

Information and Privacy Commissioner,  
Ontario, Canada



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

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## PHIPA DECISION 236

Complaint HA22-00021

Dr. Jose Guerra

January 16, 2024

**Summary:** The complainant made a correction request under the *Act* to a health information custodian (the custodian) for the correction of his personal health information in a consultation report. The custodian denied the correction request on the basis that he does not have a duty under section 55(8) of the *Act* to make the correction. In this decision, the adjudicator finds that the custodian was not required to make the requested corrections as the complainant has not established that the information he seeks corrected is inaccurate for the purposes for which the custodian uses it. The adjudicator issues no order and upholds the custodian's decision.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, sections 3(1), 4(1), 55(8) and 55(11).

**Decisions Considered:** PHIPA Decision 36.

### BACKGROUND:

[1] The requester made a correction request under the *Personal Health Information Protection Act (PHIPA or the Act)* to Dr. Jose Guerra (Dr. Guerra or the custodian) for corrections to be made to a consultation report containing his own personal health information. The request states, in part:

There is an error in the report that we need to bring to your attention. re. "the patient states that he has had this pain for approximately 5 years...". This is not correct. I did not have right knee pain for the past 5 years prior

to the accident. Further I never had injections, surgery or physiotherapy for any joint in my body at any time prior to the car accident.

[2] The custodian denied the correction request on the basis that the requester had not provided him with any information to enable him to make a correction or to justify a correction to the record.

[3] The requester, now the complainant, made a complaint to the Information and Privacy Commissioner of Ontario (the IPC) with respect to the custodian's decision.

[4] The file was assigned to a mediator. During mediation, the complainant clarified that the duration of his knee pain as recorded in the consultation report is inaccurate and he wants the term "5 years" to be struck out and the phrase "5 months since the accident" to be added. After a review of the information, the custodian advised that he maintains his position that he is not required to make corrections to the consultation report.

[5] Despite further exchanges between the complainant and the custodian about the nature of the correction request and the custodian's decision, facilitated by the mediator, the custodian maintains his position that he is not required to correct the consultation report as requested by the complainant. The complainant confirmed that he is not satisfied with the custodian's decision to deny the correction request and advised that he wants to pursue this issue at adjudication.

[6] Also, during mediation, the complainant sent a statement of disagreement to the custodian. The custodian advised that, following review of the statement of disagreement, he does not accept that it is in accordance with the requirements of *PHIPA* and he is not required to attach it to the consultation report. The complainant advised that he also wants to pursue this issue at adjudication.

[7] As mediation did not resolve the complaint, the file was moved to the review stage where an adjudicator may conduct a review. I decided to conduct a review and sought representations from both the custodian and the complainant.<sup>1</sup>

[8] In this decision, I find the custodian does not have a duty under section 55(8) the *Act* to correct the complainant's personal health information in the consultation report. I also find that in the particular circumstances of this complaint, the custodian is not required to attach the statement of disagreement provided by the complainant to the consultation report.

## **RECORDS:**

[9] The record at issue is a consultation report (the report or the consultation report)

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<sup>1</sup> The parties' representations were shared in accordance with the principles set out in the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

dated January 25, 2017.

## **ISSUES:**

- A. Does the custodian have a duty to make the requested correction under section 55(8) of the *Act*?
- B. Was the custodian required to attach the statement of disagreement provided by the complainant in accordance with section 55(11) of the *Act*?

## **DISCUSSION:**

### **Issue A: Does the custodian have a duty to make the requested correction under section 55(8) of the *Act*?**

[10] The parties do not dispute, and I find that the custodian is a health information custodian as defined in section 3(1) of the *Act*. Further, I find that the consultation report contains the complainant's personal health information under section 4(1) of the *Act*.

[11] Section 55(1) of the *Act* provides for a right of correction to records of personal health information in some circumstances. It permits an individual who has received access to their personal health information to request that a custodian correct a record "if the individual believes that the record is inaccurate or incomplete for the purpose for which the custodian has collected, used or has used the information..."

[12] Section 55(8) imposes a duty on health information custodians to correct records of personal health information 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.

### ***Representations***

[13] The custodian submits that the complainant has failed to demonstrate that the personal health information that he wishes to have corrected in the consultation report is inaccurate for the purposes for which the custodian uses the information. The custodian surmises that the complainant seeks correction of the consultation report for some other purpose that does not relate to the treatment of his knee.

