



The Manitoba Pharmaceutical Association

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PHIA Questions and Answers

At the recent district meetings, the Personal Health Information Act was discussed. Several questions could not be answered and others answered incorrectly because of lack of interpretation from the Government. At a recent pharmacists meeting, convened by MSP and attended by the Provincial Ombudsman, Mr. Barry Tuckett, the Provincial Legislative Analyst, Heather McLaren and lawyer, Grant Stefanson, these questions were answered.

Q. If a person (relative, neighbour, friend) picks up a prescription for the patient, can the pharmacist counsel the agent on the prescription?

A. It is obviously preferable to counsel a patient directly. However, when that is not possible, the agent may be counseled on behalf of the patient. This is based on Section 22 (1)(b) of the Act which states: "Except as permitted by subsection (2), a trustee may disclose personal health information only if the individual the information is about has consented to the disclosure". By sending a person into a pharmacy for their prescription, the individual is giving that consent, but only for information concerning that prescription. The Ombudsman stated common sense must be used and pharmacists should continue to counsel as in the past, however, professional judgment should prevail, and if the pharmacist feels uncomfortable about counseling the agent then no action would be taken against the pharmacist for not counseling in that circumstance. The pharmacist then must follow the standard for delivered prescriptions, which requires the provision of printed information about the drug in question and contact with the patient by phone. On the other hand, if a person is seeking health information concerning another person, including relatives, the pharmacist must have permission of the person whose information is being sought. Although the permission may be verbal, the Association recommends that it be in writing and signed by the person whose information is being sought. If any doubt exists, the pharmacist should contact the person whose information is being sought. If any doubt exists, the pharmacist should contact the person before releasing the information. This does not apply to persons seeking information without the patient's permission in accordance with Section 22(2) of the Personal Health Information Act.

Q. How long do patients' records have to be kept?

A. Patients' records collected under PHIA must, under the regulations, be retained for a period of 7 years. This does not include the hard copy of a prescription, but does include the computer record of that prescription. Hard copies of prescriptions must be retained for 2 years from the last time the prescription was dispensed.

Q. When destroying old hard copies of prescriptions, does the pharmacist have to keep a record of every prescription destroyed?

A. No. The numbers of the prescriptions destroyed must be kept (e.g. - #800540 to #826650) and the time period of the prescriptions (e.g. - January 1, 1993 to December 31, 1995); as well, a record of how they were destroyed and who destroyed them must be kept.

PHIA Questions and Answers . . . (cont'd)

Q. When a staff member signs a Pledge of Confidentiality, can the document list all the trustees at that pharmacy or does there have to be separate documents signed with each trustee?

A. The confidentiality pledge signed by a staff member (this should include all persons who have access to patient information including delivery personnel, but not trustees) can list all trustees, and once signed is binding between the employee and all trustees (pharmacists) at the pharmacy. New agreements must be signed with new staff members.

Q. What if a staff member refuses to sign a pledge of confidentiality? Is this grounds for dismissal in compliance with the Labour Relations Act?

A. Since a person who is not a Trustee or Information Manager cannot have access to personal health information, they would have to be either transferred to another position that does not have such access or dismissed.

Q. If a third party payer, such as Blue Cross, is an Information Manager, who must be designated to sign on behalf of the company?

A. We have been informed that third party payer, other than government, are not Information Managers and there is no need to sign an agreement with these organizations. The reason given was that the pharmacist was acting as an agent for the patient when the information was provided to the payer. This begs the question, "What Act prevents the third party payer from using this information for purposes other than providing payment"? Apparently, that is not the responsibility of the pharmacists.

Q. Trustees must inform the patient why they are collecting health information. Can a common sign approved by the Association and displayed prominently, listing the reasons for the collection be acceptable?

A. Yes, a sign is available on-line at www.napra.org and click on the MB section.

Q. How are minors treated under PHIA?

A. Subsection 60 (e) states "The rights of an individual under this Act may be exercised by the parent or guardian of an individual who is a minor (under 18 years of age), if the minor does not have the capacity to make health care decisions. This calls upon the pharmacist to make a difficult judgment, however, if a minor has made a personal decision to go to a physician and the physician has given that minor a prescription, then the physician has judged the minor capable of making a health care decision. Therefore, the information could only be released by permission of the minor.

You are reminded that Section 62 of the Act protects trustees from liability if the trustee reasonably believed that the use or disclosure of personal health information was authorized under this Act.