



Fact Sheet

Consent and Form 14

Background: The new privacy rules

As of November 1st, 2004, health care providers and other entities, defined as health information custodians (custodians), must comply with Ontario's new health privacy legislation, the *Personal Health Information Protection Act (PHIPA)*. *PHIPA* amended the *Mental Health Act (MHA)* by repealing the access to and correction of *clinical record* provisions, repealing certain *clinical record* disclosure provisions to ensure consistency with *PHIPA*, and by adding some new rules for collection, use and disclosure of personal health information in psychiatric facilities in specific circumstances.¹

Under the previous *MHA* privacy rules, the disclosure or transmittal of a patient's *clinical record* to, or the examination of a patient's *clinical record* by, any person other than the team providing the patient's treatment and care required the express authorization of the patient unless the disclosure was permitted without consent by *MHA*. Consent to the disclosure of information contained in a *clinical record* was authorized by the patient signing a Form 14. Where the patient lacked capacity to consent to the disclosure of his or her *clinical record*, then the substitute decision-maker was permitted to sign the Form 14 on the patient's behalf.

What was 'Form 14?'

Form 14 was a form approved by the Minister of Health and Long Term Care under *MHA* to fulfill the consent requirement for the disclosure, transmittal or examination of clinical records pursuant to section 35(3) of *MHA*. With the coming into force of *PHIPA*, Form 14 no longer exists as a form approved by the Minister of Health and Long Term Care.

Consent Requirements under the Act

Where consent for the collection, use or disclosure of personal health information is required under *PHIPA*, custodians must ensure that consent meets the following requirements. Consent must:

- Relate to the information;
- Be the consent of the individual (or substitute decision-maker, where authorized);
- Be knowledgeable; and
- Not be obtained through coercion or deception (be voluntary).

The "knowledgeable consent" requirement of *PHIPA* means that individuals must know why the information is being collected, used or disclosed, and that they have the right to give or withhold consent for the

¹ The term *clinical record* under *MHA* has been replaced with "records of personal health information" in accordance with *PHIPA*.



collection, use or disclosure of their personal health information.

Use of 'Form 14'

With the coming into force of *PHIPA*, Form 14 no longer exists as a form approved by the Minister of Health and Long Term Care. Therefore Form 14 should no longer be used by custodians after November 1, 2004 to obtain the express consent of an individual to the collection, use or disclosure of his or her personal health information.

Where express consent is required for the disclosure of personal health information under *PHIPA* or *MHA*, and no exception to obtaining the required consent applies, custodians may look to the sample consent form that the Ministry of Health and Long-Term Care has developed, which is available at: www.health.gov.on.ca.

This sample consent form should be adapted to suit the particular needs of each custodian.

A custodian who obtained express consent using a Form 14 before *PHIPA* came into force on November 1, 2004 or a custodian that receives a Form 14 that was executed prior to November 1, 2004, is entitled to assume that it fulfills the requirements of *PHIPA* unless it is not reasonable to assume so. In determining whether it is reasonable to assume that the Form 14 fulfills the requirements of *PHIPA*, regard should be had to the consent provisions in *PHIPA*, particularly the requirement in section 18(1) and section 18(5) of *PHIPA* that the consent be knowledgeable.

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