

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into a Complaint
Regarding Disclosure and Collection of Health Information**

February 2003

Investigation Number H0057

I. Introduction

[para 1] On March 19, 2002 the Information and Privacy Commissioner (Commissioner) received a complaint that Dr. Harvey Ward (the Doctor), as an affiliate of the Lakeland Regional Health Authority (Lakeland), disclosed health information in contravention of the *Health Information Act* (HIA).

[para 2] The Commissioner ordered an investigation into this matter under section 85(e) of the HIA. This report outlines the findings and recommendations of this Office.

II. Background

[para 3] The Complainant had been receiving health services from the Doctor out of the Associated Medical Clinic in Lac la Biche.

[para 4] In September of 2001, the Complainant was admitted into the William J. Cadzow Health Centre (the hospital) in Lac la Biche. The disclosure and collection of health information related to this complaint is said to have occurred while the Doctor was treating the patient in the hospital. The hospital is a Lakeland facility.

[para 5] Lakeland was notified that one of their affiliates (the Doctor) was alleged to have disclosed health information in contravention of the HIA. At that time, they raised the issue of whether or not the Doctor's alleged disclosure occurred as an affiliate of Lakeland or as a custodian in his own right. This issue is also examined in this report.

III. Complainant's Concerns

[para 6] The Complainant states that the Doctor disclosed her health information to family members without her consent, while she was in the hospital. The Complainant cited an incident where the Doctor disclosed health information to her father and sister-in-law, and a separate incident of disclosure to her father.

[para 7] The Complainant also states that the Doctor contacted a Clinical Neuropsychologist and collected health information without authorization.

[para 8] The Complainant contends that the above noted disclosures and collection breached her privacy.

IV. Investigation Findings

[para 9] The following issues are examined in this report:

1. Was health information disclosed?
2. Did the Doctor's disclosure of health information occur as an affiliate of the Lakeland Regional Health Authority?
3. Did the Doctor's disclosure of the Complainant's health information contravene the HIA?
4. Did the Doctor's collection of health information contravene the HIA?

Issue 1: Was health information disclosed?

[para 10] Under section 1(1)(k) of the HIA, 'health information' means any or all of the following:

- (i) *diagnostic, treatment and care information;*
- (ii) *health services provider information;*
- (iii) *registration information*

[para 11] During my investigation, the Doctor advised me that he had a discussion with family members shortly after the Complainant was admitted to the hospital. The Doctor indicated that he was attempting to collect information to assist him in his treatment of the Complainant. The Doctor said that he inquired about the parent's observations of symptoms the Complainant demonstrated while living with them. In my view, the disclosure of health information was a by-product of this discussion more than it was a disclosure in and of itself. Nevertheless, health information was disclosed, including that the Complainant was being investigated for 'neurological and psychological pathology'.

[para 12] I find that 'health information' in the form of diagnostic, treatment and care information and registration information was disclosed by the Doctor to family members.

Issue 2: Did the Doctor's disclosure of health information occur as an affiliate of Lakeland Regional Health Authority?

[para 13] At the request of the Lakeland Regional Health Authority (Lakeland) the Commissioner decided to examine whether the Doctor's alleged collection and disclosure of health information occurred as an affiliate of Lakeland or as a custodian in his own right.

[para 14] The relevant portions of the HIA state:

1(1) In this Act,

(a) “affiliate”, in relation to a custodian, includes

- (i) an individual employed by the custodian,*
- (ii) a person who performs a service for the custodian as an appointee, volunteer or student or under a contract or agency relationship with the custodian, and*
- (iii) a health services provider who has the right to admit and treat patients at a hospital as defined in the Hospital Act,*

[para 15] Lakeland advised that the Doctor currently holds privileges as a ‘Regional Active Consulting’ in the speciality of Obstetrics and Gynaecology. Lakeland said that the Doctor is considered to be Active, as defined in the Lakeland ‘Medical Staff Bylaws’. The bylaws define privileges as:

“The right to assess specific RHA resources in order to provide specified health care services to patients in the region.”

[para 16] The Lakeland ‘Medical Staff Bylaws’ state that a member of the Active Category may ‘perform professional services for Patients to the extent permitted by the Privileges granted’. Lakeland clarified that the privileges granted to the Doctor included the right to admit and treat patients. The Regional Medical Director’s report of January 23, 2002 shows that the Doctor was re-appointed privileges at the William J. Cadzow Health Centre in Lac la Biche. This is the hospital where the alleged disclosure occurred.

