

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 305

Complaint HA23-00127

Parkview Oral and Maxillofacial Surgery

September 29, 2025

Summary: The complainant made a request under the *Personal Health Information Protection Act* to a health information custodian, for the correction of her personal health information in her dental records. The custodian denied the request.

In this decision, the adjudicator finds that the information the complainant wants corrected consists of professional opinions or observations made in good faith. The adjudicator upholds the custodian's refusal to correct the dental records, finding that the exception to the duty to correct at section 55(9)(b) of the *Act* applies. She dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3, Sched. A, sections 3(1), 4(1), 55(1), 55(8), 55(9)(b), and 55(11).

Decisions Considered: PHIPA Decisions 193 and 241.

BACKGROUND:

[1] This complaint relates to a request to correct the complainant's dental records under the *Personal Health Information Protection Act*, 2004 (the *Act*).

[2] The complainant submitted a correction request to Parkview Oral and Maxillofacial Surgery (the custodian) requesting the following corrections be made to her dental records:

1. The complainant asked that the records specify which liquid antibiotic was used during a dental procedure. She noted that during the procedure, the dentist stated he used antibiotics. She noted that an antiseptic/antimicrobial is listed on the operative summary letter, but no antibiotic is listed.
2. The complainant stated that the operative summary letter says "fragment(s) of tooth 36 were luxated and removed." She noted "however [that] there were no fragments or pieces [and that] tooth #36 came out whole and in one piece with no fractures or cracks."
3. The complainant noted that her file, including the post operative note, does not indicate "[her] concern about the root canal substance [...] still present in [the extraction] site." She specifies that her file does not indicate that she voiced this concern in two separate visits and does not document an exchange she had with the dentist about her concern.

[3] The custodian issued a decision denying the correction request, stating that the personal health information that the complainant would like corrected is accurate. In its decision letter, the custodian did not cite the sections of the *Act* it relied on to deny the correction request.¹

[4] The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the complaint.

[5] As the complaint was not resolved through mediation, it was moved to the adjudication stage of the complaints process, where an adjudicator may conduct a review. The adjudicator originally assigned to this complaint decided to conduct a review, and invited and received representations from the custodian and the complainant.

[6] In this decision, I find that the custodian does not have a duty under section 55(8) to correct the complainant's personal health information in the record, because the exception to the duty to correct at section 55(9)(b) of the *Act* applies. I dismiss the complaint.

RECORDS:

[7] The records at issue are an operative summary letter (the operative summary) and a post operative note.

DISCUSSION:

[8] I have reviewed all of the parties' representations and attachments, and below I

¹ The custodian later confirmed that the correction request was denied under section 55(9)(b) of the *Act*.

summarize the portions that are most relevant to the issue of correction, the only issue in this complaint. In her representations, the complainant raises a number of concerns that are outside the scope of the complaint. These include concerns with the mediation of this complaint, and about a letter from the dentist addressed to her which she states was never sent to her. The custodian then responded to some of these concerns. I will not address the complainant's concerns in this decision as the only issue before me in this complaint is whether the custodian has a duty to make the requested corrections under the *Act*.

[9] There is no dispute between the parties, and I find, that the custodian is a health information custodian as defined in section 3(1) of the *Act*, and that the records at issue contain the complainant's personal health information as defined in section 4(1) of the *Act*.

[10] Accordingly, the sole issue before me is whether the custodian is required under the *Act* to grant the corrections requested by the complainant.

[11] 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 a correction under subsection (1)² 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.

[12] Section 55(9) of *PHIPA* sets out exceptions to the duty to correct records. Only the section 55(9)(b) exception is relevant in this case.³ It reads:

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.

[13] Read together, sections 55(8) and 55(9) set out the criteria pursuant to which an individual is entitled to a correction of a record of her own personal health information.

[14] Depending on the nature of the correction request, the information that the

² Section 55(1) provides that "If a health information custodian has granted an individual access to a record of his or her personal health information and if the individual believes that the record is inaccurate or incomplete for the purposes for which the custodian has collected, uses or has used the information, the individual may request in writing that the custodian correct the record."

³ Section 55(9)(a) provides an exception to the right of correction in cases where the record of personal health information "consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record."

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).⁴ In this complaint, I begin by determining whether the exception at section 55(9)(b) of the *Act* applies.

[15] For the reasons that follow, I find that the exception at section 55(9)(b) applies in the circumstances. It is therefore unnecessary for me 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 the 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.

