Information and Privacy Commissioner,
Ontario, Canada

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

PHIPA DECISION 311

Complaint HA24-00165

Unity Health Toronto

November 24, 2025

Summary: The complainant requested that a hospital make corrections to her anesthesia record following a surgery. The hospital denied the request. In this decision, the adjudicator finds that the information the complainant wants corrected consists of a professional opinion or observation made in good faith, and that the section 55(9)(b) exception to the duty to correct applies. She upholds the hospital's decision 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).

Decisions Considered: PHIPA Decision 39.

BACKGROUND:

[1] This complaint arises from a request by the complainant for correction of her anesthesia record pursuant to the *Personal Health Information Protection Act* (*PHIPA* or the *Act*).

[2] The complainant submitted a correction request to Unity Health Toronto (UHT, the hospital or custodian), seeking corrections to her anesthesia record relating to a surgery. In her request, the complainant alleged that her tooth was chipped and retainer damaged during intubation, a fact not noted in the anesthesia record. She asserted that omission of the dental injury rendered the record inaccurate because no other plausible cause existed for the dental injury, and that the suggestion that the intubation was without

complications is inaccurate.

[3] UHT denied the correction request. In its decision, UHT wrote that the complainant did not demonstrate that the record is incomplete or inaccurate for the purposes for which it uses the information, and that the record contains a professional observation or opinion made in good faith, triggering an exception to the duty to correct. UHT's decision included a "Note from physician" stating the following:

> In brief, the patient (as all patients undergoing anesthesia care) was warned of the potential for dental injury (as highlighted on the chart), and in detailing the airway management there was specific indication of an 'atraumatic' and 'easy' intubation. This was confirmed with the Fellow at subsequent time of patient concern. It is also noted, that the patient states her retainer was damaged – which would be a highly unusual event as these are either removed or if permanent are tucked behind the teeth and away from any instrumentation.
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> As we recognize dental injury is always a consideration, it serves no one to avoid this potential reality, and certainly not to document it (Dental injury is readily apparent). As I have no recollection of the injury described, and my Fellow on specific chart review and questioning by myself also is not aware of any perioperative dental injury, I cannot provide any objective reason to amend the anesthetic record on my behalf.

[4] In the same decision, UHT informed the complainant that she could submit a statement of disagreement, which would be attached to her hospital medical record and made available to any health care provider accessing the record in the future. UHT also informed the complainant that, upon her request, the hospital could provide a copy of her medical record, with the statement of disagreement attached, to any party outside UHT who had previously received a copy of the original record, such as the complainant's family physician.

[5] Two days later, after reviewing images the complainant provided, UHT issued a revised decision. It maintained its decision to refuse the correction request, and added the following comments to the "Note from physician," based on the images:

> Additional observation from physician […]: The instruments used during anesthesia are not placed in close proximity to the damage that is observed in the picture and x-ray. Based on the images, it is not possible to conclude that the damage occurred during anesthesia care…

[6] The complainant remained dissatisfied with UHT's decision and filed a complaint about it with the Information and Privacy Commissioner of Ontario (IPC). The IPC attempted to mediate the complaint.

[7] When not resolved through mediation, the complaint was moved to the

adjudication stage of the complaints process, where an adjudicator may conduct a review. I decided to conduct a review, during which I received representations from UHT and the complainant.

[8] In this decision, I find that UHT 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 in section 55(9)(b) of the *Act* applies. I dismiss the complaint.

RECORD:

[9] The record at issue is an anesthesia record. The complainant maintains that the record is inaccurate because it does not note damage to her tooth or retainer that she asserts occurred during surgery.

DISCUSSION:

[10] The sole issue in this complaint is whether UHT is required under *PHIPA* to correct the record in accordance with the complainant's request.

[11] The parties do not dispute, and I find, that UHT is a health information custodian as defined in section 3(1) of *PHIPA* and that the record contains the complainant's personal health information as defined in section 4(1).

[12] Section 55(1) of the *Act* provides a right to request correction of records of personal health information in certain circumstances. It states that an individual who has received access to their personal health information may request that the health information custodian correct a record "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."

[13] Section 55(8) imposes a duty on health information custodians to correct records of personal health information 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."

[14] However, section 55(9) sets out exceptions to this duty to correct records. UHT relies on section 55(9)(b),[1] which states that:

[1] 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."

> Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,
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> > b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

[15] Read together, sections 55(8) and (9) set out when a custodian is required to correct a record, and when it is not.

[16] In this case, UHT states that it has refused the complainant's correction request on two grounds: first, the complainant has not met the requirements under section 55(8), in that she has not demonstrated that the record is incomplete or inaccurate for the purposes for which UHT uses the information; and second, the exception in section 55(9)(b) applies, as the information consists of a professional opinion or observation made in good faith.

[17] Depending on the nature of the correction request and the custodian's grounds for refusal, the IPC may begin its analysis under either section 55(8) or 55(9)(b).[2] This is because, on its face, section 55(9) makes clear that even if a record is inaccurate or incomplete within the meaning of section 55(8), a custodian is not required to correct it if the exception in section 55(9)(b) applies.

[18] Accordingly, I have first considered whether the exception in section 55(9) of the *Act* applies. For the reasons that follow, I find that it does. As a result, it is not necessary for me to determine whether the complainant has met the requirements of section 55(8).

The section 55(9)(b) exception: professional opinion or observation

[19] The purpose of section 55(9)(b) is to preserve professional opinions or observations, whether accurate or not, so long as they have been made in good faith. A policy rationale behind this exception is the importance of maintaining contemporaneous documentation that may inform future care, such as explaining treatments provided or events that followed a particular diagnosis or observation.[3]

[20] Where a "professional opinion or observation" is involved, section 55(8) does not give rise to a duty to correct unless it can be established that the professional opinion or observation was not made in good faith. A request for correction cannot serve as a means to substitute or alter a custodian's professional opinion or observation with that of the complainant, such as their differing view of a medical condition or outcome, nor can it be used to challenge professional opinions or observations with which a complainant disagrees.[4]

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[2] PHIPA Decision 36.
[3] See, for example, PHIPA Decisions 206, 241 and 285.
[4] PHIPA Decision 36.

[21] A custodian relying on section 55(9)(b) must demonstrate that the information qualifies as a "professional opinion or observation" about the individual.[5] Once this is established, the onus shifts to the individual seeking the correction to establish that the professional opinion or observation was not made in good faith.

[22] Accordingly, the section 55(9)(b) exception involves a two-part analysis: (i) does the information consist of a professional opinion or observation? and (ii) was it made in good faith?

Does the personal health information consist of a "professional opinion or observation?"

[23] UHT submits that all of the information in the anesthesia record falls within the meaning of "professional opinion or observation" of the anesthesiologist and the Fellow he supervised during the surgery, both of whom are agents of the hospital. UHT states that the anesthesia record includes, among other things, details of the complainant's medical history, pre-surgical examination, the physicians' assessment of her airway, and their evaluation of the anesthesia procedure and its outcomes.

[24] I accept UHT's submission and find that the information in the anesthesia record falls within the meaning of "professional opinion or observation." In PHIPA Decision 39, on which UHT relies, the IPC reaffirmed its interpretation of this term as referring to "only observations and opinions derived from the exercise or application of special knowledge, skills, qualifications, judgment or experience relevant to the profession."

[25] In this case, I am satisfied that the information recorded in the anesthesia record documenting the anesthesiologist's and the Fellow's assessment of the complainant's condition and the procedure, was derived from the application of their professional knowledge, judgment, and training. Accordingly, I find that it constitutes a "professional opinion or observation" within the meaning of section 55(9)(b) of the *Act*.

Was the professional opinion or observation made "in good faith?"

