

Manitoba Ombudsman

REPORT UNDER

THE PERSONAL HEALTH INFORMATION ACT

CASE 2013-0016

WORKERS COMPENSATION BOARD

PRIVACY COMPLAINT: DISCLOSURE OF PERSONAL HEALTH INFORMATION

PROVISION CONSIDERED: 22(2)

REPORT ISSUED ON FEBRUARY 12, 2013

SUMMARY: The Workers Compensation Board (the WCB) had disclosed the complainant's personal health information (prescribed medications) to his employer, in respect of an appeal filed by the complainant. The appeal was in relation to a decision by the WCB not to continue paying for the complainant's medication. During the investigation, the WCB determined that the disclosure of personal health information to the complainant's employer was not authorized under PHIA as the employer was no longer an interested party. The complaint is supported.

THE COMPLAINT

On January 11, 2013, our office received a complaint under *The Personal Health Information Act* (PHIA) against the Workers Compensation Board (the WCB), a trustee under PHIA. The complainant requested that we investigate what was alleged to have been an unauthorized disclosure of his personal health information.

The complainant had previously brought this matter to the attention of the WCB and had received an apology from the WCB in respect of its oversight. The complainant decided to lodge a formal complaint under PHIA in order to further assess any actions taken by the WCB since the privacy breach.

The complainant advised that the WCB disclosed names of medications prescribed to him to his employer; the WCB's Review Office included this personal health information in a letter sent to the complainant's employer in October 2012. The letter referred to the complainant's appeal of a recent decision made by the WCB, in which the WCB decided it would no longer be responsible for the medications as they were not related to the complainant's compensable injury. Additionally, the letter indicated that the employer had the right to participate in the appeal.

The complainant advised that the employer had no need to know the specific names of the prescriptions and that, by disclosing this personal health information, his employer would be able to deduce other very sensitive personal health information about him.

POSITION OF THE WORKERS COMPENSATION BOARD

The WCB advised that the complainant had filed a claim with the WCB respecting a [specific] injury in August of 1999. The WCB subsequently accepted his claim and paid wage loss benefits to the complainant. The WCB also accepted that the complainant was suffering from a pre-existing [health] condition, exacerbated by his physical injury. The WCB had accepted financial responsibility for the treatments and medications associated with this condition until May 2012 when it decided it would discontinue paying for the medications associated with his [health] condition. This decision was appealed by the complainant and, based on the WCB's practice at the time, the WCB provided the employer with a notice of appeal in which it referenced the specific medications.

When the complainant contacted the WCB about the disclosure in December 2012, the WCB apologized for the oversight and explained that it should have been more generic in its letter to the employer.

During our investigation, the WCB advised that it should not have released the names of the specific medications to the employer as the employer had no need to know the information: the employer was no longer an interested party.

ANALYSIS OF ISSUES AND FINDINGS

1. Is the information in question “personal health information” as defined under PHIA?

PHIA defines personal health information, in part, as recorded information about an identifiable individual that relates to the individual's health, health care history or the provision of health care to the individual.

We found that specific medications taken by the complainant would be considered personal health information under PHIA.

2. Was the disclosure of the personal health information authorized under PHIA?

Subsection 22(2) of PHIA sets out the circumstances in which a trustee may disclose personal health information without an individual's consent.

We found that the disclosure of the complainant's medication information to his employer was not authorized under subsection 22(2) of PHIA as the employer was not an interested party in the appeal process, i.e., its involvement in the appeal was not required.

3. What steps have been taken by the WCB since the disclosure?

Since becoming aware of the breach, the WCB's legal counsel spoke to the Director of its Review Office and a decision was made to change the process with respect to claims similar to the complainant's claim. The WCB will no longer be sending any appeal notices to employers when they have no interest in the matters at hand.

The WCB initially apologized verbally to the complainant and, during the course of our investigation, followed up with a formal written apology for the error in disclosing the complainant's personal health information, i.e., prescribed medications, to the complainant's employer. The WCB also confirmed with our office that the employer has destroyed the records relative to this complaint.

SUMMARY OF FINDINGS

1. We found that the specific prescription medications taken by the complainant and disclosed to the complainant's employer constitutes the complainant's personal health information.
2. We found that the WCB disclosed the complainant's personal health information to his employer in contravention of the PHIA.
3. We found that the WCB has taken reasonable steps to ensure an error of this nature does not reoccur.

CONCLUSION

Our investigation determined that the complaint is supported. We wish to express our appreciation to the complainant for bringing this matter forward and to the WCB for its cooperation in completing this investigation and improving its privacy practices.

February 12, 2013
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