

POLICE ENQUIRIES AND POLICE ACCESS TO PATIENTS PROCEDURE [®]

DOCUMENT SUMMARY/KEY POINTS

This policy applies to **all SCHN patients** – inpatients, outpatients and those waiting in the Emergency Department.

Staff must follow these procedures as stated. All other information [except for provisions under [Chapter 16A of the Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW) – refer to [Information Sharing with other Agencies policy](#)] may only be provided in response to a search warrant/subpoena, or requests in writing- refer to: [Subpoenas, Statements and Medico-Legal Requests](#).

- A child is a “vulnerable person” and is entitled to have a support person present during any investigative procedure, including interviews and searches.
- A child cannot waive their rights to a support person.

Sydney Children’s Hospitals Network (SCHN) (Randwick (SCH) and Westmead (CHW)) staff may need to communicate with the Police under the following circumstances:

- Police phone enquiries about a patient (i.e. *Police not in attendance*)
 - **Section 1** outlines the required procedure to manage Police phone enquiries.
- Police access to a patient whilst the patient is in the care of SCHN (*Police in attendance*)
 - **Section 2** outlines the required procedure to manage Police access to patients.
- Police requests to interview a staff member in relation to the performance of their duties;
 - **Section 3** outlines the required procedure for managing Police requests for interviews with staff members in relation to patients, including staff making statements.

ED staff crash investigations: Please refer to [NSW Police Force Crash Investigation Injury Assessment Protocol](#) (located in “For Staff” tab).

Approved by:	SCHN Policy, Procedure and Guideline Committee	
Date Effective:	30 May 2016	Review Period: 3 years
Team Leader:	Network Manager, Medico-Legal	Area/Dept: Clinical Governance Unit

CHANGE SUMMARY

- New SCHN Policy.
- Replaces CHW Policy [0/A/07:8096-01:02] of similar title.

READ ACKNOWLEDGEMENT

- All clinical staff, administration staff working in clinical areas and managers are to read and acknowledge they understand the contents of this document.

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Related Legislation

- 1. Children's And young Persons (Care and Protection) Act 1998 (NSW)**
<http://www.legislation.nsw.gov.au/fragview/inforce/act+157+1998+ch.16a+0+N>
- 2. Criminal Procedure Act 1986 (NSW)**
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+209+1986+cd+0+N>
- 3. Evidence Act 1995 (NSW):**
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+25+1995+cd+0+N>
- 4. Children (Criminal Proceeding) Act 1987 (NSW):**
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+55+1987+cd+0+N>
- 5. Young Offenders Act 1997 (NSW):**
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+54+1997+cd+0+N>

Abbreviations

The following abbreviations are used in this document:

CHW – The Children's Hospital at Westmead

DCGMA - Director of Clinical Governance and Medical Administration

NETS – Newborn and paediatric Emergency Transport Service

NM – Nurse Manager

NUM – Nursing Unit Manager

SCH – The Sydney Children's Hospital, Randwick

SCHN – The Sydney Children's Hospitals Network (Randwick and Westmead)

Introduction

The safety and security of all patients across the Sydney Children's Hospitals Network is paramount.

All children or cognitively or physically impaired persons, all Aboriginal and Torres Strait Islanders and all non-English speakers are defined by law as being "vulnerable persons" (See [Chapter 6 Part 6 Criminal Procedure Act 1986](#) and Section s24 of the [Law Enforcement \(Powers and Responsibilities\) Regulation 2005](#) (NSW)), and should be accompanied by a suitable support person in any interviews requested by the Police. The right to a support person cannot be waived by a child.

If the Police require information about a particular patient relating to the safety, welfare or well-being of children and young persons, provisions under [Chapter 16A of the Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW) ("the **Care and Protection Act**") permit our co-operation. Refer to Section 245 of the **Care and Protection Act** for more information.

Other situations where staff may need to communicate with the Police may occur in the following circumstances:

- Police enquiries about a patient via a third party (*Police not in attendance*)
- Police access to a patient whilst the patient is in the care of the SCHN (*Police in attendance*)

"Police" in this document refers to the NSW Police; the Police force of another State or Territory; the Australian Federal Police, or any other law enforcement or investigative agency recognised under the **HRIP Act**, or **Chapter 16 A of the Care and Protection Act**.

The following procedures must be followed in each specific circumstance.

