

2002-189

IN HEALTH CARE FACILITIES, PHIA KNOWS NO HOLIDAYS OR OTHER BREAKS

PHIA – Access (failure to respond) – McPhillips Medical Group

s. 6(1), 7(1)

Introduction: Under The Personal Health Information Act (PHIA), an individual has a right, on request, to examine and receive a copy of his or her personal health information maintained by a trustee. The request does not have to be in writing. A trustee must respond to the request for access no later than 30 days after the request was received (unless the request is transferred to another trustee pursuant to PHIA), either by providing access to the information or by advising, in writing, that the information does not exist, cannot be found, or that the request is being denied in whole or in part for a specified reason described in PHIA. The failure of the trustee to respond to a request within the 30-day period is to be treated as a decision to refuse to permit the personal health information to be examined or copied. There is no provision that allows for an extension of the 30-day response time under PHIA.

The case summarized below is an example of a failure to respond within the 30-day period set out in PHIA and, more generally, a lack of understanding of the legislation.

The trustee of the personal health information in question was a medical clinic. It is apparent that the physician who had medically attended to the individual requesting access to her personal health information was away from the clinic for an interval longer than the 30-day response period when the request was received. However, the physician was not the trustee of the information. It was the responsibility of the medical clinic to provide a response to the individual within the 30 days of receipt of the request for access.

It is to be noted that PHIA requires that a “health care facility” (a term under PHIA that includes medical clinics), designate one or more of its employees as a privacy officer whose responsibilities include generally facilitating the trustee’s compliance with the Act and dealing with requests from individuals who wish to examine and copy or correct personal health information under the Act. The privacy officer(s) of a health care facility should be familiar with the provisions of, and their responsibilities under PHIA and should be leading the facility in issues relating to the Act as an advisor and resource to their colleagues. The trustee organizations should, of course, be ensuring that the privacy officer has adequate resources, including training.

Ultimately, it is the trustee that is accountable for its actions or inaction under the legislation. We advised the clinic in this case that our office, as well as Manitoba Health, can provide presentations and written materials to assist trustees in meeting their legal obligations under PHIA.

An individual complained to our office under PHIA that she had requested access to her personal health information from the McPhillips Medical Group (the Clinic), a trustee under the Act, and had not received a response in more than 30 days after making the request.

As background, the individual advised our office that on July 17, 2002, she attended the Clinic, where she had formerly been a patient and provided her former physician’s assistant with a

letter of request for access to her medical chart. The individual stated that she was informed at that time that the physician would be away from the office until September 2002. She indicated to our office that she telephoned the physician's office in August and arranged an appointment for September 9, 2002, to review her medical chart. She informed us that this appointment was later cancelled by the Clinic, and that she was advised on September 5, 2002, that her medical chart had been transferred to another physician.

PHIA sets out the requirements for responding to a request for access as follows:

Trustee must respond promptly

6(1) *A trustee shall respond to a request as promptly as required in the circumstances but no later than 30 days after receiving it, unless the request is transferred to another trustee under section 8.*

Trustee's response

7(1) *In responding to a request, a trustee shall do one of the following:*

- (a) make the personal health information available for examination and provide a copy, if requested, to the individual;*
- (b) inform the individual in writing if the information does not exist or cannot be found; or*
- (c) inform the individual in writing that the request is refused, in whole or in part, for a specified reason described in section 11, and advise the individual of the right to make a complaint about the refusal under Part 5.*

Further to receiving the individual's complaint, we made enquiries with the Clinic. The Clinic acknowledged receipt of the individual's letter of request for access on July 17, 2002. Our office advised the Clinic of the requirements for a response to an access request under PHIA. Subsequently, the Clinic responded to the individual's request for access by letter dated October 2, 2002, and a copy of the response letter was provided to our office. The response letter indicated that a complete copy of the individual's chart would be made available to her upon receipt of a cheque said to be in line with the fees charged according to the Manitoba Medical Association.

The 30-day time limit for responding to a request received on July 17, 2002, would be August 16, 2002. Accordingly, the Clinic's response to the individual, dated October 2, 2002, was not provided in compliance with the time limit set out under PHIA. Nevertheless, as the Clinic responded to the individual's request, it appeared that the complaint was resolved and we concluded our review of this matter.