

# Section 51 Protection for Quality Reviews

For Island Health Medical Staff Leaders

# Welcome!

High performing organizations are built on the concept of a Just Culture that supports using learning from errors to drive improvements in care.

Creating a Just Culture ensures that we are able to have honest conversations about errors in a way that is safe and blame free.

Section 51 protection is part of what enables these types of conversations to occur.

Island Health adapted this self-directed training module for Medical Staff Leaders from a presentation developed by Northern Health.

It will take approximately 20 minutes to complete this module.



# Why do I need to know this?

**CONFIDENTIAL**

Your patient just had emergency surgery, and you suspect that the surgery was only needed because someone made a mistake during a routine procedure the day before. You want to talk about your concerns, but you're afraid that if you do, it could be used against someone on your team in a malpractice suit.

How can you help your team learn from this situation and improve the care provided while ensuring that nothing said will be used against you or your team?

You need to learn about Section 51!

# What this module covers:

By the end of this module, you will be able to:

- \* Explain the purpose of Section 51
- \* Determine when to initiate a Section 51 Review
- \* Ensure your communication is protected
- \* Find additional resources
- \* Connect with the people at Island Health who can answer your questions

# What is Section 51?

It is a section in the *BC Evidence Act* that allows you the freedom to discuss or critique a case or event, without having your **thoughts or opinions** entered into evidence in any possible legal proceedings.

It is meant to ensure that hospitals and health care professionals can constantly review and improve services and procedures, without fear of reprisals.

But, there is a catch!



# What's the catch?

1. Not all information and communications are protected.
2. You still have an obligation to disclose adverse events to patients.

To be protected under Section 51, you must follow a set process. Information compiled for the purpose of an event review process is protected when the review is conducted by a committee that:

1. is established or approved by the Board of Directors,
2. includes health care professionals employed by or practising at Island Health, and
3. is for the purpose of improving medical or hospital practice or care.

Ensure that your communications are protected from the start.



# What a “Section 51 Review” is not

- \* Just because an event is to be reviewed, this does not make it a Section 51 review.
- \* Not all safety events are reviewed under Section 51.
- \* Designating a review as Section 51 does not affect the impact of the findings and recommendations.

# When should a Section 51 Review be conducted?

The Health Care Protection Program recommends that reviews under Section 51 should be conducted for “all occurrences, events or adverse outcomes that give rise to significant quality of care concerns”

*and*

are “reviewed for the purposes of examining the quality of care by health care professionals.”





# When should a Section 51 Review be conducted?

- \* Safety events are reported through the Patient Safety and Learning System. As the name implies, the subsequent review is for learning and as such will be carried out under Section 51.
- \* Factual information provided following a patient care concern identified through the Patient Care Quality Office (PCQO) does not fall within Section 51 of the Evidence Act.

# When should a Section 51 Review be conducted?

- \* Section 51 applies within the Hospital Act, the Mental Health Act and the Emergency Health Services Act, and as such:
  - \* Information must be collected in facilities that are defined under the *Hospital Act*, and Provincial mental health facilities as defined in the *Mental Health Act*;
  - \* S.51 includes the review of medical/hospital practice during transportation to/from the hospital or facility.

# True or False?

I decided that we need to review the case of the patient with an ulcer who fractured her arm on the way to the bathroom. I've started interviewing the nurses who were on staff during the incident.

Are our conversations protected under Section 51?

- A. True
- B. False



# Answer



B. False

- \* You can't just start gathering information, and expect it to be protected under Section 51.
- \* You must be working with a properly constituted committee on a Quality Assurance Review.

# What is a “properly constituted Quality Review committee”?

Committees that report to the Island Health Board of Directors  
*and*

Have a Terms of Reference (ToR) which specifically identifies quality assurance as one of the purposes of the committee.

Committees can be existing, multi-purpose committees, or convened with the specific purpose of conducting a Section 51 review.

All quality councils that report through the Quality Structures at Island Health are Section 51 protected.

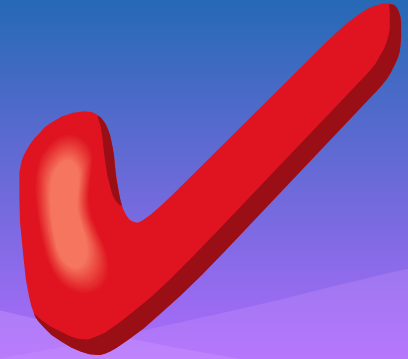
# True or False?

