



REVIEW REPORT 282-2019

Saskatchewan Health Authority

June 25, 2020

Summary:

The Applicant made a request of numerous amendments and corrections to their deceased Spouse's medical record with St. Anthony's Hospital, a facility within the Saskatchewan Health Authority (SHA). The Commissioner found the Applicant did not have the right to act on behalf of the deceased Spouse in this particular circumstance as they have not demonstrated that the requested amendments relate to the administration of the deceased Spouse's estate. The Commissioner recommended that the SHA take no further action on this file.

I BACKGROUND

- [1] On June 3, 2019, the Applicant made a request of numerous corrections and amendments to Saskatchewan Health Authority (SHA). The requested corrections and amendments were for a portion of the deceased spouse's (Spouse) personal health information in the deceased Spouse's medical record at St. Anthony's Hospital (Hospital).
- [2] On June 20, 2019, the Applicant provided the SHA with proof of executor/executrix of the deceased Spouse's estate.
- [3] By letter dated June 28, 2019, the SHA responded to the Applicant. The response in part noted:

I understand the concerns you have with not agreeing with some of the content of [Spouse]'s chart but I could not correlate those concerns with the duties that you have

to perform as [Executor/Executrix] of the estate as per section 27(4)(e)(i) of *The Health Information Protection Act* (HIPA) so therefore we cannot proceed with amending the record....

[4] By letter dated August 19, 2019, the Applicant requested a review of this decision by my office.

[5] On September 10, 2019, my office notified the SHA and the Applicant of our intention to undertake a review and invited both parties to make a submission.

II RECORDS AT ISSUE

[6] The record at issue is the deceased Spouse's medical record with the Hospital and if the Applicant has the right of amendment to that record.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[7] The SHA qualifies as a trustee pursuant to subsection 2(t)(ii) of HIPA and the Hospital is a facility within the SHA. Therefore, I have jurisdiction to conduct this review.

2. Does the Applicant have the right of amendment of their deceased Spouse's medical record?

[8] On June 3, 2019, the Applicant provided the SHA with a 5-page list with the heading, "Requested Corrections and Amendments to [Spouse]'s Medical Record."

[9] On June 28, 2019, the SHA responded to the Applicant, in part noting:

I understand the concerns you have with not agreeing with some of the content of [Spouse]'s chart but I could not correlate those concerns with the duties that you have to perform as [Executor/Executrix] of the estate as per section 27(4)(e)(i) of *The Health*

Information Protection Act (HIPA) so therefore we cannot proceed with amending the record....

[10] Subsection 27(4)(e)(i) of HIPA provides:

27(4) A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:

...

(e) if the subject individual is deceased:

(i) where the disclosure is being made to the personal representative of the subject individual for a purpose related to the administration of the subject individual's estate;

[11] However, the Applicant was requesting an amendment to their deceased Spouse's medical record and subsection 27(4) of HIPA relates to disclosure of personal health information not amendment of personal health information. Section 40 of HIPA addresses the right of amendment.

[12] I cannot consider if the amendments are appropriate pursuant to section 40 of HIPA until I conclude that the Applicant has the authority to act on behalf of the deceased Spouse in this circumstance.

[13] The Applicant has requested amendments to the deceased Spouse's medical record. Therefore, I must first look at section 56 of HIPA. Specifically, subsection 56(a) of HIPA addresses the exercise of rights or powers for individuals who are deceased. Subsection 56(a) of HIPA provides:

56 Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

[14] Subsection 59(a) of *The Freedom of Information and Protection of Privacy Act* (FOIP) is identical to subsection 56(a) of HIPA. Therefore, I adopt the same interpretation of subsection 59(a) of FOIP for purposes of subsection 56(a) of HIPA.

[15] As outlined in my office's *Guide to FOIP: Chapter 4* (updated February 4, 2020) (Guide to FOIP) starting at page 15, subsection 59(a) of FOIP [subsection 56(a) of HIPA] provides that where an individual is deceased, the individual's personal representative can exercise the deceased individual's rights or powers under FOIP provided it relates to the administration of the deceased individual's estate.

[16] Therefore, in order for subsection 56(a) of HIPA to be engaged, the Applicant must meet the following two requirements:

1. Proof of the right to act as the personal representative is required; and
2. Proof that disclosure [or correction or amendment] of the requested information is necessary for the purposes of administering the deceased's estate.

