

MANITOBA OMBUDSMAN PRACTICE NOTE

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DISCLOSURE UNDER *THE PERSONAL HEALTH INFORMATION ACT* (PHIA)

INTRODUCTION

One of the purposes of PHIA is to establish rules governing the collection, use, disclosure, retention and destruction of personal health information.

The term "disclosure" is not defined in PHIA. It is a term, however, that means revealing recorded personal health information to someone outside of the trustee.

Recorded information may be disclosed in a number of ways:

- providing the record itself or a copy of it
- creating another record, such as a letter or memo, containing the information
- verbally disclosing information from the record

When disclosing personal health information, a trustee should take precautions appropriate to the circumstances to ensure that the information is revealed only to the intended recipient. Required security safeguards respecting disclosure are contained in PHIA and PHIA Regulation 245/97. Security safeguards concerning disclosure must be addressed in the trustee's written policy and procedures that are required under section 2 of PHIA Regulation 245/97.

GENERAL DUTIES OF TRUSTEES UNDER PART 3 OF PHIA

The privacy protections, including those concerning disclosure, are set out in Part 3 of PHIA . The general duties of trustees concerning disclosure are:

- every disclosure must be authorized under the Act, and
- every disclosure must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed

AUTHORIZATION FOR DISCLOSURE

A trustee is permitted, or authorized, to disclose personal health information in circumstances set out under sections 22, 23, 23.1, 23.2 and 24 of PHIA. It is important to carefully consider the wording of the provision to ensure it applies.

There are very few circumstances where a trustee would be required to make a disclosure, such as when complying with another Act or a subpoena, that requires the disclosure. In most situations, the decision to disclose is at the discretion of the trustee. This being the case, even where PHIA permits the trustee to disclose, the circumstances should be considered to determine whether it is appropriate to make the disclosure.

CONSENT TO DISCLOSE

Consent from the individual is one of the authorizations for disclosure under clause 22(1)(b) of PHIA. Consent is not necessary where disclosure is permitted under another clause. In some circumstances, a trustee may still wish to obtain consent from the individual even if the disclosure is otherwise authorized.

PHIA sets out the nature of and certain requirements for consent when it is required by the Act (section 19.1).

INDIVIDUAL'S ABILITY TO INSTRUCT THAT CERTAIN DISCLOSURES NOT BE MADE

In certain situations, the individual can say that he or she does not want a particular disclosure to be made. Clause 22(2)(a) recognizes that an individual may instruct the trustee not to make a disclosure necessary to provide health care, to another person who is, will be or has been providing health care to the individual (although the disclosure could be made for another reason permitted under PHIA).

Other examples apply to particular trustees in specific situations and are found in PHIA clauses 23(1), 23(2), 23.1(2) and 23.2(2). Where a disclosure might be made under the latter two provisions, the trustee must follow the notice requirements set out in PHIA (for section 23.1) or PHIA and PHIA Regulation 245/97 (for section 23.2).

CONSIDERATIONS FOR DISCLOSURE

A trustee should analyze each situation and consider the following before making the disclosure:

- the reason for making the disclosure
- whether the purpose for the disclosure is permitted under the Act
- if it is appropriate in the circumstances to obtain consent even if the disclosure is otherwise authorized
- how to limit the disclosure to the minimum amount of information necessary to accomplish the purpose
- the level of sensitivity of the information
- to whom the information is being disclosed
- how the information should be disclosed

- keeping a record of the disclosure to indicate the details of the disclosure, including a description of the information, who disclosed it, to whom it was disclosed, and the reasons for the disclosure