

Manitoba Ombudsman

REPORT UNDER

THE PERSONAL HEALTH INFORMATION ACT

CASE 2014-0451

HEALTH SCIENCES CENTRE

ACCESS COMPLAINT: REFUSAL OF ACCESS

PROVISIONS CONSIDERED: 6(1)(a), 6(1.1) and 6(3)

REPORT ISSUED ON DECEMBER 18, 2014

SUMMARY: A hospital in-patient requested an opportunity to examine her chart. The hospital did not provide the complainant with access to her personal health information within 24 hours as set out in clause 6(1)(a) of *The Personal Health Information Act*. Our office found that the complaint was supported.

THE COMPLAINT

On [date removed], 2014, an in-patient at the Health Sciences Centre requested to examine information the hospital maintained about health care currently being provided to her.

The Health Sciences Centre, a hospital, is a “health care facility” pursuant to the definition contained in clause 1(1) of *The Personal Health Information Act* (PHIA or the act) and as such is a “trustee” under the act.

The patient was discharged later that day and without having had the opportunity to examine her personal health information maintained by the hospital about care currently being provided to her.

Our office received a complaint about refused access from the patient on [date removed], 2014. The complaint alleges that the trustee refused access by failing to respond to the patient’s request within the time frame set out in PHIA and that the trustee had no basis for refusing access.

POSITION OF HEALTH SCIENCES CENTRE

The trustee advised that the patient had previously viewed her chart just over one week before the date in question. Based on the level of questions the complainant had with regards to the

information in her chart during the previous viewing, the trustee determined that it would be best to have the patient's physician present when she viewed the chart again as he would be best able to address questions if the need arose.

The trustee advised that in response to the patient's [subsequent] request, an email was sent to the physician's office at approximately 1:30 pm that day requesting an appointment for the purpose of reviewing the chart following the patient's discharge. The email was copied to the patient. While the trustee maintains that the patient was in agreement with this arrangement, the patient indicates she was not provided with another option.

Within a matter of days after notification by our office of the within complaint, the trustee contacted the patient and advised that it would make a copy of her chart available to her for pick-up at the hospital for a fee of \$90.50. After further discussion with our office, the trustee revised the fee to \$25.00 in accordance with part 5(a) of the *WRHA Acute, Long Term & Community Care Sites Fee Schedule for Patient Information*. On [date removed] the patient arranged for a third party to attend at the hospital and pick-up her personal health information.

When our office made additional inquiries about the \$25.00 fee, we were advised that it is routinely applied in the circumstances mentioned in clause 6(1)(a) of PHIA when a hospital in-patient requests to examine information about health care currently being provided to him or her. When we noted that the patient was not charged the fee when she viewed her chart on [date removed] we were advised that the failure to charge the fee on that occasion was an oversight.

ANALYSIS OF ISSUE AND FINDING

Did the trustee comply with the requirement for responding to a request as set out in clause 6(1)(a) of PHIA?

PHIA provides that an individual has a right, on request, to examine and receive a copy of his or her personal health information maintained by a trustee. A trustee "maintains" personal health information when the trustee has custody or control of the information.

PHIA sets out a time limit of 24 hours within which a trustee shall respond to a request by a hospital in-patient to examine his or her personal health information:

Trustee to respond promptly

6(1) *A trustee shall respond to a request as promptly as required in the circumstances but not later than*

(a) 24 hours after receiving it, if the trustee is a hospital and the information is about health care currently being provided to an in-patient;

Information provided in 24 hours

6(1.1) *In the circumstance mentioned in clause (1)(a) (hospital patient), the trustee is required only to make the information available for examination and need not, despite section 7, provide a copy or an explanation.*

Failure to respond

6(3) *The failure of a trustee to respond to a request within the time frame required under subsection (1) is to be treated as a decision to refuse to permit the personal health information to be examined or copied.*

Our review determined that the patient made a request to examine her personal health information to the trustee on [date removed]. At the time the request was made the patient was an “in-patient” at the hospital. The trustee was required to respond to the request within 24 hours by making the information available to the patient for examination. The patient was discharged from hospital later the same day and was not provided with an opportunity to examine her personal health information prior to discharge or within 24 hours of her request.

Our office found that the trustee did not provide the complainant with access to her personal health information within 24 hours as set out in clause 6(1)(a) of PHIA. As the complaint was about refused access, we did not make a finding in regard to the appropriateness of the fee charged in the circumstances.

CONCLUSION

Based on our office’s finding in this matter, the complaint is supported.

December 18, 2014
Manitoba Ombudsman