

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 294

Complaint HA24-00062

[a doctor]

July 31, 2025

Summary: A mother requested that a doctor make several corrections to her deceased son's medical records regarding the events leading up to his death. The doctor denied the request, stating that the information the mother wants corrected consists of his professional opinions or observations, made in good faith.

In this decision, the adjudicator finds that the information the mother wants corrected consists of professional opinions or observations made in good faith by the doctor, and the section 55(9)(b) exception to the duty to correct therefore applies. He upholds the decision of the doctor and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004 c. 3, Sched. A, sections 55(1), 55(8), and 55(9)(b).

BACKGROUND:

[1] This complaint relates to a request to correct the complainant's deceased son's personal health information under the *Personal Health Information Protection Act, 2004* (the Act). The complainant made a request to a doctor for several corrections to her son's medical records related to notes made by the doctor during her son's life.¹ The notes generally state that the complainant's son was a healthy baby, which the complainant

¹ In accordance with "Practice Direction 3: Publicly Released Decisions under the *Personal Health Information Protection Act, 2004*," the name of the doctor has been withheld because it would identify the complainant.

disputes.

[2] In response, the doctor refused the corrections, stating that the notes represent his professional opinions and observations made in good faith, and the section 55(9)(b) exception to the section 55(8) duty to correct therefore applies. The complainant provided additional information in response to the doctor's decision, but the doctor maintained his decision.

[3] The complainant filed a complaint about the decision to the Information and Privacy Commissioner of Ontario (IPC). In her complaint, the complainant included additional corrections that were not previously considered by the doctor.

[4] The IPC attempted to mediate the complaint. During mediation, the doctor reviewed the additional correction requests and denied them under section 55(9)(b) of the Act because they too constitute his professional opinions or observations made in good faith at the time of the complainant's son's care. The doctor also advised that the complainant's correction request was added to her son's personal health record and that, if someone requested the record, the complainant's statements about what she wants corrected would be included in the record.

[5] The complainant explained that her son's autopsy was completed using his current personal health record, which includes the information she says is incorrect. The complainant said she believes that the incorrect information misled the pathologist who completed the autopsy report. The complainant states that she wishes to have her son's medical records corrected so that she can request a second autopsy.

[6] No further mediation was possible, and the complaint was moved to the adjudication stage of the complaints process. The adjudicator initially assigned to the complaint conducted a review and received representations from the doctor and the complainant. The complaint was then assigned to me to complete the review. I considered the representations of the parties and determined that I did not need to seek additional representations.

[7] For the reasons that follow, I uphold the doctor's decision and dismiss the complaint.

RECORDS:

[8] The records at issue are pages 1-11, 14-15, and 21 of the doctor's medical records for the complainant's son. The requested corrections generally relate to the health of the complainant's son, and the complainant claims that the records are inaccurate or incomplete.

DISCUSSION:

[9] The parties do not dispute, and I find, that the doctor is a health information custodian as defined in section 3(1) of the Act. Further, I find that the records contain the child's personal health information as defined in section 4(1) of the Act. There is also no dispute that the complainant is entitled, under paragraph 4 of section 23(1), to exercise the right of access and correction on behalf of her child.²

[10] Accordingly, the sole issue in this complaint is whether the doctor has a duty under the Act to correct the records in accordance with the complainant's request.

[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, uses 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.

[13] Section 55(9) sets out exceptions to this duty. The doctor relies on section 55(9)(b), which states:

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.

[14] Read together, sections 55(8) and 55(9) set out when an individual is entitled to a correction of a record of their personal health information.

[15] In this case, the doctor refuses the complainant's request for correction both on the grounds that she has failed to satisfy the requirements of section 55(8) (to demonstrate that the record is incomplete or inaccurate for the purposes for which the custodian uses the information), and that the exception at section 55(9)(b) applies (that

² Section 23(1)4 of the *Act* provides that if an individual is deceased, the deceased's estate trustee or the person who has assumed responsibility for the administration of the deceased's estate, if the estate does not have an estate trustee, may provide consent for an access and correction request.

the record consists of a good faith professional opinion or observation).

[16] Depending on the nature of the correction request, the information that the individual seeks to have corrected, and the reasons for the custodian's refusal of the request, the IPC may approach the analysis in a correction complaint initially under section 55(8) or 55(9).³ In this case, I begin by determining whether the exception at section 55(9) applies.

[17] For the reasons that follow, I find that the exception at section 55(9)(b) applies to the complaint, and I therefore do not need to consider whether the complainant has satisfied the requirement of section 55(8). The wording of section 55(9) makes it clear that even if a complainant satisfies the IPC that the information is incorrect or inaccurate within the meaning of section 55(8), a finding that an exception in section 55(9) applies will result in a finding that the custodian has no duty to correct.

