

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 235

Complaint HA20-00126

London Health Sciences Centre

January 15, 2024

Summary: The complainant submitted a correction request under *PHIPA* to a hospital to correct her personal health information in two forms completed by a physician. The hospital denied the complainant's request citing section 55(8). The adjudicator finds that the complainant did not demonstrate that the information in the records was incomplete or incorrect for the purpose the hospital uses the information. As a result, the hospital's decision to not make the requested corrections is upheld.

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

Cases Considered: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.

BACKGROUND:

[1] This decision addresses the London Health Sciences Centre (hospital or LHSC) denial of the complainant's request to correct two forms related to her request for payment of out-of-country health services under section 55(1) of the *Personal Health Information Protection Act (PHIPA or Act)*.

[2] The public website of the Ministry of Health and Long-Term Care (the ministry)

indicates that OHIP funding is available to patients for out-of-country services provided that prior approval is obtained before services are received. The website indicates that the form must be completed by the patient's physician.

[3] The complainant submitted a request to the hospital seeking corrections to two Request for Prior Approval for Full Payment of Insured Out-of-Country (OOC) Health Services completed by a named physician on June 8, 2018 and July 31, 2018 (forms).

[4] The complainant requested a correction to information located under the heading "Clinical Diagnosis (condition for which treatment is sought)" portion of the two forms.

[5] The hospital issued a decision letter to the complainant, denying the requested corrections stating, in part that, it:

... is unable to grant this request. LHSC has a duty to correct the record if it is incomplete or inaccurate for the purposes of which LHSC uses this information. This request does not meet this requirement.

[6] The hospital subsequently issued a revised decision citing section 55(8) of *PHIPA*.

[7] The complainant filed a complaint with the Information Privacy Commission of Ontario (IPC) and a mediator was assigned to explore settlement with the parties. Mediation did not settle the complaint and it was transferred to the adjudication stage of the complaints process in which an adjudicator may conduct a review. During my review, I invited the written representations of the parties.¹ The parties submitted written representations and then written replies after considering each other's arguments. The appellant's submissions are voluminous and discuss at length important issues relating to what she says is a lack of recognition and substandard care of patients living in Ontario with rare diseases in Ontario.²

[8] I note that in *Canada (Minister of Citizenship and Immigration) v. Vavilov*,³ the Supreme Court of Canada reaffirmed its finding in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*⁴ that an administrative decision

¹ Initially, I sent a Joint Notice of Review to the hospital joining two complaints filed by the complainant assigned to me. However, the complainant subsequently withdrew one of her complaints and I closed that file.

² The complainant attached several documents with her representations such her email exchanges with the physician, the hospital and the ministry along with past medical reports and other correspondence relating to advocacy work completed by others relating to the care patients living with rare diseases in Ontario receive. In addition, the complainant forwarded several emails, each often containing several attachments containing items such as other emails, links to social media content or articles. The complainant also during the review stage sent emails to the IPC complaining about recent hospital visits and the care she received for the purpose of documenting these incidents. In response, the complainant was advised that the IPC does not have the authority to review the conduct of health care professionals. I considered all of this material during my review into this complaint.

³ 2019 SCC 65, at paragraphs 128 and 301 [*Vavilov*].

⁴ 2011 SCC 62, [2011] 3 S.C.R. 708 [*Newfoundland Nurses*].

maker is not required to explicitly address every argument raised by the parties. Moreover, the fact that a decision maker's reasons do not address all arguments will not, on its own, impugn the validity of those reasons or the result.⁵

[9] I wrote this decision with this principle in mind and I have reviewed all of the relevant information put before me during the course of this review. However, for the sake of succinctness, I only summarize the points that I find to be directly related to the issue of whether the complainant's evidence meets the initial onus of establishing a right of correction under section 55(8).

[10] For the reasons that follow, I find that the complainant has not discharged the onus in section 55(8) and uphold the hospital's decision to deny the complainant's requested corrections to the forms.