[14] The custodian submits that the complainant's request relates to the following statement in the consultation report, "This patient states that he has had this pain [i.e.,

right knee pain] for approximately 5 years, but this actually was exacerbated by a car accident sustained in August 2016." The next sentence goes on to reiterate that the car accident caused "aggravation of his right knee pain" The custodian refers to an MRI which reveals "osteoarthritic changes with a degenerative tear of the medical meniscus." The custodian notes that the referral from the complainant's family physician was a referral for "R knee moderate osteoarthritis".

[15] The custodian states that the complainant argues that he told the custodian that he had pain for approximately 5 months and not 5 years. The custodian states that to accept this argument would mean that the complainant told him that the onset of his knee pain was in or around the time of his car accident. The custodian says that the complainant's assertion is inconsistent with the rest of the information in the consultation report that documents that he (the custodian) was told that the complainant's knee pain was exacerbated by the car accident, indicating that the knee pain "...clearly pre-existed the accident and that its onset was prior to the accident." The custodian states:

The imaging report and the family physician referral request to Dr. Guerra both support the understanding that the complainant had moderate osteoarthritis in his right knee, which would not have been caused by the accident, but which can cause pain.

[16] Finally, the custodian notes that after his assessment of the complainant he would use his written notes to prepare his consultation report and the entirety of the custodian's contemporaneous chart note demonstrates that the complainant stated that his knee pain pre-existed the accident.

[17] The complainant provided three attachments with his representations which I have reviewed. The attachments include a request for access to personal health information, one document containing three reports and, the letter from the complainant's physician. The complainant says that there is no contemporaneous chart note made by the custodian as he made an access request for his personal health information and there were no notes identified as responsive. The complainant alleges that the custodian instead dictated his notes and that there was an error when the third parties transcribed the dictation which resulted in the error in the consultation report. The complainant argues that the custodian should provide either the notes or the dictation recordings as proof that he told the custodian that he had been suffering from knee pain prior to the accident.

[18] The complainant submits that he is the best person to speak to his pain and the custodian should have accepted his say so when he told him he had not been suffering pain for the five years prior to the accident. The complainant submits that he provided a letter from his family physician dated in 2018 which notes that the complainant did not have any pre-existing conditions before his accident. This letter was provided to the custodian, but the custodian refused to make the correction.

[19] The complainant submits that he understands the custodian does not have a duty to correct unless the custodian is satisfied 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. In this case, as the custodian is not satisfied that the record is inaccurate, the complainant states that I should order the custodian to make the correction.

[20] The complainant asks that I consider the facts in his earlier deemed refusal complaint against Dr. Guerra. The complainant further alleges that the custodian works with insurance companies to deny claims and suggests that this is an important consideration in the custodian's decision to refuse to make the correction to the report.

[21] Finally, the complainant states that neither exception in section 55(9) applies in this case and the custodian has not claimed that either exception applies.

### ***Analysis and Finding***

[22] Based on my review of the parties' representations I find that the custodian does not have a duty under section 55(8) of the *Act* to correct the consultation report as the complainant has not satisfied the custodian that the information in the consultation report is inaccurate for the purposes for which the custodian uses the information.

[23] In all cases where a complaint regarding a custodian's refusal to correct records of personal health information is filed with this office, the individual seeking the correction 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). 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.

[24] In PHIPA Decision 36, the adjudicator set out the approach to be applied when interpreting section 55(8) of *PHIPA* and, in particular, whether the information is incomplete or inaccurate for the purpose for which the custodian uses the information. The adjudicator stated:

There is no question that the accuracy of records containing personal health information is essential to the effective provision of health care. However, the correction provisions of *PHIPA* are limited by the requirement that the individual requesting the correction demonstrate to the satisfaction of the custodian that the record is incomplete or inaccurate for the purposes for which the custodian uses the information. The accuracy of the information

that is requested to be corrected is therefore connected to the purposes for which the information is used.

In interpreting these provisions of the *PHIPA*, I find it helpful to have regard to section 11(1) which requires health information custodians that use PHI [Personal Health Information] about an individual to take reasonable steps to ensure that the information is accurate, complete and up to date as is necessary for the purposes for which it uses the information. The duty to use accurate information under section 11(1) can be viewed as the corollary to the duty to correct inaccurate information under section 55(8). In both, the purpose for which the information is used is key to understanding the scope of the duty.

[25] The adjudicator went on to find that she was satisfied that not all personal health information contained in records held by a health information custodian needs to be accurate in every respect. She also found that where the custodian is not relying on the information for a purpose relevant to the accuracy of the information, it is not required to correct the information.

