

# MANITOBA OMBUDSMAN PRACTICE NOTE

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## USE 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 "use" in relation to personal health information is defined in PHIA Regulation 245/97 as including processing, reproduction, transmission and transportation of information. "Use" is generally understood as meaning the handling of recorded personal health information, including sharing, within the trustee.

When using personal health information, a trustee must ensure that the information is accurate, up to date, complete and not misleading. Required security safeguards respecting use are contained in PHIA and PHIA Regulation 245/97. Security safeguards concerning the use of personal health information 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 use, are set out in Part 3 of PHIA. The general duties of trustees concerning use are:

- every use must be authorized under the act,
- every use must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used, and
- the use of personal health information by employees must be limited to those who need to know (PHIA Regulation 245, a trustee must determine, for each of its employees, agents, students and volunteers, what personal health information he or she is authorized to use)

## **AUTHORIZATION FOR USE**

A trustee may only use personal health information for the purpose for which it was collected or received, or as otherwise permitted in the circumstances set out under section 21. It is important to carefully consider the wording of the provision to ensure it applies.

## **CONSENT TO USE**

Consent from the individual is one of the authorizations for use under clause 21(b) of PHIA. Consent is not necessary where use is permitted under another clause. In some circumstances, a trustee may still wish to obtain consent from the individual even if the use is otherwise authorized.

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

## **CONSIDERATIONS FOR USE**

A trustee should analyze each situation and consider the following before using personal health information:

- the reason for using the information
- whether the purpose for the use is permitted under the act
- if it is appropriate in the circumstances to obtain consent even if the use is otherwise authorized
- how to limit the use to the minimum amount of information necessary to accomplish the purpose; is it restricted to the necessary information handled by the necessary person(s) in the particular circumstances?
- ensure that the identity of the person using the information is verified as the person the trustee has authorized to use it