[para 17] The HIA says that a health services provider is an affiliate of a custodian when they have the right to admit and treat patients at a hospital. I find that the Doctor is an affiliate of Lakeland in this situation, as he has privileges to admit and treat patients at the William J. Cadzow Health Centre. However, the Doctor is also a custodian in his own right as a health services provider who is paid under the Alberta Health Care Insurance Plan to provide health services (HIA section 1(1)(ix)), which he does out of the Lac la Biche Associated Medical Clinic.

[para 18] An affiliate must only collect, use or disclose health information as authorized by the HIA and in compliance with the custodian’s policies and procedures. I did not find it necessary to examine the custodian’s policies and procedures in this case.

[para 19] The Doctor’s relationship with Lakeland as an affiliate is limited. The activities of the Doctor within the Associated Medical Clinic occur as a custodian in his own right. The Doctor is an affiliate of Lakeland when providing health services through his right to admit and treat. That is, the Doctor is an affiliate of Lakeland while he exercises the privileges granted to admit and treat a patient.

[para 20] I find that the Doctor, in this situation, disclosed health information of the Complainant as an affiliate of Lakeland.

Issue 3: Did the Doctor's disclosure of the Complainant's health information contravene the HIA?

[para 21] Section 62(4) of the HIA says that:

Each affiliate of a custodian must comply with

- (a) this Act and the regulations, and*
- (b) the policies and procedures established or adopted under section 63.*

[para 22] Section 34 of the HIA says that disclosure of individually identifying health information is to be with consent. To disclose health information without consent, a custodian must have authority under section 35(1) of the HIA. The relevant portions of section 35(1) state:

A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information

(b) to a person who is responsible for providing continuing treatment and care to the individual,

(c) to family members of the individual or to another person with whom the individual is believed to have a close personal relationship, if the information is given in general terms and concerns the presence, location, condition, diagnosis, progress and prognosis of the individual on the day on which the information is disclosed and the disclosure is not contrary to the express request of the individual,

[para 23] There are two disclosures related to this complaint:

- 1) The Complainant said that on September 10, 2001 she saw her father, sister-in-law and the Doctor talking in the hospital hallway.
- 2) She also said that, after telling the Doctor that she expected that 'all information needed to be kept confidential' following the September 10th disclosure, she saw the Doctor showing her father papers from her 'hospital file' at the nurse's station on September 11th.

Disclosure 1 – September 10th Disclosure of Health Information To Father and Sister-in-Law.

[para 24] The September 10th disclosure occurred shortly after the Complainant had been admitted to the hospital. The Complainant had been brought to emergency by her parents who she was living with at that time, and a discussion ensued between the Doctor and sister-in-law. During my investigation, the Doctor told me that he discussed the Complainant's symptoms demonstrated while living at her parent's home and disclosed that she was being investigated for

‘neurological and psychological pathology’. The Doctor said that the purpose of the discussion was to obtain information to assist him in providing care.

[para 25] The HIA authorizes disclosure of health information, in general terms, to family members when it concerns the presence, location, condition, diagnosis, progress and prognosis of the individual on the day the information is disclosed. The HIA also authorizes disclosure of health information to a person who is responsible for providing continuing treatment and care to the individual. However, an individual has the ability to make an express request that health information not be disclosed to family members. A custodian must consider an expressed request prior to disclosing health information.

[para 26] The information before me is that health information related to the Complainant’s condition, on that day, was disclosed in general terms to family members. The HIA provides a custodian (in this case, an affiliate of the custodian) with discretion to decide what health information can be disclosed to family members. In many situations an individual admitted to a hospital would expect that some health information would be disclosed to family members. The HIA recognizes this general expectation and provides an individual the right to expressly request that their health information not be disclosed.

[para 27] In this situation, there was no expressed request to not disclose health information. I am satisfied by the information before me that the disclosure was made in general terms concerning the Complainant’s condition on the day of the disclosure under section 35(1)(c) of the HIA. Accordingly, I find that the September 10th disclosure did not contravene the HIA.

[para 28] As I have found that section 35(1)(c) provided authority for this disclosure it is not necessary to examine whether the disclosure may also have been authorized to a person who is providing continuing care and treatment under section 35(1)(b).