1 Police Enquiries about a Patient

It is common for police to enquire on the phone, or via email, about a patient's condition following an accident or incident. In this situation:

- **Requests for information** by the Police **are to be referred to the patient's treating Medical Officer** with support from the **Director of Clinical Governance and Medical Administration** (DCGMA), or the Executive on-call, or their designee.
- Generally, **the information supplied to the Police should be limited to confirmation of identity and address**. Refer to the procedure below for more details.
- If the Police are seeking information of an **urgent nature** and they can confirm that they are actively investigating the commission of an offence and that the information is "**essential to the execution of their duty**", the information supplied must follow the procedures described below and the provision of information **should be expedited** as far as possible.
- There may be some **situations where additional, limited clinical information can be provided** to the Police. Consideration needs, however, to be given to the **seriousness**

of the offence involved, the level of public risk, the impact of the disclosure on the patient's care, and the impact on the therapeutic relationship. In this case the additional information released should be limited to a general outline of the patient's condition and/or injuries, and confirmation of the patient's identity and address. If further information is sought the office of the DCGMA should be contacted on **98453475**, for assistance.

- **All other information** may only be provided in response to a **search warrant or subpoena, except** for the exchange of information permitted in terms of the provisions under **Chapter 16A of Care and Protection Act**. In this regard refer to the [Information Sharing with other Agencies policy](#) for details of what can be shared under Chapter 16A.

1.1 Procedure for Police Enquiries about a patient's condition

1. **Requests from the Police must be documented in the patient's medical record** by the staff member who receives the request and must include, in the medical record entry, the identity of the requesting officer (*name, badge number, station/local area command and contact details such as a telephone number or email address*).
2. The staff member who receives the Police request must acknowledge the request and state that the Hospital will contact them with the information as soon as possible. No information should be given directly to the requester at this stage: it should only be provided once the further steps detailed below have been followed. This procedure helps to verify that the request came from the Police and must be followed.
3. If the staff member who receives the police request is not the patient's Admitting Medical Officer, the patient's Treating Medical Officer is to be contacted. If the Treating Medical Officer is not available, contact the **DCGMA's** office on **9845 3475** to seek assistance.
4. The **Medical Officer** (or the DCGMA, or the DCGMA's authorised delegate) **should then contact the Police Officer who made the request in order to provide a response to the request.** This may include confirmation of the identity and address of the patient and/or to provide a general report of the patient's condition. The **response must be limited to information which is reasonably necessary for the purpose for which the Police require it.**

2 Police Access to Patients – Interviews

- **Interviews with patients are dependent on the urgency of access for the Police, balanced by the medical state of the patient in relation to either injury or medication.**
- **SCHN duty of care** to the maintenance of the **patient's clinical wellbeing is paramount.**
- Section s24 of the [Law Enforcement \(Powers and Responsibilities\) Regulation 2005](#) (NSW) defines the following categories of '**vulnerable persons**':
 1. children;
 2. people who have impaired intellectual functioning;
 3. people who have impaired physical functioning;
 4. an Aboriginal or Torres Strait Islander; and
 5. a person of a non- English speaking background.
- **Patients of SCHN may be classified according to one or more of these categories** of 'vulnerable persons' and if a patient is interviewed by Police, **there MUST be an appropriate support person present** during the interview.
- **A child cannot waive their rights to a support person.**

A support person can include:

 - the child's **parent or guardian**, or a **person who has the lawful custody** of the child, but not the father or mother if they have neither guardianship nor custody; or
 - someone who has the **immediate care of the child** (for example the Medical Officer or NUM); or
 - **an adult** (who is not a police officer) who is present **with the consent of one of the people mentioned above** (for example Social Worker, Child Protection Unit, Family and Community Services Worker); or
 - if the child is **14 years of age or over**, **an adult** (who is not a police officer) **who is present with the consent of the child**; or
 - a **legal representative** of the child's choice.
- The **child's parent/carer/legal guardian must also be notified of the interview** by the NUM/NM/ AHNM, unless the presence of the parent/carer/legal guardian would compromise the investigation by the Police.
- **A patient or their legal guardian may refuse to provide a victim statement to Police.**
- Where a patient (and/or their legal guardian) has agreed to provide a statement to Police, it **should be arranged within 'normal working hours'** (0800 – 1700) where possible.
- The **NUM/NM in charge of the ward where the patient is assigned must be notified** of the request and should co-ordinate the arrangements for the time and place of the interview.
- Interviews **may be facilitated by a representative of Community Services or a Social Worker.**

- The patient's **Treating Medical Officer must also be notified** of the request.

The Police provide their own **interpreters** as questioning at this level is of a legal and not a medical nature, hence specialist interpreters are needed.

