



Report of Findings: 23/24-H-013
Dr. D.A. Ginson
April 30, 2024

Citation: Dr. D.A. Ginson (Re), 2024 NBOMBUD 3

Summary: Upon learning that their family physician (“the custodian”) would be retiring, the Complainant made a request for a full copy of their medical file. After receiving no response for several months, the Complainant made a complaint to this office. The Ombud found that the custodian failed to provide a timely response to the Complainant’s request and did not cooperate with our office’s investigation in a timely manner. The Ombud recommended that the custodian give a copy of the remaining records in the file to the Complainant as soon as possible if this has not already been provided. The Ombud also recommended that the custodian take steps to ensure that patients seeking to request their records can reach the custodian in writing and to provide our office with a de-identified copy of the notice that the custodian will be sending to patients to advise of how they can request their files once they have been transferred to the medical chart storage company.

Statutes Considered: [Personal Health Information Privacy and Access Act](#), SNB 2009, c. P-7.05, sections 2, 7(1), 10(1), 10(2), 54(1), 54(2), and 55(1); [Ombud Act](#), RSNB 1973, c O-5, s. 7; [Medical Act](#), SNB 1981, c 87.

Authorities Considered: [McInerney v. MacDonald](#), 1992 CanLII 57 (SCC), [1992] 2 SCR 138.

Other Resources: College of Physicians and Surgeons of New Brunswick, [Regulation 12: The Patient Medical Record](#), [Guideline: Closing a Practice](#).

INTRODUCTION

[1] This Report is issued in conclusion of an investigation into a complaint under the *Personal Health Information Privacy and Access Act* (“the Act”) about a health care custodian’s failure to provide a timely response to a patient’s request for access to their medical file.

[2] Upon learning in November 2022 that their family physician would be retiring from practice, the Complainant verbally requested a copy of their medical file by leaving a message on the custodian’s office voicemail. The Complainant followed up with a written request for a full and complete copy of their patient medical record by fax to the custodian’s office on December 14, 2022, providing their email address and personal and work telephone numbers. The Complainant said that they also made a follow-up call to the custodian’s office on January 16, 2023, but received no response. As the Complainant still had not received any response from the custodian in August 2023, they made a complaint to this office.

[3] I issued a notice of complaint to the custodian by registered mail on September 7, 2023, which was successfully delivered to the custodian’s office the following day.

[4] In late September 2023, the custodian provided the Complainant with part of their file (217 pages). The Complainant advised our office that they picked up a copy of these records from the custodian’s office on September 29, 2023, at which time the custodian told them that further records from their file would be forthcoming shortly.

[5] As the Complainant still had not received the rest of the records from their file, on October 17, 2023, they asked that we continue our efforts to fully address this complaint.

[6] We were unable to resolve this complaint informally as our repeated efforts to contact the custodian were largely unsuccessful and we did not receive any communication from the custodian for nearly six months after the notice of complaint was delivered to her office in early September 2023. This led me to conduct a formal investigation under subsection 69(3) of the *Act*.

PRELIMINARY ISSUES: CUSTODIAN’S REQUEST FOR ANONYMITY AND PROTECTION OF INFORMATION OF A PERSONAL NATURE

Custodian’s submissions

[7] As the custodian had concerns about being named in a public report in this matter, we invited her legal counsel to provide submissions for my review and consideration before making a final decision on this point.

[8] In support of the custodian's request to not be named, counsel raised the following points:

- disclosing/publishing the name of the custodian in this case would not advance the educational purpose of this Report;
- disclosing/publishing the custodian's name "could have disproportionately detrimental effects";
- the custodian provided details to our office in confidence about the circumstances that she submitted contributed to the delays encountered in this case, and while relevant to the investigation, "should be dealt with delicately and anonymously";
- the possibility or risk of such information being publicized would have a chilling effect on the custodian's ability to share such information with this office in the future;
- noting that confidentiality is one of the five values of this office, and quoting from our 2021-2022 Annual Report that states "[i]n certain cases, the Ombud may also issue a public report of findings, while maintaining the confidentiality of the individuals involved";
- the office routinely anonymizes reports involving individual complainants and individual respondents, and while corporate or institutional respondents have been named "from time to time", in the vast majority of cases, individual custodians subject to investigation have not been identified.

