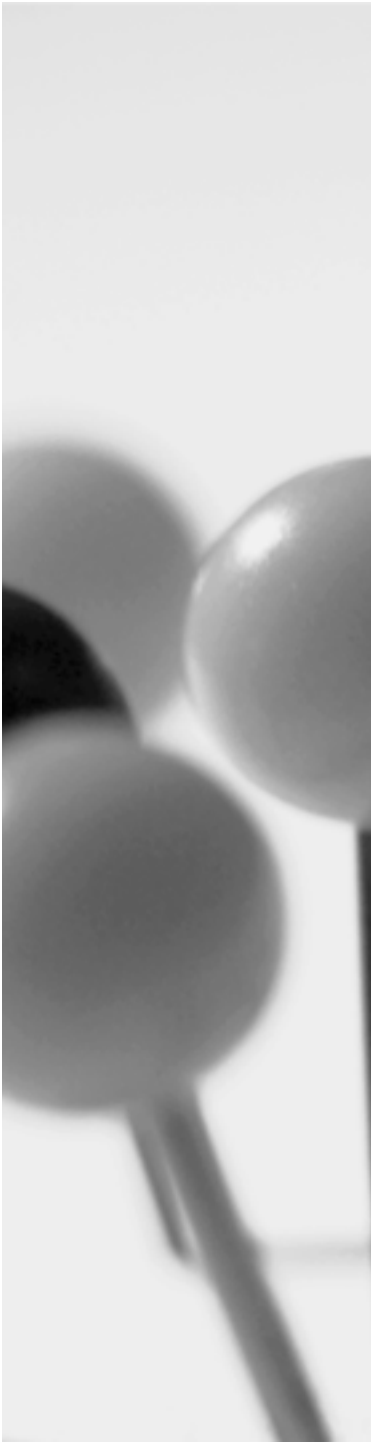




Access Requests vs. Disclosures

R. Gary Dickson, Q.C.
Saskatchewan Information & Privacy
Commissioner



Right of access to one's own personal health information

- One of key activities (collection, use, disclosure, access & correction)
- Part V of HIPA
- Part 2 of PHIA
- Part 2 of HIA

“Access” in context

- Fundamental principle of any privacy law
- Described by Supreme Court as a “quasi-constitutional” right
- Builds on common law (R. v. McInerney)
- Used to specifically refer to access by the data subject/client/patient

Access

- Mandatory requirement, subject to limited exceptions
- 30 day time limit
- Duty to assist
- Limited power for trustee/custodian to extend 30 days
- Right to seek review by IPC/Ombudsman (Man. only)

Access not absolute right!

- Exceptions narrowly interpreted
- Duty to sever
- Cannot disclose phi of 3rd party
- Danger to health or safety
- Quality assurance matters

Access by Surrogates

- Mature minor
- Legal representative of an estate
- Personal guardian

Saskatchewan wrinkle

- Section 4 exclusions
- Affects only:
 - *Adoption Act*
 - Part VIII of *Automobile Accident Insurance Act*
 - *Child and Family Services Act*
 - *Mental Health Services Act*
 - *Public Disclosure Act*
 - *Vital Statistics Act, 1995*
 - *Workers' Compensation Act, 1979*

Saskatchewan wrinkle

- Section 4(4) is limited only to:
 - Part II (Rights of individual)
 - Part IV (limits on collection, use & disclosure of phi)
 - Part V (access of individuals to phi)

Saskatchewan wrinkle

- That means that even if caught by section 4(4), the following parts of HIPA will apply:
 - Part I (Preliminary matters & definitions)
 - Part III (Duty to protect phi)
 - Part VI (OIPC Review and appeal)
 - Part VII (OIPC Powers)
 - Part VIII (General)

Access

- Manitoba Reports:
 - 2002-153 (Seven Oaks General Hospital- limits of right of access by a surrogate)
 - 2000-209 (Grace General Hospital- insufficient evidence of harm to deny access)
 - Report 2002-189 (McPhillips Medical Group- PHIA knows no holidays)