I need to initiate a Section 51 Review. I am a member of a Physician's Community of Practice. We meet once a month to share information and learn best practices from each other, in order to continuously improve our own practice.

My Community of Practice is a "properly constituted committee" for the purposes of Section 51.

- A. True
- B. False

# Answer:



B. False

- \* To be “properly constituted”, your terms of reference must explicitly state that your committee conducts Quality Assurance Reviews.

# True or False?

I need to initiate a Section 51 Review. I meet regularly with the other Medical Directors and Chief Medical Health Officer.

This group is a “properly constituted committee” for the purposes of Section 51.

- A. True
- B. False



# Answer:



B. False

- \* You're involving the right people, but unless your group is a formal committee with a mandate to perform Quality Reviews in your terms of reference, you're not covered under Section 51.

# True or False?

I need to initiate a Section 51 Review. I am a member of the Island Health Medical Advisory Committee (MAC).

This is a “properly constituted committee” under Section 51.

- A. True
- B. False

# Answer:



A. True

- \* Local MACs report to the HAMAC, which in turn reports to the Board; they also have a Terms of Reference that includes a statement about conducting Quality Assurance Reviews.

# Who is able to commission a Section 51 review?

- \* Chief Medical Officer
- \* Medical Directors through Program and Geographic Quality Councils
- \* Chiefs of Staff through Geographic Quality Councils
- \* Department Heads through the Health Authority Medical Advisory Committee
  
- \* At Island Health, Section 51 reviews are usually commissioned through the Geographic and Program Quality Councils. For advice contact [psls@viha.ca](mailto:psls@viha.ca)

# Who is ultimately accountable for a Section 51 review?

- \* Medical Directors
- \* Chief Medical Officer
- \* Health Authority Medical Advisory Committee (HAMAC)
- \* Chief Executive Officer & Board of Directors

# What is protected under a Section 51 review?

- \* Opinions and interpretations of any health care professionals, staff members and individuals who participate in the review are protected.
- \* All information, records, summaries and documentation arising from the Section 51 review are protected.



# A Note on Recommendations...

- \* Once approved (for example, by a Quality Council), recommendations from a Section 51 review may be released to individuals within the organization who need to be aware of, or have the authority to act on, the recommendations.
- \* If the organization has taken action on recommendations from a Section 51 review, these actions may be released to the public. Under Section 51, actions should not be directly linked to the review or recommendations.

# What is *not* protected under a Section 51 review?

- \* The *facts* of the case or factual information (including in a patient's chart) are *not* generally protected.
- \* Reviews related to care provided in the community (not linked to hospital-based care).
  - \* Note: Transportation of patients to and from hospital is covered.
- \* Information and opinions gathered by any person or individual who is not working with a "properly constituted committee" to conduct a Quality Review.



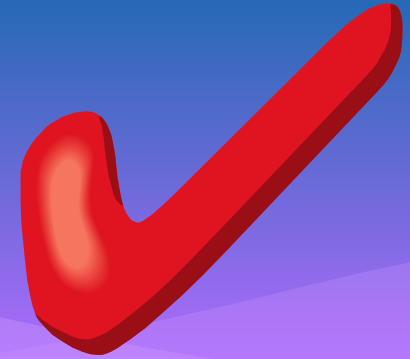


# Multiple Choice:

Which information would *not* be protected under a Section 51 Review?

- A. My judgement about whether or not the patient should have been discharged.
- B. The name and dosage of the medication prescribed.
- C. My opinion about the appropriateness of the medication prescribed.
- D. My concerns about the personal issues that may have been distracting the attending physician.

# Answer:



B. The name and dosage of the medication prescribed.

- \* The factual information is not generally protected, but your thoughts, beliefs and opinions are.



# Related Legislation, Policies & Guidelines applicable in British Columbia

- \* *Evidence Act, S.51*
- \* *Health Act*
- \* *Mental Health Act*
- \* *Health Professions Act*
- \* *Emergency Health Services Act*
- \* *Freedom of Information & Protection of Privacy Act*
- \* *Canadian Disclosure Guidelines*
- \* *Island Health Disclosure Policy*

# Thank you for completing this module!

For more information, contact:

[qps@viha.ca](mailto:qps@viha.ca)

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