[9] For these reasons, the custodian submitted that anonymization is also appropriate in this case, for both the custodian and the Complainant.

[10] In effect, the custodian has raised two distinct issues that merit different considerations:

- the naming of the custodian in a published report at the conclusion of this investigation; and
- the potential disclosure of information of a personal nature that the custodian shared with this office about the reasons for the delays encountered in this case.

Identification of custodians in public reports

[11] After considering the matter, including the submissions provided, I do not find there are compelling reasons in this particular case that favour the publication of an anonymized report for both the Complainant and the custodian.

[12] While this office has not adopted and published a formal policy on the identification of custodians in our public reports, as a matter of practice, this office and its predecessors have routinely anonymized the names of the complainants in public reports, while publishing the names of the public bodies or custodians of personal health information involved. I do not accept the custodian's submissions stating otherwise as based in fact.

[13] We typically name custodians of personal health information, whether they are large public organizations or individual health care providers, because all have the same obligations to administer and protect the sensitive personal information they collect in accordance with the provisions of the *Act*.

[14] Generally speaking, it is a matter of public accountability for the public to be aware of how custodians comply with their obligations under the *Act*. However, I recognize that there can be circumstances that would warrant not disclosing the name of a custodian in certain cases.

[15] One reason would be whether naming the custodian could identify the complainant or any person whose personal health information is at issue. Additionally, and depending on the circumstances of each particular case, it is possible during the course of our investigations that we may become aware of personal information involving a particular health care provider or their employees, for example, that could merit protection.

[16] A decision to protect the name of a custodian is exceptional in nature and must be founded on compelling and concrete reasons. It is not sufficient to indicate, for example, disproportionately detrimental effects to the custodian without providing specifics about what those are or would be expected to be. The possibility of a disadvantage, embarrassment or distress will typically be insufficient on their own to justify not disclosing the name of a custodian in a public report.

[17] As the Provincial statutory privacy oversight body that routinely handles and reviews sensitive and confidential information in our day-to-day operations, my office is keenly aware of the need to protect privacy and to guard against unreasonable invasions of privacy. As such, this is taken into account in the content of our published reports so as to avoid including any information that is not material to share.

[18] In the present case, the custodian was acting in her professional capacity as the Complainant's family physician. The Complainant's request for a full copy of their file was to the custodian in this professional capacity, and the custodian's obligations to comply with the *Act* in treating the request, and in complying with the present investigation, all flow from her responsibilities as a professional health care provider.

[19] As we were unable to informally resolve this complaint, the matter escalated for formal investigation, and as will be explained below, I found significant compliance concerns on the custodian's part both in responding to the Complainant's request as well as this office's efforts to address this issue with the custodian. Again, these compliance concerns stem from the custodian acting in her professional capacity as a licensed health care provider, not in her personal capacity.

[20] I am of the view that reporting on the compliance issues raised in this case and identifying the custodian by name would not reveal anything about her in her personal capacity.

[21] Further, there is nothing to suggest that the custodian was unaware of her obligations to provide timely responses to patient requests for their own personal health information or to promptly comply with our office in complaint matters under the *Act*.

[22] Given the circumstances of this case, I am also concerned that other patients may be encountering difficulties in contacting the custodian and getting timely responses to file requests and am of the view that there is a public interest in naming the custodian in this decision.

Confidentiality of information provided to this office during investigations

[23] As for the custodian's concerns about the potential disclosure of details about personal information that was shared with this office, as a starting point, public bodies and health care custodians routinely share highly sensitive and confidential information with this office for the purposes of addressing complaints and compliance issues. Our office's ability to conduct thorough investigations is greatly facilitated when we receive timely, open, and fulsome cooperation from public bodies and health care custodians.

[24] When I decide a published report is appropriate to conclude a particular matter, considerable care and attention is given to determining what details are appropriate to include and what needs to be kept confidential to ensure that our office is not a flowthrough for sensitive, confidential, or otherwise protected information.

[25] This is reflected under section 7 of the [*Ombud Act*](#):

7 Despite section 6, the Ombud may disclose in a report made by the Ombud under this Act, the *Personal Health Information Privacy and Access Act* or the

Right to Information and Protection of Privacy Act any matters that, in the opinion of the Ombud, are necessary to disclose in order to establish grounds for his or her conclusions and recommendations.¹

[26] In the present case, I accept the custodian's concerns on this point. The details the custodian shared about some of the circumstances that lead to some of the delays in this case could reveal information of a personal nature. While these details helped inform my analysis of this matter, there is no need to disclose them here to give effect to my conclusions and recommendations.