The section 55(9)(b) exception

[16] The custodian submits that he does not have a duty to correct because the exception at section 55(9)(b) applies in this case.

[17] 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 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. This approach is consistent with the approach taken to similar provisions in other jurisdictions.⁵

[18] 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 custodian's "professional opinion or observation," unless it can be established that the professional opinions or observations were not made in good faith. Moreover, 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.⁶

[19] Where the 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.

[20] 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. Therefore, if the exception applies, it does not matter whether or not the individual has met the onus in section 55(8) because even if the complainant satisfies this office that

⁴ PHIPA Decision 36.

⁵ See for example Orders H2004-004, H2005-006 and H2005-007 of the Information and Privacy Commissioner of Alberta, cited in PHIPA Decision 36.

⁶ PHIPA Decision 36.

the information is incorrect or inaccurate under section 55(8), a finding that the exception in section 55(9)(b) applies means that the custodian does not have a duty to make the correction.

[21] 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 faith."

Does the personal health information qualify as a "professional opinion or observation?"

[22] For the reasons below, I find that the personal health information at issue qualifies as professional opinions or observations.

The custodian's representations

[23] The custodian submits that no corrections are necessary. The custodian relies on the exception at section 55(9)(b) of the *Act* and maintains that the personal health information at issue consists of the dentist's professional opinions and observations made in good faith.

[24] The custodian submits that the information in the records represents the dentist's exercise of professional knowledge and experience in the course of information gathering, to arrive at a clinical judgment. The custodian submits that any misunderstanding between the dentist and the complainant does not affect its characterization as professional opinion within the meaning of section 55(9)(b).⁷

[25] The custodian submits that professional opinions or observations are preserved under section 55(9)(b) because of a need for documentation explaining treatments provided or events that follow a particular observation or diagnosis.⁸

[26] The custodian submits that the notes in the operative summary letter contain the dentist's accurate assessment of the stages of the extraction procedure, as well as his remarks and observations made in the course of performing the procedure. The custodian submits that the post operative note contains the dentist's observations made about the patient's recovery and healing process. The custodian further submits that documentation of a dentist's first-hand account will qualify as professional observations.

[27] The custodian maintains that the application of Section 55(9)(b) does not turn on whether the personal health information is objectively true or accurate.⁹

⁷ The custodian cites PHIPA Decision 197.

⁸ The custodian cites PHIPA Decision 193 at para 20.

⁹ The custodian cites PHIPA Decision 193 at para 29.

The complainant's representations

[28] The complainant submits that the section 55(9)(b) exception does not apply as the corrections she seeks are factual, and not professional observations or opinions. She submits that therefore, the issue of "good faith" also does not apply.

[29] With respect to the second correction, the complainant states that her file does not indicate that the dentist extracted tooth #36 as a whole or that she was given the tooth to take home. The complainant notes that the dentist told her the tooth would be in pieces, but it was not in pieces. She states that tooth #36 was given to her after the extraction and that it remains in her possession, whole and intact with no fractures. She includes a photo of the tooth with her representations.

[30] The complainant explains that the operative summary refers to "the fragment(s)" of this tooth. She states that her family doctor understood this to mean broken or cracked and advised her to seek a correction. The complainant submits that it is important to have an accurate patient file to ensure proper diagnosis when she sees medical professionals in the future for her ongoing issues with the site of the extraction.

[31] The complainant cites from two letters, one from the dentist and one from the dentist's counsel, providing clarifications including that the entire tooth was removed as one fragment or one piece, including the root and crown. She asks why the dentist is reluctant to clarify what occurred during the extraction. She notes that the dentist's letter consists of his professional opinion or observations. She explains that she is not asking the dentist to change his professional opinion or observation, she is only asking him to include in the operative summary, the professional opinion and observations he expressed in his own letter. The complainant submits that section 55(9)(b) does not apply in this case because the words she would like added to her file are the dentist's own words from a letter he wrote himself.

[32] With respect to the third correction, the complainant states that the post operative note does not indicate her concern with the presence of the root canal substance in the extraction site, nor does the rest of her file. She notes that she voiced her concern to the dental assistant during one visit and to the dentist during a second visit. When speaking with the dentist, the complainant states that she asked about the root canal substance and pointed to the x-ray displayed on the television screen. She states that the dentist spoke about his wife being a dentist and performing root canals regularly, and that the substance was not anything to worry about. The complainant indicates that she wants her concerns and these events to be documented because they "factually occurred" and because it is important for the referring doctor to know.

Analysis and findings

[33] In order for section 55(9)(b) to apply, the personal health information in the records must 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*.¹⁰

[34] I agree with the custodian that the personal health information that the complainant wants corrected qualifies as professional opinions and observations. The complainant’s correction request is with respect to two records of personal health information. The first is a one-page operative summary documenting the complainant’s tooth extraction. This record provides a narrative of the procedure, as well as a section entitled “additional notes,” which features some background, a patient preference, and a timeline for follow up. The second record is a half page post operative note featuring a brief summary of the patient’s follow up visit after the extraction.

[35] Based on the custodian’s representations and my review of the records, I find that the records at issue contain personal health information that qualifies as the dentist’s professional opinions and observations. In these records, the dentist documents a tooth extraction and later assesses the healing of the extraction site. The dentist’s documentation of the tooth extraction and subsequent healing process are professional opinions or observations resulting from his application of special knowledge, skills, qualifications, judgment or experience relevant to his profession. As the custodian submits, the records feature the dentist’s first-hand account of a tooth extraction he performed, including the stages of the procedure, and his remarks and observations about the procedure and the patient’s recovery.

[36] The custodian cites PHIPA Decision 193, in which the adjudicator remarked:

[29] [...] the application of the section 55(9)(b) exception does not turn on whether the personal health information at issue is objectively true or accurate. The section 55(9)(b) exception may apply to personal health information, even if that information is inaccurate, where that information qualifies as a “professional opinion or observation,” made in good faith.

[37] I agree with and adopt the reasoning in PHIPA Decision 193.

[38] The complainant takes issue with the dentist’s description of the extracted tooth and his failure to document her post operative concerns. To the extent that the complainant argues that these are inaccuracies, this does not make the section 55(9)(b) exception inapplicable. As noted above, section 55(9)(b) may still apply to personal health information that is inaccurate.

[39] With respect to the second correction, the complainant indicates that she would like the dentist to describe the extracted tooth as he did in a letter to her, in order to clarify what was meant by the word “fragment(s).” The complainant submits that this

¹⁰ PHIPA Decision 36.

letter consists of his professional opinions and observations and therefore, she is not asking the dentist to change his professional opinions or observations – only to replace them with other professional opinions and observations. I appreciate the nuance that the complainant raises; however, it remains that the operative summary contains the dentist's professional opinions and observations for the purposes of section 55(9)(b). Therefore, the exception to the duty to correct still applies, barring a finding that the dentist did not make these professional opinions or observations in good faith.

[40] With respect to the third correction, the complainant notes that she voiced concerns on two occasions and had an exchange with the dentist, and that these were not documented in the post operative note, or elsewhere in her file.

[41] In PHIPA Decision 241, the complainant noted, among other things, that a health information custodian had excluded certain information from the record. I find the adjudicator's comments helpful:

[26] As explained above, the purpose of the section 55(9)(b) exception is to preserve "professional opinions or observations," accurate or otherwise, that have been made in good faith. Therefore, while I understand the representatives' concerns about what was included in the death note and what was not, whether the personal health information in the death note is objectively accurate or complete is not something that I can consider in determining if the exception applies. Rather, I am limited to determining if the information qualifies as a "professional opinion or observation," made "in good faith." In this case, I find that the information that the representatives seek to have corrected in the death note qualifies as the physician's professional opinion or observation within the meaning of section 55(9)(b).

[27] In my view, the specific information that should be included in the death note is, on its face, an application of the professional judgement and experience of the physician. I am satisfied that the physician's investigation and documentation of the circumstances leading up to and surrounding the mother's death are an exercise of their professional knowledge and skill. While I acknowledge the representatives' concerns about the inclusion of certain physical factors and the exclusion of mental health factors, this does not mean that the physician's decision regarding what should be included in the death note was not professional in nature. Whether or not the documentation is accurate does not affect its classification as professional opinions or observations within the meaning of section 55(9)(b).¹¹

[Emphasis added]

¹¹ PHIPA Decisions 36, 37 and 193.

[42] I agree with and adopt the reasoning in PHIPA Decision 241. Documenting the complainant's post operative recovery was an exercise of the dentist's professional knowledge and skill. This includes the dentist's judgement in deciding what to include and what not to include in the record. The post operative note therefore contains his professional opinions and observations. The complainant questions its accuracy and completeness as it does not capture her concerns. However, as noted above, section 55(9)(b) exception applies to professional opinions and observations made in good faith, even if that information is inaccurate.

