
Personal Health Information Protection Act

REPORT

FILE NO. HI07-20

A Corporation

Personal Health Information Protection Act

REPORT

FILE NO.

HI07-20

INVESTIGATOR:

Cathy Hamilton

HEALTH INFORMATION CUSTODIAN:

A Corporation

SUMMARY OF INFORMATION GIVING RISE TO REVIEW:

A lawyer representing a family physician, contacted the Office of the Information and Privacy Commissioner/Ontario (the IPC) to report that her client had been carrying on a medical practice in an office space that was managed by a medical management company (the company). Due to a contractual dispute with the physician, the company terminated its relationship with the physician, and changed the locks at the office (the office). As a result, the company retained possession of the records of personal health information (the records) of individuals who had seen the physician. The IPC opened a file and worked with the company to fulfill its obligations under the *Personal Health Information Protection Act* (the Act).

RESULTS OF REVIEW:

The physician's legal counsel provided the IPC with the following additional information. The majority of the physician's patients were registered with her, as a sole practitioner, through a Ministry of Health and Long-Term Care Family Health Group. A copy of the Family Health Group Agreement was provided to the IPC. The agreement was silent on the issue of the records.

The physician had also entered into a written agreement with the company ten years ago. The physician's legal counsel provided a copy of the agreement to the IPC. The agreement indicated that the physician carried on a medical practice, but was silent on the issue as to which party would be responsible for the records.

In addition, a second physician practised medicine in an office at the same address. This office was also under the company's management. From time to time, in the past, the two physicians had a mutual agreement to cover each other's patients when one of them was ill or on vacation.

Following the contractual dispute, the physician set up a new practice at another location.

The physician was of the view that she had carried on a sole practice at the office, and was, therefore, a health information custodian. Accordingly, the records were being improperly held by the company, and should be transferred to her new location. The physician's legal counsel subsequently asked the IPC to make a finding that the physician is the health information custodian, and order the company to return the records to the physician.

The company retained legal counsel following the contractual dispute, who provided the following information to the IPC. The company has provided medical management services to three offices in the building for more than 15 years. At any given time, there have been two to three medical practitioners carrying on medical practices, each with their own office.

The offices are located in a low-income area and operate principally as a walk-in clinic, and most patients are new Canadians. In addition, many of the patients who saw the physician had also received care at that location for years prior.

The company is presently maintaining the patients' records in a secure space in the office. Since the physician's departure, approximately six patients have requested their records. The company has provided the records to those patients, without a fee. The company's legal counsel advised the IPC that any future requests by patients to have their records sent to the physician will be honoured, without a fee.

In addition, further records have been sent to the physician, at her request, to deal with various matters that required urgent attention. The physician's legal counsel confirmed that this was the case.

Based on the information provided by legal counsel for the physician and the company, there is no evidence to suggest that the records are being stored in an unsecure manner. The records are maintained in a locked cabinet at the office. In addition, information provided by both legal counsel indicate that some records were sent to the physician, at her request, to deal with urgent matters, and that all patients currently have access to their records, at no cost.

It is also my understanding that the company has agreed that it will continue to provide the physician's former patients with access to their records, at no cost. Should the IPC receive a complaint from a patient that this is not the case, a file will be opened and dealt with immediately.

Given that patients are not experiencing difficulty in obtaining their records, it was determined that further review of this matter was not warranted and the file was closed.

As a final comment, in my view, this situation could have been avoided. There was a written agreement between the physician and the company in place. However, the agreement was silent on the issue of patients' records. A clause in the agreement that clearly set out the parties' responsibilities for records management would have gone a long way to avoiding the situation that occurred. A similar issue was discussed by Commissioner Cavoukian in the IPC's *Order HO-003*.

Original signed by: _____
Brian Beamish
Assistant Commissioner

_____ November 19, 2007