

## ELEMENTS OF CONSENT FOR PERSONAL HEALTH INFORMATION UNDER PHIA:

In offering the following elements of consent that should be addressed by a trustee of recorded personal health information about an identifiable individual, the Ombudsman's Office is not suggesting that there is a single consent form, activity or process by which informed consent may be obtained in the use or disclosure of personal health information.

Personal health information may only be collected, used or disclosed for purposes authorized under *The Personal Health Information Act*. Note that obtaining consent may not be employed as a means of collecting personal health information not otherwise authorized under the Act. There is no provision for consent in relation to the collection of personal health information from the individual the information is about, but this process is available for use and disclosure of personal health information lawfully collected. PHIA provides for the collection of personal health information from other sources in a limited number of circumstances, including when authorized by the individual.

Notwithstanding this, the limitation principle applies to the collection of personal health information as well as to its use and disclosure. In other words, every collection, use and disclosure must be limited to the minimum amount of personal health information necessary to meet the authorized purpose.

It is the duty of trustees to ensure that consent is obtained in a manner that is consistent with legislative provisions under *The Personal Health Information Act*. Under the legislation, consent may be required whenever personal health information is used by or disclosed to someone other than the individual the information is about.

We have put forward generic elements that could, in our opinion, be addressed in a flexible, reasonable, and effective manner so long as the process follows the law and the result is meaningful consent where it is required or sought. Addressing each of the elements of consent can contribute to ensuring that the trustee is providing the minimum amount of information through clear, specific and informed consent.

To ensure that the trustee will use and disclose the minimum amount of personal health information necessary to accomplish its purpose, the consent should be in writing and should address the following elements of consent:

- a. the specific personal health information to be used or disclosed;
- b. the identity of the person, organization or trustee that the personal health information may be used by or disclosed to;
- c. all the purposes for the use or disclosure;
- d. statement a from the trustee:
  - affirming that a third-party recipient will be instructed not to use or disclose the personal health information provided by the trustee, except for a purpose specified in the consent, and
  - specifying the subsequent disclosures, if any, that a third-party recipient will be instructed it is permitted to make;
- e. an acknowledgement that the consenting individual has been made aware of:
  - why the personal health information is needed, and
  - the risks and benefits to the individual of consenting or refusing to consent to the use or disclosure;
- f. the date the consent is effective, and the date the consent expires;
- g. a statement that the consent may be revoked or amended at any time.

To make our suggestion clear, we reiterate our opinion that a consent form need not articulate every one of these elements under all circumstances, but each of the components should have been carefully considered in the process of preparing such a form. While it is not our role to prescribe or approve a specific form in advance of its use, we would be pleased to discuss the suggested elements with you.

[July 2003]