Disclosure 2 – September 11th Disclosure of Health Information (Patient Chart) To Father.

[para 29] The Complainant said that she advised the Doctor that she did not want any further health information disclosed to her family, following the September 10th disclosure. The Complainant said that she saw the Doctor showing her father a portion of her ‘hospital file’ by the nursing station after making this request.

[para 30] In my interview with the Doctor, he said that he may have had the Complainant’s patient chart in hand, but did not open it to allow the father to view any of the patient’s records.

[para 31] The alleged disclosure took place by the nurse’s station, so I spoke to nurses on shift at that time. None of the nurses saw the Doctor show the patient chart to the father. The Complainant’s father also said that the Doctor did not show him any patient records from the patient chart.

[para 32] I find that the patient chart was not disclosed to the father.

Issue 4: Did the Doctor's collection of health information contravene the HIA?

[para 33] The Complainant said that the Doctor collected health information from a Clinical Neuropsychologist without authorization. This is an indirect collection of health information.

[para 34] Section 20(b) of the HIA says:

A custodian may collect individually identifying health information

(b) if that information relates directly to and is necessary to enable the custodian to carry out a purpose that is authorized under section 27.

[para 35] The relevant portion of section 27 reads:

(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:

(a) providing health services;

[para 36] The relevant portion of section 22(2) says:

A custodian may collect individually identifying health information from a person other than the individual who is the subject of the information in the following circumstances:

(a) where the individual who is the subject of the information authorizes collection of the information from someone else;

(d) where collection from the individual who is the subject of the information is not reasonably practicable;

[para 37] During my investigation, the Doctor stated that the Complainant had been seeking treatment for possible neurological ailments she was experiencing. The Doctor said that prior to the episode of being hospitalized in September of 2002, the Complainant provided him with a copy of a 2001 assessment by a Clinical Neuropsychologist for his consideration. On September 10th, the Doctor phoned the Clinical Neuropsychologist as part of his examination of treatment options. This contact is documented in the Lakeland 'Progress Notes'. The content of the record suggests that the purpose of this phone call was to assist the Doctor in determining treatment. It was not to collect health information about the Complainant. This is consistent with the Doctor's statements to me. Although collection of health information may have been incidental to the purpose of the call, some health information was collected.

[para 38] The HIA provides a custodian (in this case, an affiliate of the custodian) with discretion to determine what health information is directly related to and necessary to collect to provide health services. I am satisfied that collection of health information was directly related to and necessary to enable the Doctor to provide health services.

[para 39] I must also examine whether the Doctor had authority to collect the information indirectly. The Complainant had not authorized indirect collection of her health information in this instance. The HIA also authorizes indirect collection when it is not reasonably practicable to collect directly from the individual. Given the circumstances in this case and the Doctor's stated need to examine possible treatment options, I do not believe that it would have been reasonably practicable to collect directly from the Complainant. The Complainant did not have the information the Doctor needed and given her recent admission to the hospital was not in a position to obtain it.

[para 40] I find that the Doctor's indirect collection of health information did not contravene the HIA.

Complainant's Subsequently Raised Concern

[para 41] While discussing this investigation, the Complainant advised me of her concern that she did not know, nor had anyone taken any action to advise her, of her ability to make an express request that health information not be disclosed to family members. The Complainant felt that Lakeland could have taken steps to advise her and did not do so.

[para 42] I agreed to examine whether a custodian has an obligation to advise individuals of the ability to make an 'express request' that health information not be disclosed. I decided to involve Lakeland in this examination. While I did not find a legal obligation under the HIA to advise patients of the right to make an express request, Lakeland told me that they would further consider the matter.

[para 43] I am pleased to say that Lakeland has since addressed the Complainant's concern. Policy has been established to initiate a 'Confidentiality Alert' process to ensure, where appropriate, that the expressed wishes of the patient are regarded. Lakeland has also developed posters to publicly advise patients of this policy and their ability to make an express request.

[para 44] I wish to thank Lakeland for the very cooperative and helpful approach in addressing this concern of the Complainant.

Closing Comment

[para 45] I have found that the Doctor's disclosure of health information to family members and his collection of health information was authorized by the HIA.

[para 46] I wish to thank the Doctor for his cooperation in this investigation, and the Complainant for raising the 'express request' concern that led to a positive resolution by Lakeland.

Submitted by,

LeRoy Brower
Health Team Leader