If the interview is to occur after hours:

- The **AHNM must be notified** and arrange the time and place of the interview.
- The **child's parent/carer/legal guardian must also be notified** of the interview by the AHNM unless the presence of the parent/carer/legal guardian would compromise the investigation by the Police.
- The **AHNM must notify the Executive –on-call and the patient's Treating Medical Officer.**
- A **Social Worker or other staff member or a representative from the Department of Community Services may facilitate the interview.**
- Where there are either medical, legal, or procedural concerns in relation to any Police investigation or inquiry, medical and nursing staff should contact a **Clinical Program Director, the Director of Nursing, Director of Clinical Operations or the DCGMA** to manage the situation.
- Depending on the nature of the concern, the Director can consult one or more of the following persons to seek assistance/report a concern:
 - **Duty Officer** on duty at each Police Station, to seek assistance, and verify the identity of the requester, or any other matter.
 - **At CHW:** Parramatta Police Station Crime Manager (ph. **9633 9633** within working hours) ;
 - **At SCH:** Maroubra Police Station Crime Manager (ph.**93499299** within working hours);

and/or

- **SCHN Medico-Legal Manager** (ph. **93820062/98453475**);

and/or

- [NSW Health Legal Branch](#) to obtain legal opinion, if required. (**NB: The DCGMA, SCHN Medico-Legal Manager or Executive on-call shall coordinate this option**)
- At the discretion of the Executive, Public Relations should be contacted (ext. 53364: CHW) (ext. 23571: SCH) as a proactive measure, as Police activity can attract media attention.

2.1 Procedure

If the patient is NOT a suspect

1. A legal adviser is not required.
2. A “support person” should be present (see [Support Person](#) for details). The child should have an opportunity to express their needs and/or choice of support person before commencing the interview and the interview shall not commence without a support person present. The identified support person(s) shall meet separately with the police and the patient prior to the interview to ensure the best outcome for the clinical wellbeing of the patient.

If the patient IS a suspect

1. A child is a “vulnerable person” [see [Vulnerable Person definition above](#)] and is entitled to have a support person present during any investigative procedure, including interviews and searches. **A child cannot waive their rights to a support person.**
2. The child has a right to:
 - o speak to a support person by telephone and facilities should be provided for them to have this phone conversation in private, with no one present, not even the police;
 - o speak to their support person in private;
 - o know why he /she is under arrest, if applicable. You may ask the Police if the child is under arrest and if so, what for.
 - o Remain silent and not answer any questions, make a statement or sign anything until he/she has had legal advice;
 - o Legal advice. Help can be obtained by ringing **Legal Aid Hotline for Under 18’s on 1800 10 18 10**

Staff should only be present during Police interviews if it is in the clinical interests of the patient, or if the staff member is the nominated support person by virtue of their role e.g. Social Worker.

The presence of a staff member may be preferable to the Police calling in an adult to support the child who has no experience - or interests - in protecting the rights of children.

Note: Persons present must not jeopardise the child’s safety, clinical well-being, or exert undue influence.

If the child is harassed or mistreated in any way, keep a record of the police officer’s name and identification and report this to your immediate line manager and to the DCGMA on 98453475, or email schn-cgu@health.nsw.gov.au at the earliest opportunity.

3 Interviews of Employees by Police

Where a Police Officer requests to **interview a staff member** in relation to the **performance of their duties**:

- **No employee is compelled to provide a statement to a police officer.** To assist the proper administration of justice and to limit the need to be subpoenaed to give evidence in Court, staff members are, however, encouraged to assist in providing statements of this kind
- **All employees are entitled to first seek legal advice or speak to their professional association / organisation before providing a statement to police.**
- The request should also be referred to the Department Head or Clinical Program Director as also the DCGMA, so that arrangements can be made to have another senior member of staff witness the interview and act as a support person.
- **If the interview concerns a patient, the patient's privacy must be maintained.** Such an interview concerning a patient's condition should be with the patient's Admitting Medical Officer or in his/her absence, the senior Treating Medical Officer.
- **In addition, the SCHN Medico-Legal Manager must be notified of any requests** from Police to interview staff by emailing: schn-cgu@health.nsw.gov.au.
- Unless urgent, requests for witness statements from staff should be made in writing by the requesting person by addressing the request to the **Office of the Director of Clinical Governance and Medical Administration**, or his designated nominee, by emailing schn-cgu@health.nsw.gov.au, or sending the request to **Corner Hawkesbury Rd and Hainsworth St, Locked Bag 4001, Westmead, NSW, 2145.**

4 Further information

- [NSW Health Patient Matters Manual](#)
- [NSW Health Code of Conduct](#)
- [NSW Privacy Manual](#)
- [Law Enforcement \(Powers and Responsibilities\) Regulation 2005](#)

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