ISSUES

[27] The issues to be addressed are:

- the delays the Complainant encountered in receiving a full copy of their patient file,
- in light of the custodian's retirement from practice and challenges we experienced in communicating with her office, whether the custodian has made suitable arrangements to ensure proper security and retention of patient files and timely responses to access requests from other patients who may wish to get copies of their files, and
- the custodian's lack of communication and cooperation with this office's attempts to address this complaint informally.

ANAYLSIS AND DECISION

[28] The *Act* is based on the premise that personal health information belongs to the individual and evolved from the common law right of access to the information held in one's own patient records that was established by the Supreme Court of Canada in [Mclnerney v. MacDonald](#).²

[29] In that case, the Court considered a patient's request for her complete medical file from her family physician and upheld an order from the lower courts ordering the doctor to provide a copy of the entire medical file. The Court considered the significance of personal health information and what it means for individuals:

[M]edical records contain information about the patient revealed by the patient, and information that is acquired and recorded on behalf of the patient. Of

¹ [Ombud Act](#), RSNB 1973, c O-5.

² [Mclnerney v. MacDonald](#), 1992 CanLII 57 (SCC), [1992] 2 SCR 138.

primary significance is the fact that the records consist of information that is highly private and personal to the individual. It is information that goes to the personal integrity and autonomy of the patient.

[30] The Court also considered the doctor-patient relationship, finding it to be fiduciary in nature, and found that doctors hold patient information in confidence and for the benefit of their patients:

The fiduciary duty to provide access to medical records is ultimately grounded in the nature of the patient's interest in his or her own records... [I]nformation about oneself revealed to a doctor acting in a professional capacity remains, in a fundamental sense, one's own. The doctor's position is one of trust and confidence. The information conveyed is held in a fashion somewhat akin to a trust. While the doctor is the owner of the actual record, the information is to be used by the physician for the benefit of the patient. The confiding of the information to the physician for medical purposes gives rise to an expectation that the patient's interest in and control of the information will continue.

[31] These principles are reflected in the overarching purposes as set out in section 2 of the *Act*, which include the following:

2 The purposes of this Act are

(a) to provide individuals with a right to examine and receive a copy of their personal health information maintained by a custodian, subject to the limited and specific exceptions set out in this Act,

...

(d) to facilitate the effective provision of care and planning and management of the health care system,

[32] The *Act* grants individuals a legal right of access to their own personal health information and recognizes that this right is directly connected to the effective provision of health care. As the health care system is evolving ever more towards patient-centered care and greater involvement of patients in their health care decisions, the right of patients to have timely access to their personal health information is of fundamental importance and is inextricably linked with the dignity and autonomy of patients navigating the health care system.

[33] With these foundational principles in mind, I now turn my attention to the present case, where the Complainant requested a full copy of their medical file from their retiring family physician in late 2022 and has waited over a year to receive a complete response.

[34] The purpose of this decision is not solely to focus on the serious compliance issues raised in this case, but also to educate and remind health care professionals of their obligations under the *Act* with a view to encourage better compliance.

[35] The circumstances of this case also raise information practices and records management concerns which can easily befall busy and overburdened health care professionals. It is my hope that the publication of this report will bring better awareness to these issues and challenges and encourage custodians to take proactive measures to guard against similar compliance issues in their own practices.

Delays in the Complainant receiving a full copy of their medical file

[36] There is no question that the *Act* applies in this case. At the time of the Complainant's request, the custodian was the Complainant's family physician and the information generated by the custodian from the doctor-patient relationship is the Complainant's personal health information.

[37] Further, the family physician is a custodian as defined in section 1 of the *Act*. The definition of custodian includes a "health care provider", which includes "a person who is registered or licensed to provide health care under an Act of the Legislature...". The family physician is currently a practicing member of the College of Physicians and Surgeons of New Brunswick, which operates under the authority of the [Medical Act](#) and applicable regulations.³

[38] The *Act* recognizes a person's right to examine or receive a copy of their personal health information maintained by a custodian under subsection 7(1). Requests can either be verbal or written, although a custodian can require a request to be made in writing (subsection 7(3)).