[26] The approach set out in PHIPA Decision 36 has been adopted by subsequent adjudicators in PHIPA decisions<sup>2</sup> and I adopt it in the present circumstances. Applying that approach here, I find that the custodian does not have a duty to correct the consultation report because the complainant has not demonstrated, to the satisfaction of the custodian, that the personal health information that he seeks to have corrected is inaccurate or incomplete for the purposes the custodian uses the information. Given the nature of the information the complainant seeks to correct, considering the parties' representations and evidence, and my review of the consultation report as a whole, it is evident that the custodian does not rely on this information for a purpose relevant to the accuracy of the information. Further, I find that based on the evidence before me, that the complainant has not established that the custodian relies on the accuracy of the information the complainant seeks to have corrected (the length of time of the complainant's knee pain) for the purpose of treating the complainant which is the purpose for which it is used. Therefore, the custodian is not required to correct the information.

[27] The complainant has provided evidence that he suggests demonstrates that the information he seeks to correct may be inaccurate. I make no finding on the accuracy of the information the complainant seeks to correct.

[28] Furthermore, I have not considered the other allegations provided by the complainant regarding the custodian's dictation/transcription practices or the work he has done for insurance companies. This evidence is not relevant to my determination.

[29] Accordingly, I find the custodian does not have a duty to correct the information

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<sup>2</sup> PHIPA Decisions 39 and 40.

under section 55(8).

**Issue B: Was the custodian required to attach the statement of disagreement provided by the complainant in accordance with section 55(11) of the Act?**

[30] Section 55(11) sets out the requirements for the statement of disagreement where the custodian has refused to make a requested correction of personal health information. Section 55(11) states in part:

A notice of refusal under subsection (3) or (4) must give the reasons for the refusal and inform the individual that the individual is entitled to,

(a) prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make.

(b) require that the health information custodian attach the statement of disagreement as part of the records that it holds of the individual's personal health information and disclose the statement of disagreement whenever the custodian discloses information to which the statement relates.

[31] The complainant provided a statement of disagreement to the custodian during mediation. The custodian refused to attach the statement of disagreement to the consultation report and cited the following reasons:

Please be advised that I will not be placing this document in your record as it fails to meet the statutory requirements of a Statement of Disagreement.

55(11) of [the Act] permits "a concise statement of disagreement that sets out the correction that the health information custodian has refused to make". The first paragraph of your January 25, 2022, letter under the heading "Challenge" is an appropriate Statement of Disagreement that I would be prepared to place in your record.

The remainder of the letter contains a series of legal arguments, disputed factual claims, false allegations, and an unfounded accusation that I provide medical opinions that benefit insurers in return for financial compensation. None of this is appropriate for a Statement of Disagreement and I will not place it in your record.

[32] The custodian says that while the complainant has a right to require a statement of disagreement be attached to his consultation report, that statement should not include legal arguments, disputed factual claims, and false allegations. The custodian states that it would be prepared to attach the following statement of disagreement:

On April 3, 2019, a request for correction was made with respect to my personal information. Specifically, a transcribed, dictated report in the name of Dr. Guerra's claimed that I had said that I had pain in my right knee for 5 years prior to January 25, 2017, has been challenged as not being correct. I have written to Dr. Guerra to correct this personal information, as I made no such statement as I did not have pain in my right knee for 5 years prior to being in an accident.

[33] The custodian cites the finding in PHIPA Decision 162 that found that it is reasonable for a custodian to refuse to attach a statement of disagreement that goes beyond a concise statement of disagreement.

[34] The complainant did not address the issue of whether the custodian should attach his statement of disagreement to the disputed consultation report.

### ***Analysis and findings***

[35] I have reviewed the complainant's statement of disagreement dated January 25, 2022. In the circumstances, I find the complainant's statement of disagreement does not meet the requirements of section 55(11)(a). The complainant's statement of disagreement contains a number of allegations and statements that go well beyond a concise statement of disagreement that sets out the correction that Dr. Guerra refused to make. As such, I find the custodian is not required under section 55(11)(b) to attach the statement of disagreement, as it has been provided, to the consultation report.

[36] If the complainant wishes to provide a new statement of disagreement to the custodian to attach to the consultation report, he should provide the custodian with a statement of disagreement that complies with section 55(11)(a) of the *Act*. As stated in PHIPA Decision 162, the custodian should adopt a liberal interpretation of whether the complainant's new statement of disagreement complies with the requirements of section 55(11)(a).

[37] Finally, if the custodian refuses to attach the complainant's new statement of disagreement, the complainant may make a complaint to the IPC for a determination as to whether the new statement meets the requirements of section 55(11)(a).

### **NO ORDER:**

For the foregoing reasons, no order is issued.

Original Signed by: \_\_\_\_\_  
Stephanie Haly  
Senior Adjudicator

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January 16, 2024