
Subject: **COLLECTION, USE AND DISCLOSURE
OF PERSONAL HEALTH INFORMATION**

Number: **ADM-PHI-27**

Section: Personal Health Information/Privacy

Prepared by: Director of Governance and Corporate
Secretary; Privacy Officer

Endorsed by: Providence Care Management Forum

Clinical Documentation and Technology
Committee

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Secretary; Privacy Officer

Page 1 of 8

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POLICY

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Purpose:

To support Providence Care personnel in complying with provisions of the *Personal Health Information Protection Act* regarding collection, use and disclosure of personal health information for patients, clients, and residents.

Keywords: access, clinical record, legal, release, audio, visual recordings, secondary use

Policy Statement:

Providence Care has an obligation to collect, use and disclose personal health information (PHI) about patients, clients, and residents (clients) in a manner that protects the confidentiality of the PHI and privacy of the client while facilitating effective health care delivery. Providence Care collects, uses and discloses PHI in accordance with the *Personal Health Information Protection Act (PHIPA)*, *Public Hospitals Act (PHA)*, *Mental Health Act (MHA)*, *Long-Term Care Homes Act (LTCHA)*, and other relevant legal or statutory requirements.

General Principles

Providence Care collects, uses, or discloses PHI with the consent of the client or incapable client's Substitute Decision-Maker (SDM)/Power of Attorney (POA) for Personal Care when necessary for a lawful purpose.

Providence Care limits the amount of PHI it collects, uses, or discloses to the minimum amount that is reasonably necessary. Providence Care only collects, uses, and discloses PHI if no other information will meet the purpose.

Providence Care personnel collect, use, disclose, retain or dispose of PHI only as permitted by Providence Care and as necessary for the purpose of carrying out their duties, subject to any limitations or restrictions that are in place. To help prevent unauthorized collection, use or disclosure of PHI, access to PHI is limited to those who require such information in order to carry out their job duties.

PHIPA identifies situations where PHI may be collected, used or disclosed with or without consent of the individual. Providence Care relies upon the implied consent of the individual to collect, use or disclose PHI for the provision of health care or assisting with the provision of health care.

The list of examples in this policy are not all encompassing. For clarification or further information about specific situations contact the Privacy Officer at privacyofficer@providencecare.ca or 613-544-4900, ext. 53548.

Collecting PHI

Providence Care collects PHI directly from the individual, except in certain circumstances, for example, where the individual consents to the collection being made indirectly. Providence Care also collects information indirectly where it is reasonably necessary for providing health care to the individual and it is not possible to collect PHI that can reasonably be relied on as accurate and complete, or to collect PHI from the individual in a timely manner. (Refer to Appendix 1 'Limits on Use and Disclosure'.)

Using PHI

Providence Care and Providence Care personnel are permitted to use PHI for the purpose for which the information was collected or created and for all functions reasonably necessary for carrying out that purpose, unless it is aware that the individual has expressly instructed otherwise.

Providence Care is permitted to use PHI for other secondary purposes where it would not be practicable or reasonable to seek permission from the individual, including but not limited to:

- Planning or delivering services that Providence Care provides and evaluating those services
- Risk management, improving or maintaining quality of care, and improving or maintaining the quality of any related programs or services
- Providing education to Providence Care personnel to provide health care

- To contact a client or SDM/POA to seek consent to a use or disclosure of PHI in situations where consent is required
- For the purpose of a proceeding or a contemplated proceeding in which Providence Care or current or former member of Providence Care personnel is or is expected to be a party or witness if the information relates to matter at issue in the proceeding
- To obtain payment or process, monitor, verify or reimburse claims for payment for the provision of health care or related goods and services
- For approved research conducted at or by Providence Care in accordance with PHIPA

Disclosing PHI

Providence Care may disclose PHI with the consent of the individual or the individual's SDM/POA. The information disclosed must be limited to only what was consented to and may only be disclosed to the individual or organization specified on form 400674 'Consent to Disclose'.

Disclosure of PHI may be permitted or in some cases it may be required under PHIPA or pursuant to other legislation.

