

Three Strikes and We're In – Abandoned Health Records

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In May 2007, my office – the Office of the Information and Privacy Commissioner of Ontario (IPC), received a letter from the Royal College of Dental Surgeons of Ontario (the College) stating that they had been contacted by a number of patients of a dentist in the Ottawa area with reports that the dentist's clinic (the Clinic) had closed, without notice. The patients had contacted the College to ask for assistance because of their inability to gain any access to their dental records.

Following these reports, the College made a number of attempts to contact the owner of the Clinic, but with no success. Not having the power or authority to enter the clinic premises in order to seize the records on behalf of the patients, the College contacted my office for assistance.

Based on the information provided by the College, and a personal visit to the Clinic by an IPC staff member, it was confirmed that the Clinic had been closed for some time and appeared to be abandoned. In the ensuing discussions between the IPC and College staff, it was agreed that it was of paramount importance to secure the abandoned patient files and to allow patients of the dental clinic access to their records.

As Commissioner, I decided that, in the absence of any response from the dentist at the Clinic, I would exercise my powers of seizure under the *Personal Health Information Protection Act* (PHIPA), and enter the Clinic premises to take possession of the files. The College agreed to take custody of the files from the IPC, provide secure storage and facilitate access for patients seeking to retrieve their personal health records.

In order to investigate this matter and lay the proper ground work for obtaining possession of the dental records, my office gave written notice – the first of three – to the owner of the Clinic. In the first notice, the owner was advised that: the IPC had initiated a complaint under *PHIPA*; that the matter was under review; and that a Health Order may be issued.

The notice elaborated on my decision to initiate a review because there were reasonable grounds to believe that the owner of the Clinic had not taken reasonable steps to protect the personal health information that he was responsible for against theft, loss and unauthorized use or disclosure, as required under *PHIPA*. Further, the owner was, in effect, denying his patients the right of access to their records. In order to ensure compliance with *PHIPA* and to facilitate access by patients to their dental records, the owner of the Clinic was requested to contact our office immediately to discuss how this matter could be resolved.

After receiving no response from the owner within a set time frame, a second notice was sent demanding that steps be taken to obtain the records and deliver them to my office immediately. With no response to the second notice, I issued a third, and final, notice notifying the owner of the Clinic that my office was intending to enter the Clinic premises and seize all patient records, pursuant to my powers as Commissioner under *PHIPA*. In my final notice, I provided the date

that this would occur and indicated that the records would then be placed in the custody and control of a representative of the College.

Given the possibility that the owner of the Clinic may not have wished to co-operate, I contacted the Chief of the Ottawa Police Service (Ottawa Police) and requested the assistance of the Ottawa Police in carrying out my duty as Commissioner in entering the Clinic. The Chief readily agreed to assist my office in obtaining access to the premises, including making arrangements for a locksmith to be present at the Clinic when entry was to occur and notifying neighbouring businesses of what was about to transpire, so as not to cause any alarm. My utmost gratitude goes out to the Chief, as the assistance and cooperation of the Ottawa Police was critical to achieving the goal of securing the patient records. Not only did the Chief kindly offer his assistance, but he also ensured that a police officer was present at the time of entry, in the event that an alarm had to be disengaged or some other unforeseen circumstances that may have arisen.

On the designated day of entry, an investigator from my office, a representative of the College and a police officer entered the Clinic. The investigator, with the assistance of the police officer and the locksmith, successfully entered and seized the dental records in question. In addition, five computer hard drives, that could have potentially contained additional health information of patients, were also seized, along with a number of dental moulds. Custody of the records, hard drives and dental moulds were immediately turned over to the representative of the College as agreed, who transported them to secure storage at the College's offices in Toronto.

The first step undertaken by the College following the seizure of the records was to notify the patients who had initially contacted the College wishing to obtain their dental records. Following this, the College created an inventory of files and began notifying patients of the Clinic as to the whereabouts of their files and how to gain access to them.

While this is not the first case in Ontario concerning abandoned health records, it is nonetheless a noteworthy incident for my office. This case marked the first time that I exercised my powers as Commissioner under *PHIPA* to enter the premises of a health professional in order to seize patient files. Although it is highly unlikely that I will need to use these powers on anything but an exceptional basis, the exercise proved to be extremely effective in ensuring that abandoned patient files were secure and that patients could exercise their rights of access to their health records.

This investigation is also an excellent example of how different organizations with varying mandates, can work together successfully to achieve a positive outcome. The coordinated efforts of the Ottawa Police, the College, and the IPC were critical to the successful recovery of the dental records of the patients involved in this complaint. I was delighted with the outcome.