[43] The complainant submits that she requires the corrections to maintain an accurate patient file, considering future visits with medical professionals to address ongoing issues with the site of the tooth extraction. This concern, however valid, does not change the characterization of the personal health information at issue as professional opinions and observations for the purposes of section 55(9)(b).

For any personal health information qualifying as a "professional opinion or observation," was the professional opinion or observation made "in good faith?"

[44] For the reasons below, I find that the professional opinions and observations at issue were made in good faith.

Parties' representations

[45] The custodian notes that the complainant bears the onus of establishing that his professional opinions and observations were made in bad faith. In the custodian's view, the complainant has only expressed her disagreement with what was noted in the records.

[46] The custodian maintains that there is no evidence of malice or an intention to harm on the dentist's part and therefore, the complainant has not established that his professional opinions and observations were not made in good faith.¹²¹³

[47] The complainant submits that although the custodian says it has a professional obligation to keep an accurate patient record, it refuses to do so. She submits that the dentist seems to maintain "his position out of spite, pride, and his conflict of interest relationship with [another dentist]." She submits that the dentist's long-standing relationship with this other dentist, who is not a part of her circle of care, is a conflict of interest that has influenced his judgement. The complainant's argument, as I understand it, is that the custodian has chosen not to grant the correction as a result of this conflict

¹² The custodian cites PHIPA Decision 135.

¹³ The custodian cites from a decision of the Inquiries, Complaints and Reports Committee of the Royal College of Dental Surgeons of Ontario and attaches the decision to its representations. However, I may not consider this decision as evidence in this complaint based on the confidentiality provision at section 36(3) of the *Regulated Health Professions Act*. See for example PHIPA Decision 238 at para 10.

of interest.

[48] The complainant questions the dentist's good faith several times throughout her representations, including when addressing matters outside the scope of this complaint. For instance, the complainant submits that during the mediation process, the dentist lied about providing her with a copy of a letter addressed to her and dated May 9, 2024. She also submits that the attachments to a letter from the dentist's counsel were deceptive and misleading.

Analysis and findings

[49] Court decisions 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 that persons are assumed to act in good faith unless proven otherwise. Therefore, the burden of proof rests on the individual who seeks to establish that a person has acted in the absence of good faith to rebut the presumption of good faith.¹⁴ 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 custodian did not make the professional opinion or observation in good faith.

[50] I agree with the custodian that the complainant has not met the burden of proof under the second part of the section 55(9)(b) analysis. The complainant has not provided enough evidence to rebut the presumption that the dentist's professional opinions and observations were made in good faith.

[51] Some of the complainant's allegations, about the attachments in the letter from the dentist's counsel, or about the May 9th, 2024 letter that she says she never received, do not relate the issue at hand – that is, whether the professional opinions and observations at issue were made in good faith. The allegation that the custodian has refused to correct her records due to the influence of another dentist with whom the dentist has a conflict of interest also does not relate to whether he made those professional opinions and observations in good faith. To the extent that the complainant submits that the dentist initially made professional opinions and observations in bad faith as a result of a conflict of interest, the complainant has not provided sufficient evidence to establish malice, intent to harm, serious carelessness or recklessness on the part of the dentist or the custodian. As a result, I find that the complainant has not rebutted the presumption of good faith.

[52] The complainant does not refer to the first correction noted above in the background section. I note that in her representations, the complainant clarifies that the second and third corrections were included in her complaint to the IPC. From my review of the file, it appears that the first correction was only included in the complainant's correction request to the custodian, prior to the opening of the complaint. My

¹⁴ *Finney v. Barreau du Québec*, [2004] 2 SCR 17, 2004 SCC 36 (CanLII). See also PHIPA Decision 37.

understanding is the first correction is no longer at issue. However, if the complainant intended to include the first correction, I would also find that it relates to professional opinions and observations made in good faith.

[53] As I have found that the personal health information the complainant seeks to have corrected consists of professional opinions and observations made in good faith, the section 55(9)(b) exception applies. Accordingly, the custodian has no duty to make the requested corrections, and I uphold his decision refusing to do so.

[54] Based on the evidence before me, it does not appear that the complainant has exercised her right to require that a statement of disagreement be attached to the records that she seeks corrected. Under Section 55(11) of the *Act*, the complainant is "entitled to prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make" and require that it be attached to her records and disclosed whenever the custodian discloses the information. Accordingly, I remind the complainant that she is entitled to submit a statement of disagreement in accordance with section 55(11), if she so wishes.

NO ORDER:

I dismiss the complaint.

Original Signed by: _____

Hannah Wizman-Cartier
Adjudicator

September 29, 2025