

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2005-005

March 16, 2006

DR. NAGY YOUSSEF

Review Number H0578

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant complained that Dr. Nagy Youssef (the “Custodian”) refused to attach a statement of disagreement to the Custodian’s record about the Applicant, in contravention of section 14(3) of the *Health Information Act* (the “Act”). The Commissioner found that section 14(1)(b) of the Act sets out the requirements for a statement of disagreement and that the Applicant’s statement of disagreement did not meet those requirements. Therefore, the Commissioner decided that the Custodian was not required to comply with the duty under section 14(3) of the Act to attach the statement of disagreement to the Custodian’s record about the Applicant.

Statutes Cited: *Health Information Act*, R.S.A. 2000, c. H-5, ss. 13(1), 13(6)(a), 14(1), 14(1)(b), 14(3), 80(3)(a), Part 2; *Interpretation Act*, R.S.A. 2000, c. I-8, s. 28(2)(d).

Order Cited: AB: Order H2004-004

I. BACKGROUND

[para 1] The Applicant complained that Dr. Nagy Youssef (the “Custodian”) refused to attach a statement of disagreement to the Custodian’s record about the Applicant, in contravention of section 14(3) of the *Health Information Act* (the “Act”). The Applicant requested a review by my Office. As the matter could not be resolved by mediation, it was set down for a written inquiry.

II. RECORD AT ISSUE

[para 2] The record at issue is a revised statement of disagreement that the Applicant wants attached to the record. The Applicant forwarded the revised statement of disagreement to the Custodian approximately one month after providing the Custodian with the original statement of disagreement.

III. ISSUE

[para 3] The Notice of Inquiry sets out one issue:

Is the Custodian required to comply with the duty under section 14(3) of the Act to attach a statement of disagreement to the record?

[para 4] The Applicant raised a further issue in her rebuttal submission. In general, I will not consider issues raised for the first time on rebuttal and will not consider the Applicant's additional issue in this inquiry.

IV. DISCUSSION OF THE ISSUE

A. When does the Custodian's duty arise under section 14(3) of the Act to attach a statement of disagreement to the record?

[para 5] Part 2 of the Act establishes the right of an applicant to request that the applicant's health information be corrected or amended, and sets out the circumstances in which a custodian may refuse that request. Section 13(6)(a) gives a custodian the discretion to refuse to correct or amend health information where that information involves a professional opinion or observation.

[para 6] Part 2 of the Act also establishes the right of an applicant to have a statement of disagreement attached to the record that is the subject of the requested correction or amendment.

[para 7] In his submission, the Custodian says that his medical opinions and observations are at issue in the record. As such, the Custodian says that the Act precludes him from making any corrections or amendments, and he is correspondingly precluded from attaching a statement of disagreement.

[para 8] The issue before me is not whether the Custodian properly refused to make a correction or amendment. However, I will address the Custodian's arguments since they are related to the issue before me concerning the duty to attach a statement of disagreement to the record.

[para 9] Sections 13(1) and 13(6)(a) of the Act say:

13(1) An individual who believes there is an error or omission in the individual's health information may in writing request the custodian that has the information in its custody or under its control to correct or amend the information.

...

13(6) A custodian may refuse to make a correction or amendment that has been requested in respect of

(a) a professional opinion or observation made by a health services provider about the applicant...

[para 10] Section 13(6)(a) gives a custodian the discretion (“may”) to refuse to correct or amend a professional opinion or observation. That discretion must be exercised properly. In Order H2004-004, I examined the factors that must be considered in determining whether or not the custodian had properly exercised her discretion to refuse to correct or amend a professional opinion or observation.

[para 11] I reject the Custodian’s submission that the Act precludes him from making any corrections or amendments to a professional opinion or observation.

[para 12] A custodian’s obligation to attach a statement of disagreement is set out in section 14(3) of the Act. Section 14(3) says:

14(3) On receiving the statement of disagreement, the custodian must

(a) if reasonably practicable, attach the statement of disagreement to the record that is the subject of the requested correction or amendment, and

(b) provide a copy of the statement of disagreement to any person to whom the custodian has disclosed the record in the year preceding the applicant’s request for the correction or amendment.

[para 13] Section 28(2)(d) of the *Interpretation Act*, R.S.A. 2000, c. I-8 says that “must” is to be interpreted as imperative, that is, mandatory. As such, a custodian has a duty to attach a statement of disagreement concerning a professional opinion or observation, as required by section 14(3) of the Act.

[para 14] Section 14(1) of the Act establishes the time at which a custodian’s duty to attach a statement of disagreement arises. Section 14(1) says:

14(1) Where a custodian refuses to make a correction or amendment under section 13, the custodian must tell the applicant that the applicant may elect to do either of the following, but may not elect both:

(a) ask for a review of the custodian's decision by the Commissioner;

(b) submit a statement of disagreement setting out in 500 words or less the requested correction or amendment and the applicant's reasons for disagreeing with the decision of the custodian.

[para 15] Consequently, a custodian's duty to attach a statement of disagreement arises when the custodian refuses to correct or amend and when the applicant complies with the requirements of section 14(1)(b).

[para 16] Specifically, an applicant's statement of disagreement must (i) be 500 words or less, (ii) set out the requested correction or amendment, and (iii) set out the applicant's reasons for disagreeing with the decision of the custodian.

[para 17] I interpret "the decision of the custodian" to mean the custodian's refusal to correct or amend.

B. Did the Custodian have a duty in this case to attach the Applicant's statement of disagreement to the record?

[para 18] The Custodian refused to correct or amend the Custodian's professional opinions and observations about the Applicant. As set out in section 14(1)(b), the Applicant's statement of disagreement must therefore (i) be limited to 500 words, (ii) set out the Applicant's requested corrections or amendments, and (iii) set out the Applicant's reasons for disagreeing with the decision of the Custodian.

[para 19] The Applicant's statement of disagreement is limited to 500 words or less. However, although the Applicant challenges the Custodian's medical opinion, the statement of disagreement is primarily a list of complaints and allegations about the Custodian. The Custodian believes those allegations to be defamatory and inflammatory.

[para 20] I do not need to decide whether the Applicant's allegations are defamatory or inflammatory. I find that the Applicant's statement of disagreement does not meet the requirements of section 14(1)(b) of the Act because it does not contain the Applicant's requested corrections or amendments and does not set out the Applicant's reasons for disagreeing with the Custodian's decision to refuse to correct or amend. Therefore, the Custodian's duty to attach the statement of disagreement to the record does not arise.

[para 21] The Custodian's duty to attach a statement of disagreement to the record would arise only if, on a further request for correction and a refusal by the Custodian to correct or amend, the Custodian received from the Applicant a statement of disagreement that met the requirements of section 14(1)(b) of the Act.

V. ORDER

[para 22] I make the following order under section 80(3)(a) of the Act.

[para 23] I find that the Custodian is not required to comply with the duty under section 14(3) of the Act to attach the Applicant's statement of disagreement to the record.

Frank Work, Q.C.
Information and Privacy Commissioner