In general, Clinical Records is responsible for disclosing PHI to third parties (e.g. other HICs, the police) outside of Providence Care. If there is an urgent need to disclose PHI and Clinical Records is unable to make the disclosure in a timely manner, Providence Care personnel must get authorization from the Privacy Officer or Administrator on call who may consult with legal counsel or others.

A clinician within their scope of practice or authorized program clerical support can provide informal direct access to PHI at a client or SDM's/POA's request for information (e.g. a medication profile, insurance forms, copy of an assessment, copy of care/service plan, letter on their health status, or health services received, such as a doctor's note or letter for the Ontario Disability Support Program (ODSP)).

Disclosure as Permitted or Required by Law

Providence Care is permitted, but is not required to disclose PHI in a number of situations without consent:

- Where the disclosure is reasonably necessary for the provision of health care, it is not reasonably possible to obtain the consent of the client or the client's SDM/POA in a timely manner; and the client has not expressly withdrawn or withheld their consent, disclosure may be made to specified Health Information Custodians (HICs) or those within the Circle of Care.
- Where the client is deceased or suspected to be deceased to identify the individual or inform others where it would be reasonable in the circumstances
- For the purposes of contacting a relative, friend or potential SDM/POA of the individual, if the individual is injured, incapacitated or ill and unable to give consent
- To determine or verify the eligibility of an individual to receive health care
- To a prescribed entity that maintains a registry of PHI

- Where there are reasonable grounds to believe the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons
- For the purposes of a proceeding if Providence Care or Providence Care personnel are expected to be a party or witness in that proceeding
- For the purposes of determining, assessing or confirming capacity
- For research purposes, subject to the requirements of PHIPA

Providence Care has an obligation to disclose PHI in some situations in order to comply with a legal requirement under PHIPA or another act. Disclosure of PHI is required where a mandatory reporting or disclosure obligation exists by law, including:

- Complying with a summons, court order, warrant or other similar requirement
- Reporting to a Children's Aid Society where there are reasonable grounds to believe that a child is in need of protection as a result of abuse or neglect
- Informing the coroner if a client dies in custody
- Reporting sexual abuse, incompetence, or incapacity to a health professional's college
- Where a health care professional has reason to believe that an individual will carry out threats of violence against a specific person or group of people, the health care professional may have a positive duty to report the potential threat to the police or to the intended victim of a threat (i.e. duty to warn)
- Any other purpose required by legislation

Policy Statement Only

Definitions:

Circle of Care

The term "circle of care" is not a defined term in PHIPA. It is a term commonly used to describe the ability of certain health information custodians to assume an individual's implied consent to collect, use or disclose personal health information (PHI) for the purpose of providing health care, in circumstances defined in PHIPA.

Circumstances when you may assume consent to be implied

A health information custodian (HIC) may only assume an individual's implied consent to collect, use or disclose personal health information if all of the following six (6) conditions are satisfied.

1. The HIC must fall within a category of HICs that are entitled to rely on assumed implied consent. For example, health information custodians include:
 - health care practitioners
 - long-term care homes
 - LHIN Home and Community Care
 - hospitals, including psychiatric facilities

- specimen collection centres, laboratories, independent health facilities
 - pharmacies
 - ambulance services
 - Ontario Agency for Health Protection and Promotion
2. The PHI to be collected, used or disclosed by the HIC must have been received from the individual, their SDM/POA or another HIC.
 3. The HIC must have received the PHI that is being collected, used or disclosed for the purpose of providing or assisting in the provision of health care to the individual.
 4. The purpose of the collection, use or disclosure of PHI by the HIC must be for the provision of health care or assisting in the provision of health care to the individual.
 5. In the context of disclosure, the disclosure of PHI by the HIC must be to another HIC.
 6. The HIC that receives the PHI must not be aware that the individual has expressly withheld or withdrawn their consent to the collection, use, or disclosure.

Client

Client includes patient, client, resident.

Collection

Collection means to gather, acquire, receive or obtain personal health information by any means from any source (i.e., from another person, organization, or health care custodian).

Consent

Consent means knowledgeable voluntary agreement from the client or incapable client's SDM/POA to collect, use, or disclose PHI for the identified purposes. For the consent to be knowledgeable, it must be reasonable to believe that the individual knows the purpose of the collection, use, or disclosure and knows that they may give or withhold consent.