RECORDS:

[11] The records comprise of two ministry forms entitled "Request for Prior Approval for Full Payment of Insured Out-of-Country (OOC) Health Services" (forms) completed by a named physician on June 8, 2018 and July 31, 2018.

DISCUSSION:

[12] 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,

[13] There is also no dispute that the hospital is a "health information custodian" as defined in section 3(1) of *PHIPA*,⁶ and that the complainant was given access to her health records before making her correction request.

⁵ *Vavilov*, *supra* note 4, at paragraph 91; *Newfoundland Nurses*, *ibid*, at paragraph 16.

⁶ Under section 3(1)4.i. of *PHIPA*.

[14] The sole issue in this complaint is whether the hospital 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 for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[15] 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.

[16] Read together, these provisions set out the criteria pursuant to which an individual is entitled to a correction of their records of PHI.

[17] Below, I explain my reasons for finding that the complainant has not discharged the onus in section 55(8).

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.⁷

[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.⁸

[23] In her correction request, the complainant asks that the information in the forms under the heading "Clinical Diagnosis (condition for which treatment is sought)" which states "Hydrocephalus treated with VP shunt (programmable shunt)" be removed and replaced with "EDS with Idiopathic Intracranial Hypertension treated with VP shunt (programmable shunt)."

[24] The complainant says that the requested correction reflects the original diagnosis for which she was funded to receive a VP shunt. In support of her position, the complainant provided documentation she says demonstrates that she had not received a diagnosis of hydrocephalus from the physician who completed the forms she wants corrected nor from any other medical professional.

[25] In addition, the complainant provided a copy of an out-of-country form (OOC form) which predates the forms she seeks to be corrected. This OOC form is signed by the same physician on February 9, 2018. The complainant says that the physician described her condition in the February 2018 OOC form as "EDS with query raised ICP and query sinus stenosis." The complainant also provided a copy of an email the physician sent her in response to her questions about why different medical terms are used to describe her condition in the February 2018 OOC form from how it is described in the forms she seeks to be corrected. The physician's email confirms that the complainant does not have hydrocephalus but instead a condition "linked to her EDS." The physician indicates in her email to the complainant that she cannot change the June and July 2018 forms as the treatment requested has already been approved and funded by the ministry.

[26] The complainant also says that the terms "Idiopathic Intracranial hypertension" be added to the June and July 2018 forms. These specific terms do not appear in the February 2018 OOC form. However, the complainant says that term "Idiopathic Intracranial hypertension" should be added to the forms she wants corrected because these terms are "relevant" and a more accurate description of her condition.

[27] The complainant explains that failing to remove the term "hydrocephalus" from the forms could place her at "considerable risk" and jeopardize the quality of her future care and cause unnecessary delay.

⁷ PHIPA Decisions 36, 39 and 40.

⁸ PHIPA Decisions 36 and 39.

[28] In response, the hospital says that the forms, "are government application forms", required to be completed before any out of country health services are received by patients. The hospital says that it does not use the information contained in the form. Instead, it says that the ministry uses "the information contained in the form for the purposes of their program for OHIP approved OOC health services." The hospital takes the position that "since it does not rely on the information for a purpose that is relevant to the accuracy of the information in the OCC forms, then [it] is not required to make the requested correction."

[29] The hospital also says that the complainant already prepared a Statement of Disagreement which has been attached to the forms.

[30] In response, the complainant asserts that the hospital used the forms to "facilitate follow up care after the acute crisis of the VP shunt was addressed." The complainant also says that the hospital uses the forms for purposes not related to providing follow-up care but to justify medical decisions which has resulted in the poor quality of care patients with rare diseases, such as EDS.⁹

[31] The hospital provided a reply to the complainant's arguments. The hospital says that the complainant's evidence fails to demonstrate that it uses the information contained in the forms. The hospital says that the complainant's evidence in this regard "are purely speculative" and "not supported by the evidence." The hospital goes on to state that it:

... agrees that the patient was not diagnosed with hydrocephalus, and this error has been acknowledged by [the physician]. There is no evidence of LHSC or any LHSC physician using this information to facilitate follow up care after the acute crisis of the shunt was addressed or to justify medical decision that have negatively impacted her treatment. The information was in the OOC forms was not used for the purposes of the hospital, namely the ongoing care and treatment of the patient.