[17] I will now consider if these requirements have been met by the Applicant.

1. Has the Applicant provided proof of the right to act as the personal representative?

[18] Page 16 of the Guide to FOIP outlines that a *personal representative* would be someone appointed by the court as Executor, Executrix or Administrator of an estate. Proof of this could include a copy of the signed and attested document naming the representative to act in matters related to the individual's estate such as copies of a will or letters of administration.

[19] Through documentation received from the Applicant and the SHA, I can conclude that the Applicant is the Executor/Executrix of the deceased [Spouse]'s estate. Therefore, I am satisfied the Applicant has met the first requirement.

[20] I will now assess if the Applicant has met the second requirement.

2. Proof that disclosure [or correction or amendment] of the requested information is necessary for the purposes of administering the deceased's estate.

[21] As found on page 16 of the Guide to FOIP, FOIP (or HIPA) does not permit a personal representative to access [or correct or amend] information for any purpose. A personal representative can only access, correct or amend for a purpose relating to the administration of the estate.

[22] *Administration of an estate* means the management and settlement of the estate of a deceased, including selling collecting and liquidating assets, paying debts and making claims for funds owing or exercising any right of financial benefit of the deceased.

[23] Administration includes the management of the estate and considerations of what assets may exist or may come into existence. It can also include commencing and defending lawsuits.

[24] My office has previously looked at the administration of estates in Review Report LA-2009-002 / H-2009-001 (Regina Qu'Appelle Regional Health Authority) and Review Report H-2013-001 (Saskatoon Regional Health Authority).

[25] By email of August 21, 2019, my office asked the Applicant:

Can you please confirm whether or not your request for amendments to your late [Spouse]'s medical records relates to the administration of [Spouse] estate?

[26] The Applicant responded August 22, 2019, stating in part:

While my [Spouse] was alive I acted as [Spouse]'s "Power of Attorney" and upon [Spouse] death was the beneficiary and [Executor/Executrix] of [Spouse]'s will. I have the responsibility of putting [Spouse] affairs in order.

[27] My office provided the Applicant with another opportunity to demonstrate that the requested amendment relates to the administration of the estate. By email dated June 18, 2020, my office asked the Applicant, in part:

In email correspondence dated August 22, 2019 with [Name], Early Resolution Officer, you advised “While my [Spouse] was alive I acted as [Spouse] “Power of Attorney” and upon [Spouse] death was the beneficiary and [Executor/Executrix] of [Spouse]. I have the responsibility of putting [Spouse] affairs in order.” In order for 56(a) to be engaged, you will need to provide more specific reasons as to how the requested amendment requests pertain to the administration of your [Spouse]’s estate.

[28] On July 19, 2020, the Applicant provided my office with the following response to that question:

...And if you need a “specific” reason as to how this request is justified – “it’s because **we don’t want [Spouse]’s memory dishonoured and disgraced** by leaving [Spouse] medical records flawed and filled with lies....”

[Emphasis added]

[29] The onus is on the Applicant to demonstrate that the requested amendments relates to the actual administration of the estate. The reasons the Applicant has provided relate to general statements such as putting the deceased Spouse’s affairs in order and that the Applicant does not want their Spouse’s memory dishonoured. These reasons, although important to the Applicant, do not relate to the specifics of the administration of the deceased Spouse’s estate.

[30] Therefore, the Applicant has not met the second requirement.

[31] I find the Applicant does not have the right to act on behalf of the deceased Spouse in this particular circumstance as they have not demonstrated that the requested amendments relate to the administration of the deceased Spouse’s estate.

[32] Through correspondence and the list of amendments my office received from the Applicant, I would note that there are several complaints that the Applicant has made about how the Applicant, their family and the Applicant’s deceased Spouse were allegedly treated by hospital staff. There are many different avenues for the Applicant to attempt resolution of these concerns. This may include contacting the SHA Quality of Care Coordinator or making a complaint with the Provincial Ombudsman’s Office.

IV FINDING

[33] I find the Applicant does not have the right to act on behalf of the deceased Spouse in this particular circumstance as they have not demonstrated that the requested amendments relate to the administration of the deceased Spouse's estate.

V RECOMMENDATION

[34] I recommend the SHA take no further action on this matter.

Dated at Regina, in the Province of Saskatchewan, this 25th day of June, 2020.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner