

2002-153

**TWO DIFFERENT CONCEPTS: AN INDIVIDUAL'S RIGHT TO ACCESS AND PERMISSION FOR A TRUSTEE TO DISCLOSE**

**PHIA -- Access (right of complaint; exercising rights of another person) – Seven Oaks General Hospital  
s. 60, 23(1), 39(1)**

*Introduction: The purpose of The Personal Health Information Act (PHIA) is to permit an individual to seek access to his or her own personal health information and to set limits as to how that personal health information may be collected, used and disclosed by trustees.*

*In a limited number of provisions under PHIA, someone other than the individual the personal health information is about may be able to receive details about the individual's personal health information. Section 60 sets out that where there is a specified relationship, a person or entity can exercise the PHIA access and privacy rights of another individual. Section 23, under "Protection of Privacy", permits a trustee to disclose limited personal health information about an individual to others in specific circumstances.*

*The following summary concerns a situation where an individual sought to make an access complaint to our office under PHIA about personal health information he received relating to his wife. Because the individual was not his wife's representative as outlined under section 60 of PHIA, we had no choice but to decline his PHIA complaint. Nevertheless, we attempted to assist the individual to the extent possible and, after making informal enquiries with the Hospital, provided him with an explanation about his concern.*

*The summary provides some insight on how sections 60 and 23 of PHIA operate and differ.*

An individual complained to our office about the Seven Oaks General Hospital, a trustee under PHIA, alleging that personal health information that he had received from the Hospital about his wife was incomplete.

We made enquiries with the complainant to determine whether he was a representative of his wife under one of the provisions of section 60 of PHIA. Section 60 provides:

***Exercising rights of another person***

- 60** *The rights of an individual under this Act may be exercised*
- (a) by any person with written authorization from the individual to act on the individual's behalf;*
  - (b) by a proxy appointed by the individual under The Health Care Directives Act;*
  - (c) by a committee appointed for the individual under The Mental Health Act if the committee has the power to make health care decisions on the individual's behalf;*
  - (d) by a substitute decision maker for personal care appointed for the individual under The Vulnerable Persons Living with a Mental Disability Act if the exercise of the right relates to the powers and duties of the substitute decision maker;*
  - (e) by the parent or guardian of an individual who is a minor, if the minor does not have the capacity to make health care decisions; or*

*(f) if the individual is deceased, by his or her personal representative.*

The complainant had a Court order that provided him with the legal authority to handle his wife's financial affairs. He did not have authority, however, to exercise her rights under PHIA as set out in section 60 of the Act. Accordingly, the Hospital could not provide the individual with access to his wife's records pursuant to section 60 of the Act. However, where the circumstances under section 23(1) appeared to apply, the Hospital was able to disclose information to the individual pursuant to that provision.

Our office made enquiries with the Hospital and we were informed that the complainant had been provided with access to his wife's personal health information under section 23 of PHIA, which sets out:

***Disclosure to family about patient's health care***

***23(1)*** *If an individual is a patient or resident in a health care facility, the trustee may disclose personal health information about the individual to an immediate family member, or to anyone else with whom the individual is known to have a close personal relationship, if*

*(a) the disclosure is about health care currently being provided;*

*(b) the disclosure is made in accordance with good medical or other professional practice; and*

*(c) the trustee reasonably believes the disclosure to be acceptable to the individual or his or her representative.*

Section 23, a provision under Part 3 of PHIA, "Protection of Privacy", permits a trustee to disclose limited personal health information about an individual to others in specific circumstances. Section 23 does not provide those other persons or entities with a right of access which, under Part 2 of PHIA, is the right of the individual that the personal health information is about, or his or her representative as recognized under PHIA. This is an important distinction between section 23 and section 60. One of the ramifications of the distinction relates to complaints made to our office, where section 39(1) of PHIA sets out the following:

***Right to make a complaint about access***

***39(1)*** *An individual who has made a request to examine or receive a copy of his or her personal health information in accordance with Part 2 may make a complaint to the Ombudsman about any decision, act or failure to act of the trustee that relates to the request, including but not limited to the following:*

*(a) a refusal by the trustee to permit the individual to examine or receive a copy of the information;*

*(b) a refusal by the trustee to correct personal health information;*

*(c) an unreasonable delay by the trustee in responding to the request;*

*(d) an unreasonable or unauthorized fee charged by the trustee.*

Because section 39(1) of PHIA limits the right of complaint to the Ombudsman to only an individual who can and has exercised the right of access under Part 2 of the Act (or his or her representative under the Act), our office could not, in this situation, investigate the individual's concern of incomplete access as a PHIA complaint.

Nevertheless, noting that the individual had been recognized by the Trustee as an immediate family member able to obtain certain personal health information, we made informal enquiries with the Hospital about the concerns he had raised relating to his wife's record. Specifically, this related to his belief that "Integrated Progress Notes" for a span of approximately one week were missing from her chart.

We were advised by the Hospital that, for patients on the PsychoGeriatric Ward, it is the general practice to enter daily notations on the "Daily Record". We were also informed that any exceptions or concerns out of the ordinary are recorded in "Integrated Progress Notes". We observed that there was a daily record for the individual's wife for the period in question. There were, however, no integrated progress notes for that time. Based on the information we were provided, the fact that there were no integrated progress notes did not mean that personal health information was missing. We advised the individual of our observations and indicated that we hoped this clarified the situation relating to his complaint to our office.