Consent may be either express or implied. Express consent is given explicitly, either orally, in writing or by gesture. Implied consent arises where consent may reasonably be inferred from the action or inaction of the individual.

Disclosure

Disclosure means in relation to information within the custody or control of Providence Care, to make the information available or to release it to another person, organization or health care custodian outside of Providence Care. Sharing information within Providence Care is considered a use and not a disclosure.

Express Consent

Consent from the client that is specifically given for the collection, use, or disclosure of their personal health information; Express consent can be verbal or any other indication of consent (e.g., nod of the head)

Health Information Custodian (HIC)

A Health Information Custodian is a person or organization who has custody or control of personal health information as a result of or in connection with performing the person's or organization's powers or duties as further defined in PHIPA.

Implied Consent

Implied consent means consent that is not specifically provided but can be implied based on the circumstances (e.g. a client implies consent to collect PHI when discussing their health in the course of care). Providence Care may only rely on implied consent when the collection, use, or disclosure is for healthcare purposes.

Personal Health Information

Personal health information refers to information in oral or recorded form about the physical or mental health of an individual or their health history or health care that they have received that could identify them (examples include Ontario Health Insurance Plan (OHIP) number, medical record number, any combination of identifiers, such as initials, sex, date of birth, and family physician's name).

Personnel

Personnel includes all Providence Care staff, physicians, medical residents, consultants, Board members, contractors, students, affiliates, Experience Partners, and volunteers who will have access to or be exposed to personal health information.

Use

In relation to PHI in the custody or under the control of a Health Information Custodian or a person, means to handle or deal with the information but does not mean to disclose the information.

References:

[Coroner's Act](#)

[Personal Health Information Protection Act](#)

[Mental Health Act](#)

Waypoint Centre for Mental Health Care 'Collection, Use and Disclosure of Personal Health Information Ver. 1.0, 2020-08-20

Information and Privacy Commissioner of Ontario 'Circle of Care Sharing Personal Health Information for Health-Care Purposes

<https://www.ipc.on.ca/wp-content/uploads/resources/circle-of-care.pdf>

Related Policies:

Providence Care Administrative Manual Policy and Procedure #ADM-ADM-1 'Officer in Charge

Providence Care Administrative Manual Policy and Procedure #ADM-ADM-2 'Responsibilities of the Person in Charge for the Mental Health Program under the Criminal Code of Canada

Providence Care Administrative Manual Policy and Procedure #ADM-EM-28 'Communication with the Police'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-7 'Personal Health Information – Access and Release'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-10 'Privacy Practices'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-13 'Personal Health Information – Release by Facsimile'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-25 'Consent for Photographs/ Recordings'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-36 'Personal Health Information Technology Based Practice'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-39 'Consent Management/Lockbox'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-40 'Privacy Incident Management'

Providence Care Administrative Manual Policy and Procedure #ADM-PHI-44 'Communication between Health Information Custodians using Email/Text'

Providence Care Administrative Manual Policy and Procedure #ADM-QRM-1 'Incident Reporting and Management'

Providence Care Administrative Manual Policy and Procedure #ADM-RES-1 'Health Research'

Providence Care Administrative Manual Policy and Procedure #ADM-RES-9 'Privacy Incident in Research'

Providence Care Clinical Practice Manual Policy and Procedure #CLIN-PP-8 'Allergies and Adverse Drug Reaction Reporting'

Providence Care Clinical Practice Manual Policy and Procedure #CLIN-PP-13 'AWOL/Missing Client Protocol'

Subject: COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION
Policy #ADM-PHI-27

Page 7 of 8

Providence Care Clinical Practice Manual Policy and Procedure #CLIN-PP-27 'Correctional Staff and Inmates'

Providence Care Clinical Practice Manual Policy and Procedure #CLIN-PP-28 'Death of an Inpatient'

Providence Manor Care Delivery Manual Policy and Procedure #CARE-RC-5 'Allergies and Adverse Drug Reaction Reporting'