[39] The *Act* also sets timelines for custodians to respond to patient requests for access to their own personal health information under subsection 10(1). Custodians must respond to a patient's request for their own personal health information "as promptly as required under the circumstances, but no later than 30 business days after receiving it". In certain circumstances, a custodian may extend the time to respond for up to an additional 30 business days, or for a longer period of time if approved by this office.

[40] If the custodian does not respond to a request within 30 days of receipt, the custodian is deemed to have refused the request (subsection 10(2)).

³ [Medical Act](#), SNB 1981, c 87.

[41] While complainants do not need a reason to request their own personal health information as this is a recognized right under the *Act*, in making this complaint, the Complainant stated that they immediately asked for a copy of their file upon learning that the custodian would be retiring to ensure appropriate follow up and continuity of care with other health care providers.

[42] In addition to the Complainant's verbal request to the custodian for a copy of their file in November 2022, the Complainant submitted a written request to this effect by fax to the custodian's office on December 14, 2022. There is no evidence before me that suggests that the custodian contacted the Complainant about this request until the custodian's office advised the Complainant in late September 2023 that some records were available for pickup, well beyond the 30 business day timeline to respond. The Complainant picked up these records from the custodian's office on September 29, 2023.

[43] The custodian's invoice to the Complainant dated September 28, 2023 for charges for copies of these records included a handwritten note by the custodian stating:

Further information to follow after scanning. Will have it to you asap....

[44] The Complainant signed the invoice when they picked up the package with 217 pages of their medical file on September 29, 2023, confirming receipt and noting they were "[a]waiting any to be scanned file documents."

[45] Despite the custodian's note that the remainder of the records in the Complainant's file would be forthcoming as soon as possible, the custodian did not provide a further follow up to the Complainant.

[46] On March 27, 2024, the custodian advised my office that she had copied the remaining information from the Complainant's file and was willing to provide this to the Complainant at no cost. We directed the custodian to contact the Complainant and arrange to get these additional records to them as soon as possible in a secure manner.

[47] On April 23, 2024, counsel for the custodian advised that the custodian had sent a copy of the Complainant's medical file by registered mail. Counsel for the custodian provided a copy of a letter from the to the Complainant dated April 20, 2024 with the subject line "Re: Acknowledgement of registered courier service and receipt of medical chart pertaining to [the Complainant]". The letter states that a copy of the Complainant's medical chart is enclosed and that "[c]onfirmation that you have received this document will be by your required signature on this registered document."

[48] We followed up with the Complainant to provide an update to this effect on April 24, 2024 and to ask them to confirm receipt of this additional information with our office.

[49] As of the date of this report, the Complainant has not yet received the rest of their medical file that is purported to have been sent by registered mail on April 20, 2024.

[50] I acknowledge the custodian's submissions that circumstances interfered with the ability to provide a timely response to the Complainant's request. Given the extensive delays in this case, despite the fact that the custodian maintained staff onsite during this time to handle routine office duties, I have no choice but to find that the custodian did not respond to the Complainant's request in a timely fashion as required under subsection 10(1) of the *Act*.

[51] I recommend under paragraph 73(1)(a) of the *Act* that the custodian disclose to the Complainant the remaining records in their patient file if the custodian has not already done so.

Ceasing operation as a custodian and arrangements to secure and ensure continued access to patient records

[52] Given that the custodian has now retired from practice and the difficulties my office encountered in contacting the custodian's office over a period of several months, I took this opportunity to inquire whether the custodian has made appropriate arrangements to safeguard other patient files and to ensure proper supports and procedures are in place for patients to be able to access their patient files in a timely fashion.

[53] While counsel for the custodian submitted that the custodian understood that this issue "is separate from the original complaint and that, as such, it will not be referenced in [this] Report", I find it is relevant to the overall circumstances that gave rise to this complaint and merits further comment.

[54] When custodians end their practice, they do not stop being responsible for the personal health information of their patients until complete custody and control passes to another person who is legally authorized to hold the information (see subsection 54(1) of the *Act*).

[55] The steps custodians must take under the *Act* when they close their practice are set out in subsection 54(2), which states:

54(2) If the custodian ceases to operate as a custodian, the custodian or the custodian's successor shall

- (a) notify the subject of the information about the personal health information held by the custodian or the custodian's successor,

- (b) indicate where the person may make a written request for access to the personal health information, and
- (c) the period the personal health information will be retained.