Section 55(9)(b): exception for professional opinion or observation

[18] The purpose of section 55(9)(b) is to preserve professional opinions or observations, accurate or otherwise, that have been made in good faith. This purpose is based on sound policy considerations, including the need for documentation that may explain treatments provided or events that followed a particular observation or diagnosis.⁴

[19] Where a "professional opinion or observation" is involved, section 55(8) does not give a right to request a correction that amounts to a substitution or change to the doctor's "professional opinion or observation," unless it can be established that the professional opinions or observations were not made in good faith. Additionally, a request for correction or amendment should not be used to attempt to appeal decisions or professional opinions or observations with which a complainant disagrees and cannot be a substitution of opinion, such as the complainant's view of a medical condition or diagnosis.

[20] Where a custodian claims that section 55(9)(b) applies, the custodian bears the burden of proving that the personal health information at issue consists of a "professional opinion or observation" about the individual.⁵ However, once the 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.

[21] Therefore, section 55(9)(b) involves a two-part analysis. The first question is whether the personal health information is a "professional opinion or observation." The second question is whether the "professional opinion or observation" was made "in good

³ PHIPA Decision 36.

⁴ This approach has been followed in, for example, PHIPA Decisions 206, 241, and 285.

⁵ PHIPA Decisions 193 and 211.

faith.”

The personal health information qualifies as a “professional opinion or observation”

[22] In order for section 55(9)(b) to apply, the personal health information must either qualify as either a “professional opinion” or a “professional observation.” Only those observations and opinions that require a health information custodian or an agent to exercise or apply special knowledge, skills, qualifications, judgment, or experience relevant to their profession should be defined as “professional observations” or “professional opinions” within the meaning of section 55(9)(b) of the Act.⁶

[23] The complainant’s son’s medical records at issue document the child’s interactions with the doctor and provide details about the child’s medical and social history. They summarize the results of various medical examinations and provide diagnoses, proposed treatments, and follow up plans. Development charts, where the doctor documented the child’s growth over time, are also part of the records.

Representations

[24] The doctor submits that the information that the complainant wants corrected consists of his professional opinions or observations made in good faith.⁷ The doctor outlines his experience in practising medicine and, specifically, caring for babies and infants. He submits that the observations he made during each visit required him to exercise his skills, qualifications, and experience to not only conduct the physical examination of the child and document his contemporaneous findings, but also to interpret those findings and evaluate if there were any concerns regarding the child. The doctor also submits that, in preparing the development charts, he must exercise his clinical skill and judgment as a physician to evaluate information provided by the complainant regarding the child’s development, in light of his physical findings.

[25] The complainant provides representations disputing the quality of care that she received from the doctor but does not dispute that the information at issue consists of professional opinions or observations.⁸

Analysis and finding

[26] As explained above, the purpose of the section 55(9)(b) exception is to preserve

⁶ PHIPA Decision 37.

⁷ The doctor also notes that one of the complainant’s requests relates to a “no show” appointment that the complainant states was not a “no show.” He submits that while this information is unrelated to any use that he would make of the records, an addendum explaining that the appointment was not a “no show” has been added to the medical record.

⁸ The complainant provides a significant amount of documentation regarding her son’s medical issues that underlie the complaint. I have only reproduced the portions of her representations that are relevant to my section 55(9)(b) analysis.

“professional opinions or observations,” accurate or otherwise, that have been made in good faith. Although the complainant’s representations focus on how the doctor cared for her son, her quality-of-care concerns are not before me in this complaint. Whether the doctor’s conduct in assessing and treating the complainant’s child was appropriate is not within the IPC’s jurisdiction.

[27] My authority is limited to determining whether the doctor must make the requested corrections by deciding if the information at issue consists of a “professional opinion or observation,” made “in good faith.” In this case, I find that the information that the complainant wants corrected in her child’s records qualifies as the doctor’s professional opinions or observations within the meaning of section 55(9)(b). Based on the information before me, the doctor exercised a degree of professional judgment and used his specialized skills in determining what to document when interacting with the complainant’s child. While it is clear that the complainant believes the doctor’s notes are inaccurate, those notes are, nonetheless, professional opinions or observations.

[28] The complainant also requests that additional information be added to her son’s medical records, specifically related to a condition that the complainant says was present during an appointment (but the doctor did not document), and a diagnosis she received after his death. The doctor submits that he has no recollection of discussing the condition the complainant, but it is his practice to document patient concerns in the medical record. For the post-death diagnosis, the doctor submits that these posthumous findings cannot change his professional opinion and observations made prior to the child’s death.

[29] I find that the absence of information in the records regarding the condition the complainant says she discussed with the doctor also represents a professional observation or opinion, with the doctor using his expertise in determining what should and should not be documented. With respect to the missing diagnosis, I find that while there is evidence that the child had the condition at the time of his death, the records accurately reflect the doctor’s professional observations and opinions at the time he assessed the child.

