

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

PHIPA DECISION 195

A Physician

Appeal HA21-00205

December 22, 2022

Summary: The complainant submitted a correction request under the *Personal Health Information Protection of Privacy Act* to a physician requesting the removal of notations related to the status of her mental health. The physician denied the complainant's request citing sections 55(8) and 55(9)(b). The adjudicator finds that the complainant did not demonstrate that the information in the record was incomplete or incorrect for the purpose the physician uses the information under section 55(8). As a result, the custodian's decision to not make the requested correction is upheld.

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 3(1), 4(1) and 55(8).

OVERVIEW:

[1] This decision addresses a physician's denial of the complainant's correction request under section 55(1) of the *Personal Health Information Protection Act (PHIPA)*.

[2] The complainant submitted an access request under *PHIPA* to access a copy of her patient medical record, dated August 12, 2021 from her family physician (the custodian).

[3] After being granted access to the record, the complainant emailed the custodian and requested that any notations referencing her mental health be removed from the record. The custodian denied the complainant's request and the complainant filed a

complaint to the Information and Privacy Commissioner (IPC).

[4] The IPC assigned a mediator to explore settlement with the parties. During mediation, the complainant confirmed that she wanted any references to "anxiety", "counselling" or mental health" to be removed from the Patient Medical Record dated August 12, 2021, as well as from any other record held by the custodian containing any of these terms. In response, the custodian confirmed that, in addition to the August 12, 2021 record, the terms "anxiety", "counselling" and "mental issue" are contained in Patient Medical Records, dated August 24, 2021 and August 25, 2021, and that the term "anxiety" is noted in the Patient Medical Record, dated September 27, 2016.

[5] Accordingly, though the original correction request sought the correction of only the August 12, 2021 Patient Medical Record, the patient medical records, dated August 24, 2021, August 25, 2021 and September 27, 2021 were added to the complaint with the consent of the parties.

[6] Though the custodian's decision letter did not cite specific sections of *PHIPA*, the custodian confirmed during mediation that the exceptions to the duty to correct the records in sections 55(9)(a) and/or (b) of *PHIPA* apply.

[7] At the end of the mediation process, the parties were unable to reach a settlement. Accordingly, the file was transferred to the adjudication stage of the complaints process in which an adjudicator may conduct a review under sections 57(3) and (4) of *PHIPA*.

[8] After reading and considering the file, I sent a letter to the complainant advising her that my preliminary assessment was that there were no reasonable grounds for a review under sections 57(3) and (4) of *PHIPA*. The complainant was given an opportunity to provide written representations in response to my letter.

[9] In response, the complainant submitted written representations in support of her position that the custodian should make the requested corrections.

[10] After considering the complainant's written representations and the records, I find that there are no reasonable grounds for a review under sections 57(3) and 57(4)(a) because the complainant has not met the initial onus of establishing a right of correction under section 55(8). Given my finding, it is not necessary that I also determine whether the exception at section 55(9)(b) applies.

RECORDS:

[11] The records at issue are the Patient Medical Records dated August 12, 24 and 25, 2021, and September 27, 2016.

DISCUSSION:

Should the complainant's correction complaint proceed to a review under *PHIPA*?

[12] I have the authority under sections 57(3) and (4) of *PHIPA* to decide to conduct a review of a complaint. These provisions state, in part:

If the Commissioner does not take an action described in clause (1)(b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is affected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

The Commissioner may decide not to review the subject matter of the complaint for whatever reason the Commissioner considers proper.

[13] There is no dispute that the information the complainant seeks to correct constitutes her personal health information (PHI). PHI is defined in section 4(1) of *PHIPA*, in part as follows:

"personal health information", subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

(a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family,

(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,

[14] There is also no dispute that the physician is a "health information custodian" as defined in section 3(1) of *PHIPA*,¹ and that the complainant was given access to her health records before making her correction request.