[26] Even if the information qualifies as a professional opinion or observation, if there are reasonable grounds to conclude that the opinion or observation was not made in good faith, the duty to correct in section 55(8) will not apply.

[27] Courts have held that a lack of good faith may be established by evidence of malice or intent to harm, or serious carelessness or recklessness. The courts have also stated that individuals are presumed to act in good faith unless proven otherwise. Therefore, as noted above, the burden of proof lies with the complainant to establish that the opinion or observation was not made in good faith.[6]

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[5] PHIPA Decisions 193 and 211.
[6] *Finney v Barreau du Québec*, [2004] 2 SCR 17, 2004 SCC 36 (CanLII).

[28] The complainant submits that proof of bad faith lies in UHT's misstatement of her surgery date in its initial representations submitted during this review. I disagree and find this submission to have no merit. UHT acknowledged its misstatement of the surgery date and corrected it in its reply representations; I accept that the misstated surgery date in the hospital's representations was a clerical error, and that the surgery date is as recorded in the record. Also, the section 55(9)(b) reference to a professional opinion or observation that a custodian *has made in good faith* requires that the physician's conduct be evaluated based on their actions and intent at the time the record was made. Previous IPC decisions that considered whether a professional opinion or observation was made in bad faith assessed the author's conduct at the time the record was created, and I take the same approach here.

[29] UHT submits that there are no reasonable grounds to conclude that the professional opinions or observations in the record were not made in good faith. It submits that the complainant did not report any damage to her teeth until two months after the surgery.[7] UHT states that, while the pre-surgery examination documented in the anesthesia record contains no notation of existing damage to the complainant's teeth, the absence of such a notation does not establish that any damage occurred during surgery. UHT adds that neither the anesthesiologist nor the assisting Fellow recalls any dental injury occurring at the time of the intubation or during the surgery.

[30] UHT further submits that, on receiving the complainant's concerns, the anesthesiologist took steps to address them, first by conferring with the Fellow who assisted during the procedure to determine whether any dental injury or damage to the complainant's retainer occurred; and second, by reviewing the images provided by the complainant (x-ray and regular photographs from approximately eight years before the surgery and six months after) and explaining why, in his opinion, the damage to her teeth was unlikely to have been caused by the laryngoscope used for intubation.

[31] I agree with UHT that the complainant has not established that the professional opinions or observations in the record were made in bad faith. Beyond her allegations that UHT lied in its representations about the misstated surgery date, the complainant provides no representations or information to support a finding of bad faith.

[32] Having found that the record contains the anesthesiologist's professional opinions and observations, I have no basis to conclude that they were made with malice, intent to harm the complainant, or with serious carelessness or recklessness.

[33] For all of these reasons, I find that the personal health information the complainant seeks to have corrected consists of professional opinions or observations made in good

[7] The hospital submits that the complainant first reported the dental injury in late September 2023, nearly two months after her surgery. The complainant, meanwhile, disputes that she waited "two weeks" to report the injury. However, the precise timing of when the injury was reported does not affect the outcome of my decision, and accordingly, I make no finding regarding the date on which the complainant first notified the hospital.

faith. As a result, the exception in section 55(9)(b) to the duty to correct under section 55(8) applies, and UHT is not required to make the requested correction to the record.

Statement of disagreement

[34] Sections 55(11) and 55(12) of *PHIPA* give an individual whose correction request has been refused the right to require the custodian to attach a statement of disagreement to the record. A statement of disagreement may set out the individual's disagreement with any information contained in the record, and may contain the requested corrections.

[35] In this case, the custodian has attached the complainant's statement of disagreement to the record, thereby ensuring that her objections to the contents of the anesthesia record are documented in the record. This satisfies the custodian's obligation under section 55(11) to permit the complainant to formally document her disagreement when a correction is not made.

ORDER:

1. For the foregoing reasons, the complaint is dismissed.

Original Signed by: November 24, 2025

Jessica Kowalski
Adjudicator