Providence Manor Care Delivery Manual Policy and Procedure #CARE-RC-59 'Death of Resident'

Providence Care Community Programs Manual Policy and Procedure #CP-CLIN-3 'Allergies and Adverse Drug Reaction Reporting'

Providence Care sites Emergency Response Manual 'Code Yellow'

Collection, Use and Disclosure of Personal Health Information #ADM-PHI-27

LIMITS ON USE AND DISCLOSURE

Use	Description
1. Where permitted or required pursuant to an Act	<ul style="list-style-type: none"> ▪ Where use of PHI is legally permitted or required, PHI may be used by Providence Care for the purpose for which it was disclosed or for the purpose specified (e.g. <i>PHIPA</i>, <i>Mental Health Act</i>).
2. Planning, Delivery and Management of Programs and Services	<ul style="list-style-type: none"> ▪ To plan or deliver programs or services that Providence Care provides or funds in whole or in part, and for allocating resources to and evaluating those programs/services.
3. Risk Management and Quality of Care	<ul style="list-style-type: none"> ▪ For the purpose or risk management, improving or maintaining quality of care, and improving or maintaining the quality of any related programs or services.
4. Education	<ul style="list-style-type: none"> ▪ To educate Providence Care personnel to provide health care (e.g. nursing students, medical residents).
5. Disposal	<ul style="list-style-type: none"> ▪ To dispose of the PHI or to modify PHI to conceal the identity of the client to whom the information relates.
6. To Seek Consent	<ul style="list-style-type: none"> ▪ To contact a client or the client's SDM/POA to seek consent to a use or disclosure of PHI in situations where consent is required.
7. Proceedings	<ul style="list-style-type: none"> ▪ For the purpose of a proceeding or a contemplated proceeding in which Providence Care or Providence Care current or former personnel is or is expected to be a party or witness, but only if the information related to a matter at issue in the proceeding.
8. Payment	<ul style="list-style-type: none"> ▪ To obtain payment or process, monitor, verify, or reimburse claims for payment for the provision of health care or related goods and services.
9. Research	<ul style="list-style-type: none"> ▪ For research conducted by Providence Care, but only if a research plan is prepared and approved by the Research Ethics Board (REB) in accordance with PHIPA.

DISCLOSURES WITH CONSENT

Disclosure	Description
<p>10. To another healthcare facility or provider to which the client is discharged</p>	<ul style="list-style-type: none"> ▪ When a client is discharged to another healthcare facility or health care provider, a copy of the discharge summary or other pre-approved PHI may be sent to the receiving facility with the client or at a later date when the information becomes available. ▪ The PHI can only be disclosed if Providence Care is not aware that the client has refused to provide consent.
<p>11. To:</p> <ul style="list-style-type: none"> ▪ Community supervisors with respect to Ontario Review Board dispositions (e.g. work supervisors) ▪ Family members or friends of the client ▪ Government agencies or employers ▪ Insurance Companies ▪ Landlords ▪ Law enforcement agencies ▪ Lawyers ▪ Media ▪ Occupational Health, Safety and Wellness ▪ Parole Officers ▪ Psychiatric Patient Advocate Office 	<ul style="list-style-type: none"> ▪ Requires express consent.
<p>12. Clinicians within their scope of practice</p>	<ul style="list-style-type: none"> ▪ At a client's or SDM's/POA's request, a clinician can provide informal direct access to PHI for information, (e.g., a medication profile, insurance forms, copy of an assessment, copy of care/service plan, letter on their health status, or health services received, such as a doctor's note or letter for ODSP).