The professional opinions or observations were made “in good faith”

[30] Even if the information at issue is a “professional opinion or observation,” if there are reasonable grounds to conclude that the professional opinions or observations made by the doctor were not made “in good faith” within the meaning of section 55(9)(b), the section 55(9)(b) exception to the duty to correct does not apply.

[31] Courts have stated that a finding that someone has not acted in good faith can be based on evidence of malice or intent to harm another individual, as well as serious carelessness or recklessness. The courts have also stated persons are assumed to act in good faith unless proven otherwise. Therefore, the burden of proof rests on the individual seeking to establish that a person has acted in the absence of good faith to rebut the

presumption of good faith.⁹ Accordingly, in the context of section 55(9)(b) of the Act, the burden rests on the individual seeking the correction to establish that the doctor did not make the professional opinion or observation in good faith.

Representations

[32] The complainant submits that it is impossible to prove a subjective action such as whether an individual was acting in good faith. However, she submits that the doctor failed in his duty to act by not properly performing a physical exam of her child, and instead taking the information from the complainant. She also states that the doctor did not produce enough documentation in the circumstances, where abuse by the child's father was alleged.

[33] She references a court case about the death of her child, where she states that the doctor's testimony was given significant weight, despite the limited interactions the doctor had with her child. She submits that the doctor has made no attempt to address this mistake, and this is evidence that he is either not acting in good faith, or is incompetent. She states that she is asking for the doctor to correct the information and also admit that he failed her child and her family with his careless actions.

[34] The doctor submits that the burden of proof is on the complainant to establish that his opinions and observations were made with malice, intent to harm, or through serious carelessness or recklessness. He argues that this burden has not been met.

Analysis and finding

[35] The complainant's correction requests generally fall into two categories: information she says is inaccurate, and information that she says is missing and should be added to the medical record.

Information that the complainant says is inaccurate

[36] I acknowledge the complainant's belief that the doctor did not provide appropriate care to her son, and her statement that the tragic events underlying the request could have been avoided. However, at issue in this complaint is not whether the doctor provided appropriate medical care to the complainant's son, or whether there are valid reasons for wanting the doctor to have included additional information in the records. Rather, it is whether the information in the records that the complainant wants corrected constitute a professional opinion or observation, accurate or otherwise, that was made in good faith, at the time the records were created.

[37] The complainant's representations do not establish that the doctor was acting in bad faith when the records were created. They challenge the doctor's findings that the complainant's son was healthy each time he was assessed. They also allege that the

⁹ *Finney v. Barreau du Québec*, [2004] 2 SCR 17, 2004 SCC 36 (CanLII)

doctor failed to properly diagnose the complainant's son with a condition that was diagnosed in the autopsy that was later performed. The complainant's disagreement with the doctor's conclusions and the posthumous diagnosis do not, in my view, establish bad faith on the part of the doctor. As outlined above, individuals are presumed to have acted in good faith, and the complainant does not provide evidence of malice, intent to harm, serious carelessness, or recklessness. Accordingly, I find that the section 55(9)(b) exception to the duty to correct applies.

Missing information

[38] The complainant says that certain information related to two diagnoses made after her child's death should be added to the medical records. In previous IPC decisions, when considering whether a professional opinion or observation was made in bad faith, the actions of the individual who created the opinion or observation was assessed at the time it was created, rather than assessing the doctor's response to a correction request.¹⁰

[39] I take the same approach here. I also note that, on its face, the language of section 55(9)(b), "... consists of a professional opinion or observation that a doctor has made in good faith..." (emphasis added), requires that the actions of the doctor be assessed at the time the record was made. As such, I find that the doctor is not required to add the additional diagnoses to the records, even if the diagnoses are otherwise accurate.

[40] The complainant also submits that a condition that she says was present during an examination by the doctor should be added to the records since the doctor failed to document it, despite it being discussed at the examination. In his representations, the doctor submits that he does not recall this discussion, but notes that his practice is to document patient concerns in the medical record. I find that the doctor's notes, and his exclusion of the diagnoses, also constitute his professional observations or opinions and he therefore has no duty to make that correction.

Conclusion

[41] In conclusion, I find that the personal health information that the complainant wants corrected in her child's records consist of professional opinions or observations that were made in good faith. Therefore, the exception at section 55(9)(b), to the duty correct at section 55(8), applies and the doctor is not required to make the requested corrections to the records.

ORDER:

For the foregoing reasons, no order is issued.

Original Signed by: _____

July 31, 2025 _____

¹⁰ See, for example, PHIPA Decisions 178 and 181.

Chris Anzenberger
Adjudicator