

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 222

Complaint HA23-00122

PHIPA Decision 207

Allevio Pain Management Clinic

August 25, 2023

Summary: This reconsideration decision addresses the complainant's request for reconsideration of PHIPA Decision 207. In that decision, the adjudicator ordered the clinic to correct certain records under section 55(8) of *PHIPA*. The complainant remained dissatisfied and filed a reconsideration request. In this reconsideration decision, the adjudicator finds that there are no grounds to reconsider PHIPA Decision 207 and she denies the request.

Statutes Considered: *Personal Health Information Protection Act, 2004*, section 55(8).

Decisions Considered: PHIPA Decisions 25 and 207.

BACKGROUND:

[1] In this decision, I explain why I have decided not to grant the complainant's request that I reconsider PHIPA Decision 207.

[2] In PHIPA Decision 207 I ordered Allevio Pain Management Clinic (the clinic) to correct statements in two letters, having concluded that as provided for in section 55(8) of the *Personal Health Information Protection Act* (the *Act*) the complainant established that the letters are incomplete or inaccurate for the purposes for which the clinic uses the information. Although successful in the complaint, the complainant takes issue with the decision and made a request that I reconsider it for a variety of reasons.

DISCUSSION:

[3] Section 27.01 of the Information and Privacy Commissioner of Ontario's (IPC) *Code of Procedure for Matters Under the Personal Health Information Protection Act, 2004* (the *Code*) provides for four grounds for reconsideration of a decision:

The IPC may reconsider a Decision at the request of a person who has an interest in the Decision or on the IPC's own initiative, where it is established that:

- a) there is a fundamental defect in the adjudication process;
- b) there is some other jurisdictional defect in the Decision;
- c) there is a clerical error, accidental error or omission or other similar error in the Decision; or
- d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.

[4] Reconsideration is not intended to provide a forum for re-arguing or substantiating arguments made during the review, nor is it intended to address a party's disagreement with a decision.¹ Disagreement with a decision is not a ground for reconsideration under section 27.01 of the *Code*.²

The request for reconsideration

[5] The complainant sent an email titled, "Reconsideration Decision 207" and he provided me (via IPC staff) with a variety of submissions about PHIPA Decision 207. He says that PHIPA Decision 207 was flawed or illegal for a variety of reasons, including that:

- it did not refer to correspondence that he sent to the clinic on August 30, 2018,
- it did not reference or incorporate regulations or policies established by the College of Physicians and Surgeons of Ontario (CPSO) for record keeping,³
- because the adjudicator in PHIPA Decision 121, a prior decision involving the complainant and the clinic, found that the images at issue "never existed" it is

¹ PHIPA Decision 25. The approach in PHIPA Decision 25 has been applied in many other reconsideration decisions under PHIPA, including PHIPA Decisions 94, 111, 113, 146, 161, 172, 173 and 201.

² See *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC) and PHIPA Decisions 25, 113 and 172.

³ I understand the complainant to be referring to CPSO policy "Medical Records Documentation" (<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records-Documentation>).

wrong for the IPC now to tell the clinic to “strike out something that was never there.”

[6] Regarding the second bullet, the complainant states specifically that the CPSO’s medical records policy (which he refers to as a regulation) “supersedes” the IPC’s “preposterous solution (e.g. erasing the “images”).” The complainant states that he will not be satisfied until he receives a corrected copy “as outlined by CPSO Regulations.”

[7] The complainant also points out that the clinic has not answered certain questions about why the images were not saved, who knew this and when.

[8] The complainant also refers to other legislation or regulations, such as the *Medicine Act, 1991* and the *Criminal Code of Canada*.

[9] Overall, the complainant states that clinic’s actions constitute a criminal offence and that through PHIPA Decision 207, the IPC is involved as an accessory to this offence.

[10] Regarding the criteria for a reconsideration as set out in the *Code*, the complainant submits that there is a fundamental defect in the order contained within PHIPA Decision 207 because it does not refer to the above-mentioned CPSO Medical Records Documentation policy. The complainant states that even if the clinic complied with the order in PHIPA Decision 207, it would not be sufficient.⁴

Discussion

[11] As is clear, the complainant disagrees with PHIPA Decision 207, as well PHIPA Decision 119 and PHIPA Decision 121. The core of this disagreement appears to rest with the IPC’s findings – initially in PHIPA Decision 119 – that the images at the very heart of his complaints were not saved.

[12] The complainant’s ongoing disagreement with PHIPA Decision 119 (and PHIPA Decision 121, which denied his reconsideration request of PHIPA Decision 119) is not relevant to the matter before me.

[13] In most respects, the complainant’s reconsideration submissions are efforts to re-argue the same issues that I considered in my PHIPA Decision 207. As is explained in PHIPA Decision 207 I considered his arguments and, in fact, was persuaded by them. The complainant’s request is therefore perplexing because he was successful in his complaint. In any event, his arguments and disagreement are not sufficient to warrant a departure from the principle that decisions of the IPC are final. As set out above, reconsideration is not a forum to re-argue the complaint.

[14] I also disagree with the complainant that there is a fundamental defect in the

⁴ The complainant’s request for reconsideration was made 7 days after the decision was issued.

adjudication process because, as he says, the order does not expressly state that the ordered corrections comply with the CPSO record keeping policy. PHIPA Decision 207 determines only the issues under *PHIPA*, not other regulations or policies that may apply. If the order gives rise to other obligations of the clinic or its physician, this is not a matter for the IPC to supervise or opine on.

[15] That PHIPA Decision 207 does not contain reference to the CPSO record keeping policy is not a fundamental defect nor does it make the decision improper or illegal [ground 27.01(a)]. None of the other grounds for reconsideration in section 27.01 of the *Code* have been raised or, in my view, are present and therefore I dismiss the complainant's request to reconsider PHIPA Decision 207.

[16] In case it provides any assurance to the complainant, I did review his email of August 3, 2018, although I did not find it relevant to my findings.

NO RECONSIDERATION

I deny the reconsideration request.

Original signed by _____
Valerie Jepson
Adjudicator

_____ August 25, 2023