DISCRETIONARY DISCLOSURES WITHOUT CONSENT

Disclosure	Description
13. To another care provider for the provision of health care	<ul style="list-style-type: none"> ▪ Where the disclosure is reasonably necessary for the provision of health care. ▪ The PHI can only be disclosed if: <ul style="list-style-type: none"> - the client has not expressly withdrawn or withheld their consent, and - the disclosure is to specified HICs (e.g. hospital, community mental health agency, Alzheimer’s Society).
14. To contact a relative, friend or potential Substitute Decision-Maker/Power of Attorney	<ul style="list-style-type: none"> ▪ Client must be injured, incapacitated or ill and unable to give consent
15. To the Minister, another HIC, or Ontario Health	<ul style="list-style-type: none"> ▪ To determine or obtain funding or payment for the provision of health care. ▪ When receiving a request for the purpose of health care billing, the following information may be provided to physicians, midwives, or dentists who have participated in the care of the client: <ul style="list-style-type: none"> - Date of birth - Admission and discharge dates - Consultation date - Address - Telephone number - Referring/attending/family physician
16. Regarding telephone calls	<ul style="list-style-type: none"> ▪ A person’s general health status may only be disclosed if: <ul style="list-style-type: none"> - the client is an inpatient, outpatient, or resident and the individual has been given an opportunity to object and has not objected at the time of admission or later in their stay at Providence Care (this does not include inmates at Providence Care Hospital, and - the caller identifies the client by first and last name. ▪ A clinician may disclose the client’s general health status (i.e. described as critical, poor, fair, stable or satisfactory, or in similar terms) subject to documented express consent. ▪ Disclosure of any other PHI requires the client’s express consent.

DISCRETIONARY DISCLOSURES WITHOUT CONSENT

Disclosure	Description
17. Where the client is deceased or is reasonably suspected to be deceased	<ul style="list-style-type: none"> ▪ To identify the individual or inform others whom it is reasonable to inform in the circumstances, (e.g., a client who has had a relationship with the client who died when they ask).
18. Disclosure for health or other programs	<ul style="list-style-type: none"> ▪ To determine or verify the eligibility of an individual to receive health care. ▪ To conduct an audit or review if: <ul style="list-style-type: none"> - the audit or the review relates to services provided by Providence Care, - the auditor does not remove any records from the premises, and - individuals conducting the audit or review are required to sign the Confidentiality and Information Security Agreement before accessing PHI. ▪ Official representatives of Accreditation Canada may access PHI to conduct an accreditation survey of Providence Care. Accreditation Surveyors must sign a Confidentiality and Information Security Agreement before accessing PHI. ▪ To a prescribed entity that maintains a registry of PHI.
19. Eliminating or reducing a significant risk of serious bodily harm to a person or group of persons	<ul style="list-style-type: none"> ▪ Disclosure can be made when there are reasonable grounds to believe that the disclosure will eliminate or reduce a significant risk of serious bodily harm to an individual or a group in certain circumstances. ▪ Consultation with the Program/Team Manager, Director of Care, or Administrator On Call, is required prior to disclosing PHI in these circumstances. ▪ There may be a duty to warn under the common law or a mandatory obligation under statute (see #34) in some cases. ▪ Where disclosure is made, the details of the disclosure and rationale for the decision must be documented in the individual's PHI record.
20. To the head of a penal or other custodial institution	<ul style="list-style-type: none"> ▪ To assist the facility in making a decision concerning arrangements for the provision of health care to the individual or the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge in accordance with applicable law.

DISCRETIONARY DISCLOSURES WITHOUT CONSENT

Disclosure	Description
<p>21. For the purposes of examining, assessing, observing or detaining the client in accordance with the <i>Mental Health Act</i>; or complying with Part XX.1 (Mental Disorder) of the Criminal Code (Canada) or an order or disposition made pursuant to that Part)</p>	<ul style="list-style-type: none"> ▪ In the Mental Health Program as a Schedule 1 psychiatric facility, the Officer in Charge may collect, use and disclose PHI about a client, with or without the Forensic Mental Health client's consent,
<p>22. For the purpose of a proceeding or contemplated proceeding</p>	<ul style="list-style-type: none"> ▪ PHI can only be disclosed if: <ul style="list-style-type: none"> - Providence Care or Providence Care personnel (current or former) are or are expected to be a party or witness - If the information relates to or is a matter in issue in the proceeding or contemplated proceeding (e.g. Ontario Review Board hearing, Court)
<p>23. For the purpose of complying with a summons, order, warrant, or other legal procedural rule or document</p>	<ul style="list-style-type: none"> ▪ During regular business hours, all legal requests for PHI must be forwarded to Clinical Records. ▪ After hours and on weekends, all legal requests for PHI must be forwarded to the Administrator On Call ▪ Lawyers representing a client in a proceeding before the Consent and Capacity Board of the Ontario Review Board are entitled to access the PHI record of their client.
<p>24. To a proposed litigation guardian or legal representative of a client</p>	<ul style="list-style-type: none"> ▪ To have the person appointed as such, and/or ▪ To such an authorized individual for the purpose of commencing, defending, or continuing a proceeding on behalf of a client.
<p>25. For the purpose of determining, assessing, or confirming capacity</p>	<ul style="list-style-type: none"> ▪ Under the <i>Health Care Consent Act</i>, <i>The Substitute Decisions Act</i>, or <i>PHIPA</i>.