[56] Custodians also have retention, storage, and secure destruction requirements that are set out in subsection 55(1) of the *Act*:

55(1) A custodian shall establish and comply with a written policy for the retention, archival storage, access and secure destruction of personal health information that

- (a) meets any requirements prescribed by regulation or any requirements contained in any Act of the Legislature,
- (b) protects the privacy of the individual to whom the information relates, and
- (c) requires that a custodian who destroys personal health information to keep a record of the individual whose personal health information is destroyed, a summary of the contents of the record, the time period to which the information relates, the method of destruction and the name of the person responsible for supervising the secure destruction.

[57] These obligations are also reflected, in part, in the College's guidelines for physicians when closing their practice.⁴

[58] In applying the above criteria to the present case, the custodian advised that she decided in 2021 she would retire from practice and began telling patients around that time. The custodian stated that she kept the office open over the next couple of years to help patients transitioning to new care providers and to finalize paperwork. She advised that she had staff on site at the physical office most days and that part of the work involved processing patient requests for access to their files.

[59] It is not clear that the custodian contacted all patients to advise of her upcoming retirement. For instance, the Complainant reported that they learned of this from the custodian's office outgoing voicemail message in October 2022.

[60] In our attempts to contact the custodian to address this complaint earlier this year, we noted that the outgoing voicemail advised of the custodian's retirement and included instructions on how patients could request access to their files by sending written requests to the office and that patient files would be retained for ten years after the last visit.

⁴ College of Physicians and Surgeons of New Brunswick, [Guideline: Closing a Practice](#).

[61] The outgoing voicemail message was helpful to alert patients calling in about the physician's retirement and how to make requests for their files; however, there may be patients who had not been in touch with the office during this time and may not have known.

[62] The custodian indicated that she currently has between 600 and 650 active patient charts, and approximately 150 to 200 files for patients who had not been seen over the last five to ten years as well as deceased patients.

[63] The custodian advised that she is maintaining patient files in a securely locked location and is arranging for a medical chart storage company to take over the records. She indicated that she will advise all patients in writing once this is in place so they will know who to contact to access their files.

[64] As for the retention of patient records, the custodian stated that she follows the advice of the College. The College recommends that patient "records should be retained for a period of ten years after the patient is last seen. In the case of minors, records should be retained for a period of ten years after the patient was last seen, or until the age of twenty-one, whichever is longest."⁵

[65] The custodian stated that after the retention period expires, she will arrange for the secure shredding of records and will keep a list of each record destroyed with a description of the period covered in the record.

[66] I find that the custodian took some appropriate steps to advise patients of the impending closure of her practice and how they could ask for copies of their files. Given the size of the custodian's practice and number of patient files for those who she had not seen for several years, this suggests that a number of patients may not have been aware.

[67] As the patient files will be transferred to a third-party records storage company, the custodian's plan is to advise patients of this in writing along with contact information should they wish to request a copy of their file.

[68] On this point, I recommend that the custodian provide this office with a de-identified copy of the notice to patients confirming where the patient records will be held, along with confirmation of the date on which all patients have been notified. I note that the custodian has already undertaken to do so in her submissions to this office of April 23, 2024.

[69] If our office can be of assistance in preparing the notice, I invite the custodian to contact us for direction.

⁵ College of Physicians and Surgeons of New Brunswick, [Regulation 12: The Patient Medical Record](#).

[70] I also find that it is appropriate that the custodian followed the College's recommended retention periods for patient files and process for the secure destruction of records once the retention period has expired.

[71] In addition, I draw the custodian's attention to the additional requirements for secure destruction under the *Act*, which include documenting the method of destruction and the name of the person responsible for supervising the destruction (paragraph 55(1)(c)).

[72] Maintaining records of when and how patient files were securely destroyed can help patients understand why some of their health records no longer exist in the event of a future access request and/or complaint. This can also be of assistance in demonstrating whether a custodian has met their records management and secure destruction obligations under the *Act*.

The need for prompt cooperation when complaints are filed with this Office

[73] As set out above, the *Act* is based on the premise that personal health information belongs to the patient and patients have a right to timely access to their own health information. One of the other purposes of the *Act* under section 2 is "to provide for an independent review and resolution of complaints made in respect to personal health information" (para. 2(g)).

