

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 47

Complaint HA16-129

June 20, 2017

Summary: The complainant submitted a correction request to a hospital regarding her records of personal health information. The hospital denied the complainant's requested corrections relying on the professional opinions and observations exception at section 55(9)(b) of the *Personal Health Information Protection Act*. No review of the complaint is warranted in accordance with sections 57(3) and 57(4)(a) as the complainant has not established that the records she seeks to correct are incomplete or inaccurate as required by section 55(8).

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 55(8), 57(3) and 57(4)(a).

Decisions Considered: PHIPA Decisions 36, 43, 45 and 46.

BACKGROUND:

[1] The complainant submitted a correction request to a hospital under the *Personal Health Information Protection Act (PHIPA)* regarding her records of personal health information. In her correction request, she asked the hospital to remove all references to "polysubstance abuse," "paranoid schizophrenia," "paranoid psychosis," and non-compliance with taking medication. She also asked that all diagnoses be removed from her records "as they are no longer true." She acknowledged having experienced depression and having been diagnosed with manic depression and paranoid schizophrenia. However, she stated that she has "been able to get through it with time" and that she "do[es] not have a diagnosis anymore and would like [her] record corrected as such."

[2] The hospital issued a decision denying the correction request and advising the

complainant of her right to provide it with a statement of disagreement to be added to her records. The hospital's decision was based on its view that the portions of the records of personal health information that the complainant wants corrected consist of professional opinions or observations made in good faith, and that the exception in section 55(9)(b) of *PHIPA* applies.

[3] The complainant was not satisfied with the hospital's decision and filed a complaint about it with the Office of the Information and Privacy Commissioner (IPC). In her complaint letter to the IPC, she reiterated that she would like her records corrected because the diagnoses "do not reflect the truth" and she states that she "should not be bound to these diagnoses when what [she] had gone through was 'normal' to the issues [she was] trying to express." Mediation was attempted but did not resolve the complaint. At the conclusion of the mediation, a Mediator's Report, setting out the 13 corrections the complainant wants made to the records, was sent to the parties for their review and comment. The parties were advised that the Mediator's Report would be provided to the adjudicator. The complaint then proceeded to the adjudication stage of the IPC's *PHIPA* complaints process.

[4] After reading the complaint file, I sent the complainant a letter advising her of my preliminary view that her complaint does not warrant a review pursuant to sections 57(3) and 57(4)(a) of *PHIPA*. In my letter, I invited the complainant to provide written submissions to explain why her complaint should proceed to a review under *PHIPA* if she disagreed with my preliminary view. The complainant did not provide submissions in response to my letter.

[5] In this decision, I find that the complaint does not warrant a review under *PHIPA* in accordance with sections 57(3) and 57(4)(a) because there are no reasonable grounds for a review and the hospital has responded adequately to the complaint.

RECORDS:

[6] The records that the complainant seeks to correct are two psychiatric consultation reports (Consultation 1 and Consultation 2) and two psychiatric discharge summaries (Discharge Summary 1 and Discharge Summary 2) relating to her two admissions to the hospital for psychiatric treatment. The complainant's first admission to the hospital was for five days and her second admission was for 15 days.

DISCUSSION:

[7] There is no dispute and I find that, the hospital is a "health information custodian" under paragraph 4.i. of section 3(1) of *PHIPA* and the records at issue are "personal health information" under section 4(1)(a) of *PHIPA*.

[8] The complainant's correction request and complaint relate to section 55(8) of

PHIPA, which sets out a duty on health information custodians to correct a record of personal health information (PHI) in some circumstances, subject to the limited and specific exceptions set out in section 55(9).¹ Section 55(8) 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.

[9] The text of section 55(8) makes it clear that the burden of proof in a correction request (and complaint) falls on the person requesting the correction² and requires that the individual:

- 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.

Requested Corrections

[10] The 13 corrections requested by the complainant are the following:

[11] In Consultation 1 the complainant seeks 5 corrections: removal of the phrases "paranoid psychosis" (correction 1), "psychosis secondary to substance abuse" (correction 2), "Paranoid schizophrenia" (correction 4), "Polysubstance abuse" (correction 5) and "she is always reluctant to taking medications and usually the non-compliance causes decompensations" (correction 3).

[12] In Discharge Summary 1 the complainant seeks 3 corrections: removal of the phrases "Paranoid schizophrenia" (correction 11), "paranoid psychosis secondary to substance abuse" (correction 12), and "Considering her past history my concern is that she will neither be compliant with the medications or with her follow-up appointments but will show up again as usual when she is sick" (correction 13).

[13] In Consultation 2 the complainant seeks 3 corrections: removal of the phrases "She carries a diagnosis of paranoid schizophrenia" (correction 8), "decompensate as a result of noncompliance" (correction 9), and "Paranoid schizophrenia" (correction 10).

[14] In Discharge Summary 2 the complainant seeks 2 corrections: removal of the

¹ Although the hospital relied on the exception in section 55(9)(b) to deny the correction request, it is not necessary for me to consider its application in this complaint due to my finding that the complainant has not satisfied the requirements of section 55(8).

² See PHIPA Decisions 36, 43, 45 and 46.

phrases "Paranoid schizophrenia" (correction 6) and "I was of the opinion that she had not been fully compliant with her medications in the past" (correction 7).

[15] The complainant's reasons for requesting the corrections are her assertions that the information is incorrect (correction 1); that she does not abuse substances and never has (corrections 2, 5 and 12); that the information is misleading as she was usually compliant with taking her medications (corrections 3, 7, 9 and 13); that the diagnosis is incorrect and was made without adequate assessment (corrections 4, 6, 8, 10 and 11); that the correct diagnosis should have been schizoaffective disorder (corrections 4 and 11); and that the statement is incorrect and misleading as she had only missed one of her scheduled appointments (correction 13).

Analysis and finding

[16] Having reviewed and considered the complainant's correction request, the hospital's decision, and the complaint, I find that the 13 requested corrections need not be made by the hospital because the complainant has not established that those portions of the records are "incomplete or inaccurate for the purposes for which the custodian uses the information" as required by section 55(8) of *PHIPA*.

[17] Overall, the complainant provides no evidence to support her assertions that the portions of the records she wants corrected are incomplete or inaccurate for the purposes for which the hospital uses the information. Rather, she includes certain acknowledgements in her correction request and complaint letter that confirm the accuracy of the information she seeks to correct. For example, although she asserts that the references to substance abuse in corrections 2, 5 and 12 are inaccurate, she acknowledges in her correction request that she answered "yes" when Dr. K, a psychiatrist who treated her during her first hospital admission, asked her if she used drugs. While she also explains that she did so out of "sheer frustration," the fact is she confirmed to Dr. K that she used drugs. The records at issue accurately reflect this. Therefore, the complainant has not established that corrections 2, 5 and 12 are incomplete or inaccurate for the purposes for which the hospital uses the information as required by section 55(8) of *PHIPA*.

[18] Regarding her assertion about medication compliance referenced in corrections 3, 7, 9 and 13, she acknowledges in her correction request that she admitted to Dr. A, a psychiatrist who treated her during her first hospital admission, "the times [she] did not take [her] medication." Also, in her complaint letter she writes that she tried to explain to Dr. A that she "may have missed a couple of days" of taking her medication. The complainant told Dr. A about not taking her medication and the records accurately reflect this. Accordingly, she has not established that corrections 3, 7, 9 and 13 are incomplete or inaccurate for the purposes for which the hospital uses the information as required by section 55(8) of *PHIPA*.

[19] Regarding the complainant's assertion that the diagnoses are incorrect, she

acknowledges in her correction request that she has experienced mental health issues in the past but she states that she wants her records corrected because she no longer has "a diagnosis." In her complaint letter she states that she would like the records corrected because the diagnoses do not reflect the truth. She states, "I am mature, responsible and live a very healthy life and deserve to have my record corrected as such." In her own words, the complainant confirms that the reason she requested corrections 1, 4, 6, 8, 10 and 11, is because the diagnoses noted are no longer accurate. She provides no evidence that the diagnoses were inaccurate at the time.

[20] Even if I were to accept that the diagnoses may not accurately portray the complainant's current state, this would not establish that the records are inaccurate or incomplete under section 55(8). The correction provisions of *PHIPA* do not require a correction unless the PHI is inaccurate or incomplete. And they do not permit individuals to require correction of information that was accurate at the time the records were created but not relevant years later. The complainant has not established that the information in corrections 1, 4, 6, 8, 10 and 11 is incomplete or inaccurate for the purposes for which the hospital uses the information as required by section 55(8) of *PHIPA*.

[21] For all of the above reasons, I find that the complainant has not satisfied her onus under section 55(8) of *PHIPA* and, as a result, the hospital is not required to grant her correction request.

Conclusion

[22] Sections 57(3) and 57(4)(a) set out my authority to decline to review a complaint as follows:

57(3) 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 effected 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.

57(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint[.]

[23] In accordance with my authority under sections 57(3) and 57(4)(a) of *PHIPA* and for the reasons set out above, I decline to review this complaint because there are no reasonable grounds to commence a review of the subject matter of the complaint and the hospital adequately responded to the complaint. I issue this decision in satisfaction

of the notice requirement in section 57(5) of PHIPA.

[24] The complainant retains the statutory right under section 55(11) of PHIPA to submit a concise statement of disagreement setting out the corrections that the hospital has refused to make and require the hospital to attach the statement to the records.

NO REVIEW:

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

Original signed by _____

Stella Ball
Adjudicator

_____ June 20, 2017