DISCRETIONARY DISCLOSURES WITHOUT CONSENT

Disclosure	Description
26. To a health regulatory body	<ul style="list-style-type: none"> ▪ Related to the body's authority under its respective legislation for the purposes of administering and enforcing that act. ▪ The College of Physicians and Surgeons of Ontario has a number of investigative powers under the Public Hospitals Act relating to PHI. Other health professionals are subject to the Regulated Health Professions Act. ▪ Requests for PHI must be forwarded to Clinical Records
27. For the purposes of research	<ul style="list-style-type: none"> ▪ PHI can only be disclosed if PHIPA research rules, including approval by the Research Ethics Board, are met.
28. To a prescribed entity	<ul style="list-style-type: none"> ▪ For the purpose of analysis or compiling statistical information with respect to the management, evaluation, or monitoring of, allocation of resources to, or planning for all or part of the health system.
29. To the Minister	<ul style="list-style-type: none"> ▪ For the purpose of monitoring or verifying claims for payment for health care.

MANDATORY DISCLOSURES

Disclosure	Description
30. Coroner	<ul style="list-style-type: none"> ▪ Where a client dies while in custody at Providence Care, in accordance with the <i>Coroner's Act</i>, to the Coroner or a police officer delegated by the Coroner.
31. Public Safety	<ul style="list-style-type: none"> ▪ Physicians have an obligation to report health conditions that make it dangerous to drive or operate other equipment under the <i>Highway Traffic Act</i>, <i>Aeronautics Act</i>, <i>Railway Safety Act</i>, etc. ▪ A qualified medical practitioner must report to the Registrar of the Ministry of Transportation the name, address, and clinical condition of every person 16 years of age and older who, in the opinion of the medical practitioner, is suffering from a condition that makes it dangerous for that person to operate a motor vehicle. ▪ Certain communicable and reportable diseases (e.g. tuberculosis, COVID-19), conditions, or adverse reactions must be reported to the Chief Medical Officer, Medical Officer of Health or Health Canada under the <i>Health Protection and Promotion Act</i>, along with certain specified information.
32. Sexual abuse, incompetence, or incapacity by a health professional	<ul style="list-style-type: none"> ▪ To the health professional's regulatory college where triggered under the <i>Regulated Health Professions Act</i>.

MANDATORY DISCLOSURES

Disclosure	Description
33. Ontario Health Insurance Plan (OHIP) Fraud	<ul style="list-style-type: none"> ▪ Under the <i>Health Insurance Act</i>, Providence Care personnel are obliged to report OHIP fraud to the Ministry of Health or Ministry of Long-Term Care. OHIP fraud includes situations where an ineligible person uses a health card to obtain OHIP insured services.
34. Duty to Warn	<ul style="list-style-type: none"> ▪ Where a health care professional has reason to believe that an individual will carry out threats of violence against a specific person or group of people, there may be a positive duty to report the potential threat to the police or to the intended victim of a threat. ▪ If any member of Providence Care personnel has reason to believe that an individual will carry out threats of violence against a specific person or group of people, and the individual has the means to carry out that threat, that person will immediately notify their Manager or Clinical/Medical Director. ▪ The courts have supported a duty to warn in circumstances where three criteria are met: <ul style="list-style-type: none"> - Clarity – There is a clear risk to an identifiable person or group of persons, - Seriousness – There is a risk of serious bodily harm or death (note that bodily harm includes psychological harm), and - Imminence – There must be some urgency to the situation.