Access

- Alberta Orders & Investigation Reports:
 - Order F2006-021 & H2006-001 (Capital Health- quality assurance record)
 - Order F2005-017 & H2005-001 (Calgary Health Region-mother did not have power to access of phi of mature minor (daughter))

Access

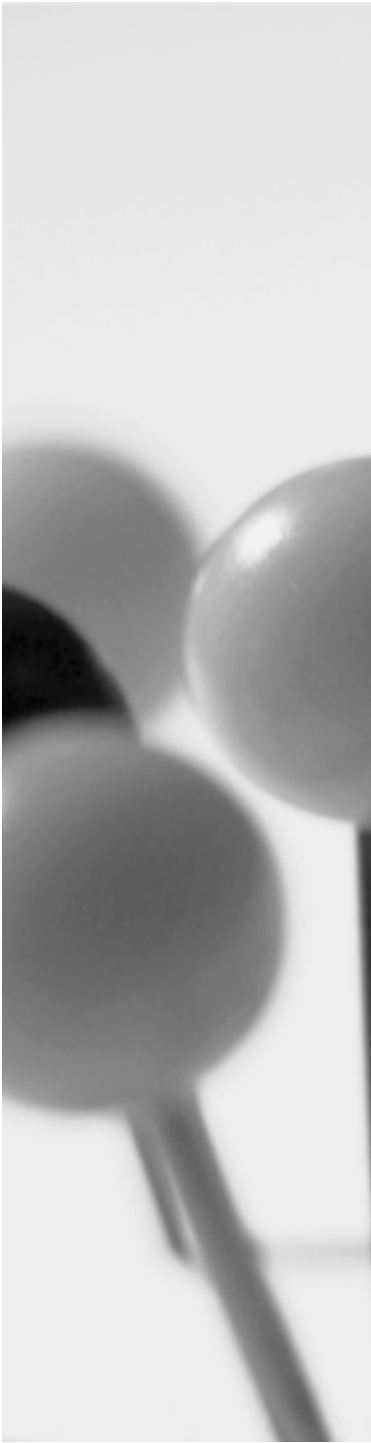
- Alberta Orders:
 - Order H2006-003 (Calgary Health Region – duty to assist)
 - Order H2006-002 (Calgary Health Region – no access where it would disclose identify of confidential informant)

Access

- Saskatchewan Reports:
 - Report H-2005-002 (Prevention Program for Cervical Cancer)
 - Report H-2006-001 (Saskatoon Health Region – access by surrogate)
 - Investigation Report H-2007-001 (Workers' Compensation Board)

“Disclosure” in context

- Usually discretionary
- Distinguish from “use” & “access”
- Disclosure without consent an exception to consent rule and construed narrowly
- Positive exercise of discretion cannot be compelled
- Subject to general rules:
 - (1) need to know and
 - (2) least amount of phi necessary for the identified purpose



Disclosure assessed on case by case basis

- **Blanket application of secondary disclosure to be avoided**

Caution about “circle of care”

- Not a statutory element of PHIA, HIA or HIPA
- Watch out for different scope (e.g. HIPA different than PIPEDA)
- Totally dynamic and variable
- Variable with each service transaction
- Restricted to custodians/trustees?

Disclosure

- Manitoba:
 - Report 2001-170 (Disclosure to another health professional)
- Alberta
 - Order H2003-003 (Alberta Mental Health Board)
 - Investigation #H0057 (Dr. Harvey Ward & Lakeland RHA)
 - Investigation Report H2002-IR-002 (The Medicine Shoppe/ J. Moriyami, Pharmacist)
 - Order H2002-005 (Dr. Daniel J. Toliver)

Disclosure

- Saskatchewan
 - Report H2006-001 (Saskatoon H.R.)
 - Report H2005-002 (PPCC)
 - Investigation Report H2007-001 (WCB)

Interpreting PHIA, HIA, HIPA

- Access right is broadly defined
- Exceptions or limitations on access narrowly defined
- Disclosure without consent narrowly defined

Other matters

- Access forms
- Disclosure forms
- Quality of Care/Client service representatives
- Oversight (Collaboration, Co-operation and Consultation)

Questions ???

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