[32] The hospital also states in its representations that the physician consulted with the Canadian Medical Protective Association and was advised that she "could not change the OOC form since the funding was approved."

[33] The complainant made sur-reply representations in response to the hospital's reply. The complainant continues to argue that the hospital uses the forms she wants corrected. In support of this position, the complainant provided numerous medical reports. One of the reports was prepared by a different physician at a different hospital

⁹ In support of this position, the complainant provided copies of emails and documents she sent to the hospital. The complainant also refers to documents, social media content and articles of the work of others doing advocacy work relating to the care patients living with rare diseases in Ontario receive. The IPC does not have the jurisdiction to make comments or decisions regarding the quality of medical care patients receive in Ontario.

regarding a 2020 visit. In this report, the complainant's history includes a notation stating "[p]revious diagnosis of intracranial hypertension, previously treated with a shunt in the United States." I note that some of the other reports provided by the complainant contain notations that the complainant had a shunt placed. The complainant says that these reports demonstrate how the information she seeks to be corrected in the forms has impacted the care she received from other physicians.

[34] The remainder of the complainant's sur-reply representations focus on concerns regarding the quality of care she received along with systemic issues patients with rare diseases face in the Ontario medical system. The complainant admits that her request to correct the clinical diagnosis information in the two forms is a part of a bigger issue relating to the lack of neurosurgical care in Ontario for patients with rare diseases.

[35] I have considered the representations of the parties, including supporting documentation the complainant provided with her written representations along with the records themselves and find that the complainant has not established that the requested corrections need to be made. I find that the complainant's evidence provides no reasonable basis to conclude that the clinical diagnosis information in the forms is "incomplete or inaccurate for the purposes for which the hospital uses the information" as required by section 55(8).

[36] Though I accept the parties' evidence that the physician acknowledged that the information at issue in the form contains an inaccuracy, the circumstance of this complaint is that the information appears in a form that was submitted to the ministry to obtain funding. The complainant argues that the hospital used these forms to provide her health care after the funded procedure occurred. However, having regard to the evidence presented, there is insufficient evidence to support a finding that the hospital used or relied upon the clinical diagnosis information in the forms in its future care decisions. The determining issue in this complaint is whether the forms are incomplete or inaccurate for the purposes for which the hospital uses the information.

[37] The hospital says that the information was in the OOC forms was not used for its ongoing care and treatment of the complainant. In my view, the forms in question served a time-sensitive administrative purpose (to request full payment of out-of-country medical services). Furthermore, its placement in the complainant's medical records held by the hospital does not in itself demonstrate that the forms were being used by the hospital in the manner described by the complainant. In my view, the forms record the information the physician submitted to the ministry and is not being used by the hospital for any other purpose. As the hospital is not relying on the information for a purpose relevant to the accuracy of the information, it is not required to correct the information at issue.¹⁰

[38] Having regard to the above, I find that the complainant has not discharged the onus of establishing that the forms are incomplete or inaccurate for the purposes for

¹⁰ PHIPA Decision 36.

which the custodian uses the information under section 55(8).

[39] Accordingly, I find that the hospital does not have a duty to grant the correction request. Given my finding, it is not necessary that I also determine whether the complainant provided the hospital with the information necessary to correct the record.

NO ORDER:

For the foregoing reasons, no order is issued, and I dismiss the complaint.

Original Signed By: _____
Jennifer James
Adjudicator

_____ January 15, 2023