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PHIPA Q&A: PRACTICAL ADVICE FOR FREQUENTLY ASKED QUESTIONS

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When is it permissible to share personal health information with legal counsel?

Q: "We have a complaint involving a deceased client and would like to share information from their health record with our legal counsel. We are not aware of a lawsuit, however, the Coroner is involved and has been provided with a copy of the record. Can we share this information with our legal counsel?"

*A: The *Personal Health Information Protection Act, 2004* (PHIPA) allows a health information custodian (HIC) to provide personal health information (PHI) to legal counsel in appropriate circumstances.*

Prior to the enactment of PHIPA, there was no clear legislative authority permitting a HIC to provide PHI about a patient to its insurer or lawyer, with some exceptions. PHIPA permits the sharing of PHI relating to the patient/client with a lawyer or other agent of the facility for risk management purposes or for the purposes of an actual or contemplated proceeding, to the extent that the information relates to matters at issue. "Proceeding" is defined broadly and includes court processes, administrative tribunals, commissions, Coroner's inquests, professional regulatory proceedings, arbitrations and mediations.

As long as the HIC is authorized to use PHI for a specified purpose, the HIC may provide the information to its agent, which may include a lawyer or other representative. This also allows investigation by the lawyer, for example, interviewing employees, preparing documents or otherwise collecting information on the facility's behalf.

There are similar provisions relating to the disclosure of PHI for the purpose of a proceeding or a contemplated proceeding. An agent may disclose PHI to the agent's professional advisor for the purpose of providing advice or representation if the advisor is under professional duty of confidentiality. Thus, an agent (such as a nurse or physician) could share PHI with his or her lawyer for example, in the context of a professional regulatory matter.

ABOUT THE AUTHOR

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Our National Health Industry Practice Group is dedicated to providing comprehensive and integrated legal services to health industry clients. For more information about our group, visit our website at www.millerthomson.com or contact one of our regional contacts:

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