

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 59

Complaint HA16-38

Centre for Addiction and Mental Health

October 30, 2017

Summary: The complainant submitted five correction requests under the *Personal Health Information Protection Act* to the Centre for Addiction and Mental Health with respect to information contained in three separate Progress Notes relating to him. CAMH denied the complainant's requests for correction. Following a review, no order is issued as the complainant did not demonstrate that the information in the Progress Notes is inaccurate for the purposes for which CAMH uses the information, and CAMH's decision to deny the correction requests is upheld.

Statutes Considered: *Personal Health Information Protection Act, 2004* sections 3(1), 4(1), 55(8), 55(9) and 55(11).

Decisions Considered: PHIPA Decisions 36, 47.

BACKGROUND:

[1] The complainant submitted five requests to the health information custodian, the Centre for Addiction and Mental Health (CAMH) under the *Personal Health Information Protection Act (PHIPA)*, for the correction of information in his records. Specifically, the complainant sought the correction of three Progress Notes, each prepared by a different clinician at CAMH.

[2] CAMH issued a decision denying the correction requests. CAMH explained that it had consulted with the authors of the Progress Notes at issue and determined that the complainant seeks the correction of information that consists of professional opinions or

observations that were made in good faith. Therefore, it takes the position that the records are accurate and complete for the purposes for which the information is used. CAMH advised the complainant that although the correction requests were denied, the complainant could submit a Statement of Disagreement to be appended to the records pursuant to section 55(11) of *PHIPA*.

[3] The complainant was not satisfied with CAMH's decision and filed complaints regarding its refusal to grant his correction request with the Office of the Information and Privacy Commissioner (IPC or this office). During mediation, it was determined that the sole issue that remains at issue for review is that the complainant disputes CAMH's decision on the basis that it refused to make the five requested corrections to three Progress Notes.

[4] The complainant contests the custodian's refusal to correct the information contained in the Progress Notes, relying on section 55(8) of *PHIPA* as well as the exception at section 55(9)(b). As a mediated resolution could not be reached, the complaint was transferred to the review stage of the process for an adjudicator to conduct a review.

[5] After reviewing the complaint file, I decided to conduct a review and sent the parties a Notice of Review setting out the relevant facts and issues, inviting them to provide written submissions on the issues. Both the complainant and CAMH provided written representations.

[6] In this decision, I find that the complainant has failed to establish that the information that he wishes to have corrected is inaccurate or incomplete for the purposes for which it is used. Consequently, CAMH is not required to correct the information under section 55(8) of *PHIPA*.

RECORDS:

[7] The records that the complainant seeks to correct are three Progress Notes written by three different clinicians:

- Record 1: Progress Note dated September 24, 2008
- Record 2: Progress Note dated November 16, 2012
- Record 3: Progress Note dated November 16, 2012

DISCUSSION:

[8] There is no dispute and I find that, CAMH 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*.

[9] The sole issue in this complaint is whether CAMH has a duty to make the requested correction under section 55 of *PHIPA*. One of the enumerated purposes of *PHIPA* is that individuals have a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions as set out in it.¹

[10] Section 55(8) of *PHIPA* provides for a right of correction to records of personal health information in some circumstances. It states:

The health information custodian shall grant a request for 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.

[11] Section 55(9)(b) of *PHIPA* sets out the following exception to the obligation to correct records, as follows:

Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

[12] Read together, these provisions set out the criteria pursuant to which an individual is entitled to a correction of his or her records of personal health information. The purpose of section 55 of *PHIPA* is to impose a duty on health information custodians to correct records of personal health information 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*.

[13] In all cases where a complaint regarding a health information 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 health information custodian uses the information" pursuant to section 55(8) of *PHIPA*. Section 55(8) requires the individual requesting a correction to:

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

¹ See section 1(c) of *PHIPA*.

[14] If the above is established the question becomes whether or not any of the exceptions in section 55(9) of *PHIPA* apply.

[15] Where the health information custodian claims that section 55(9) applies, it bears the burden of proving that the personal health information at issue consists of "professional opinion or observation" about the individual. However, once the health information custodian has established that the information qualifies as a professional opinion or observation, the onus is on the individual seeking a correction to establish that the professional opinion or observation was not made in good faith.²

Summary of the requested corrections

Record 1: Progress Note dated September 24, 2008

[16] The complainant seeks to have two portions of the record corrected. The first portion describes an altercation in which he was involved and he seeks to correct some of the descriptive elements of the altercation. The second portion describes symptoms that the complainant described experiencing at the time that the note was created. He wishes to correct that information to provide more detail about the symptoms he was experiencing and also to include that medication has now alleviated those symptoms.

Record 2: Progress Note dated November 16, 2012

[17] The complainant seeks to have two portions of the record corrected. The first correction sought describes a position that the author of the note recorded the complainant as being in at the time the note was written. The complainant indicates that he was not in that particular position until several months later and seeks to have that information corrected. The second correction describes a particular altercation involving the complainant and he disputes some of the specifics of that altercation as recorded in the notes. He would like the record to be corrected to include additional details regarding the altercation.

Record 3: Progress Note dated November 16, 2012

[18] The complainant seeks to have one portion of the record corrected. The portion describes an altercation that the complainant was involved in. He seeks to have it corrected to replace the wording of certain statements he described as having made during the altercation as well as to provide additional background information to support his actions at the time.

[19] For all of the requested corrections, CAMH explained that it would not make the corrections for the following reason:

² PHIPA Decision 37.

The record consists of a professional opinion or observation that was made in good faith. The record is accurate and complete for the purposes for which the information is used.

Representations

[20] In its representations, CAMH submits that it reviewed the complainant's request in light of the requirements set out in sections 55(8) of *PHIPA* and the exceptions set out in section 55(9) of *PHIPA*. It submits that it determined that the records were accurate and complete for the purposes for which the information was used. It also submits that it determined that, in all three cases, the request for correction was with regard to professional opinions or observations made in good faith. It submits that it has not altered its original position that the complainant's correction requests do not meet the requirements for correction as set out in *PHIPA*.

[21] CAMH submits that it advised the complainant of its decision and provided him with the option of attaching a Statement of Disagreement to the records at issue, which he declined. It submits that this option remains open to the complainant.

[22] The complainant submits, in his representations, that the portions of the Progress Notes that he seeks to have corrected are "fraud against [his] good character" and that they have had the effect of creating confusion and misunderstanding amongst people in the community and within government depicting him as "the opposite of...a gentleman of good character." He submits that these mischaracterizations have caused him conflicts of a legal and personal nature.

[23] With respect to the specific portions of the corrections he wishes to have made to the Progress Reports, the complainant provides, in some cases, alternate perspectives of the statements he made. He submits that the notes are false statements of what he communicated to the professional at that time. He also submits that some of the diagnoses that he has received are false and/or no longer accurate.

Analysis and finding

[24] Having reviewed and considered the correction requests, CAMH's decision and the parties' submissions, I find that CAMH is not required to grant the correction requests. In my view, the complainant has not provided sufficient evidence to support his correction requests and has not established that the portions of the records that he wishes to have corrected are "incomplete or inaccurate for the purposes for which the custodian uses the information" as required by section 55(8) of *PHIPA*.

[25] Recently, in *PHIPA* Decision 36, Adjudicator Jennifer James set out the approach to be applied when interpreting section 55(8) of *PHIPA*. Adjudicator James 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.

[26] Adjudicator James 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 health information 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.

[27] Adjudicator James' approach has been adopted in subsequent decisions³ and I do so here. Applying it to the circumstances of this complaint, I find that CAMH is not required to make the corrections requested by the complainant because he has not demonstrated that the record is incomplete or inaccurate for the purposes for which CAMH uses the information and also, that CAMH is not relying on the information for a purpose relevant to the accuracy of the information.

[28] In my view, the majority of the corrections that are at issue amount to clarifications or additions that the complainant wishes to make to the notes to better explain what he was intending to communicate to the clinicians who authored the notes and other than his statements he has not provided any additional supporting information to demonstrate the notes are inaccurate. Given the nature of the information, it is clear that CAMH is not relying on the specific details of the Progress Notes that the complainant wishes to have corrected for a purpose relevant to the accuracy of the information. In these circumstances, I accept that, in keeping with the reasoning expressed in *PHIPA* Decision 36, it is not required to correct that information.

[29] I also note that some of the information that the complainant wishes to have corrected in Record 1 is information that was accurate at the time the records were created but not accurate in subsequent years. In keeping with prior decisions, CAMH is

³ See, for example, *PHIPA* Decision 41.

also not required to correct this type of information.⁴

[30] Additionally, I note that in Record 2, there is one specific item of information relating to a disputed date which may be considered to be factual information. However, as the complainant has not provided evidence in support of his position that the information is inaccurate, CAMH is not required to correct it.⁵

[31] I acknowledge that in the complainant's view, specific portions of the information in the notes do not reflect the truth. However, even if I were to accept that they do not accurately portray what the complainant believes that he communicated to the clinicians at the time that the records were created this would not establish that the records are inaccurate or incomplete under section 55(8). Having found that the complainant has not established that the records are inaccurate or incomplete, it is not necessary for me to determine whether the notes reflect the professional observations of the clinicians who received and recorded the information and that the observations were made in good faith.

[32] For all these reasons, I find that the complainant has not satisfied his onus under section 55(8) of *PHIPA* to demonstrate that the information that he seeks to have corrected is incomplete or inaccurate for the purposes for which the custodian uses the information. As a result, I find that CAMH is not required under that section to correct the records at issue.

[33] Despite my findings in this decision, the complainant is reminded of his statutory right under section 55(11) of *PHIPA* to submit a concise statement of disagreement setting out the corrections that have not been made which CAMH is required to attach to his records

NO ORDER:

1. For the foregoing reasons, no order is issued.

Original Signed By: _____

Catherine Corban
Adjudicator

October 30, 2017 _____

⁴ See, for example, PHIPA Decision 47.

⁵ See, for example, PHIPA Decision 36.