[15] The sole issue in this complaint is whether the custodian has a duty to correct the complainant's PHI in the records. Section 55(8) of *PHIPA* provides for a right of correction to records of PHI in some circumstances. It states:

The health information custodian shall grant a request for a correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes

¹ Under section 3(1)4.i. of *PHIPA*.

for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[16] Section 55(9)(b) of *PHIPA* sets out an exception to the obligation to correct records of PHI in this complaint, as follows:

Despite subsection (8), a health information custodian is not required to correct a record of personal health information if, it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

[17] Read together, these provisions set out the criteria pursuant to which an individual is entitled to a correction of their records of PHI. The purpose of section 55 of *PHIPA* is to impose a duty on health information custodians to correct records of PHI that are inaccurate or incomplete for the purposes for which they use the information, subject to the exceptions set out in section 55(9) of *PHIPA*.

Analysis and Decision

The complainant has not discharged the onus in section 55(8)

[18] In all cases where a complaint regarding a custodian's refusal to correct records of PHI is filed with the IPC, the individual seeking the correction has the onus of establishing that the "record is incomplete or inaccurate for the purposes for which the custodian uses the information" pursuant to section 55(8).

[19] Section 55(8) requires the individual asking for correction to:

- a. demonstrate to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information, and
- b. give the custodian the information necessary to enable the custodian to correct the record.

[20] If the above is established, the question becomes whether or not any of the exceptions that are set out in section 55(9) apply.

[21] Previous IPC decisions have found that not all PHI contained in records held by health information custodians needs to be accurate in every respect. If a request is made to correct inconsequential bits of information that have no impact on the purposes for which the custodian uses the information, and the custodian is not relying on the information for a purpose relevant to the accuracy of the information, the custodian is not required to correct the information.²

² *PHIPA* Decisions 36, 39 and 40.

[22] In addition, the IPC has found that the custodian is not required to grant the correction request if the individual seeking the correction does not provide the custodian with the information necessary to enable it to correct the record.³

[23] In her representations, the complainant asserts that the custodian, as a general practitioner, is not qualified to make comments regarding her mental health. In any event, the complainant says that she did not seek medical advice from the custodian for anxiety related issues and thus any notation related to anxiety should be removed from the records. The appellant also made arguments in support of her position that the custodian acted in bad faith.

[24] I have read and considered, the complaint file, including the complainant's representations along with the records themselves and find that the requested corrections need not be made as the complainant has not established that the portions of the records she seeks to have corrected are "incomplete or inaccurate for the purposes for which the custodian uses the information" as required by section 55(8).

[25] The complainant has the onus of establishing whether or not the "record is incomplete or inaccurate for the purposes for which the custodian uses the information" pursuant to section 55(8). However, her submissions do not address this specific issue. Instead, the complainant argues that the notations in question should be removed on the basis that they represent the custodian's "unsolicited opinion." In my view, the complainant's evidence does not explain how the information at issue is "incomplete or inaccurate for the purposes for which the custodian uses the information", which in this case, was to document the custodian's contemporaneous observations during her medical examination of the complainant.

[26] Having regard to the above, I find that the custodian is not obliged to grant the correction request on the basis that the complainant has failed to establish that the record is incomplete or inaccurate for the purpose for which the custodian uses the information. Given my finding, it is not necessary that I also determine whether the complainant provided the custodian with the information necessary to correct the record.

[27] In addition, it is not necessary that I also determine whether the exception under section 55(9)(b), relied on by the custodian, applies.

Decision

[28] As set out above, sections 57(3) and 57(4) set out my authority to decline to review a complaint. For the reasons stated above, I have decided not to conduct a review of this complaint on the basis that there are no reasonable grounds to do so as the complainant has not met the initial onus under section 55(8).

³ *PHIPA* Decisions 36 and 39.

[29] I issue this decision in satisfaction of the notice requirement in section 57(5).

NO REVIEW:

For the foregoing reasons, no review of this matter will be conducted under Part VI of the *Act*.

Original Signed by: _____
Jennifer James
Adjudicator

December 22, 2022 _____