[74] As the *Act* has been in force since 2010, physicians are aware of this right and their corresponding obligations to respect this right. Although some physicians are still not well versed in the specific requirements under the *Act*, our office routinely works with physicians who find themselves the subject of an access complaint to resolve the matter and ensure that patients receive their personal health information as soon as practicable after we advise the physician of the complaint.

[75] In this case, the reason why we were unable to resolve this complaint informally was because the custodian failed to communicate with this office in a timely fashion or make arrangements for someone to do so on her behalf for nearly six months.

[76] While the registered mail tracking information showed that the notice of complaint was successfully delivered to the custodian's office on September 8, 2023, this office did not receive any acknowledgement of receipt or response from the custodian to this letter. This office's subsequent attempts to contact the physician at her office's publicly listed telephone number, fax number, and office address were unsuccessful. A further letter sent by registered mail was not picked up, letters sent by regular mail were returned as undeliverable, and fax communications were undelivered as there was no answer on the receiving end. We also tried to contact the custodian by leaving a

voicemail on her main office telephone line, but our office has no record of receiving a return call.

[77] Given the prolonged difficulty our office faced in trying to contact the custodian, we contacted the College of Physicians and Surgeons of New Brunswick for assistance. The College agreed to relay a message to the custodian to contact our office as soon as possible and confirmed that it had reached out to the custodian on February 12, 2024.

[78] When we finally established contact with the custodian on February 29, 2024 through legal counsel, the custodian was apologetic for not directly contacting our office to address the complaint at the outset. She explained that she thought the matter was concluded when the Complainant picked up the package of records from her office on September 29, 2023. The handwritten notes by the custodian and the complainant on the accompanying invoice appear to suggest otherwise.

[79] In the custodian's subsequent representations submitted during the formal investigation, which were provided through legal counsel on March 27, 2024, the custodian again apologized for not responding to our office's initial letter and any miscommunication. She reiterated that she had missed the September 7, 2023 notice of complaint letter as she was away from the office at that time and then added that it was only brought to her attention on October 3, 2023.

[80] The custodian stated that, after reading the notice of complaint letter, she asked her staff to call this office to advise of the status of the matter and to see if there were any other issues to address. The custodian said that as she did not hear anything further, she thought the matter had been addressed. Our office does not have any record of the custodian or her office contacting our office at any time before we were contacted by her legal counsel at the end of February 2024.

[81] As for our unsuccessful attempts to communicate with the custodian by mail at the publicly listed address for her office, the custodian stated that she was unaware of this and questioned whether there was an issue with her office's small postal box. The custodian said that postal workers sometimes return mail to the sender when the postal box was full without notice to her or other office. The custodian stated that she had requested a larger postal box due to the volume of mail the office receives but that this had not occurred, and again apologized for the inconvenience to our office.

[82] The custodian did not offer any explanation as to why the fax number was not receiving calls.

[83] We further learned on April 15, 2024 that the custodian's main office number is no longer in service, so any patients looking to contact the office by telephone will no longer be able to hear the previous outgoing voicemail message with direction on how they can make requests for their files.

[84] The custodian has stated her commitment to ensure patients are able to continue to request and receive copies of their files by contacting her office until the files have been transferred to a third-party health records storage company. The absence of a working telephone number may mean that patients will encounter difficulties in contacting the custodian to make requests, such that other means will need to be available.

[85] While there are some discrepancies between the custodian's recent explanations and the events that unfolded at the time, it is nonetheless my hope that the custodian is now better aware of her obligations under the *Act* to provide timely access to patient requests for their own personal health information and the importance of fully and promptly cooperating with our office in addressing complaints.

[86] Should our office receive any further complaints involving the custodian in the future, I expect that this office will receive more timely and meaningful cooperation at the outset and that readily resolvable issues such as patients having timely access to their files can be addressed without unnecessary delay.

[87] I recommend that the custodian take steps to ensure that patients seeking to request their records can continue to reach the custodian in writing until their records have been transferred to the health records storage company. I also recommend that the custodian advise this office of the current contact information where patients can make requests so that we can direct anyone who contacts our office for assistance accordingly.

CONCLUSION

[88] I acknowledge that challenges can arise for health care providers, particularly for sole practitioners, that may hinder their capacity to meet their obligations from time to time to ensure patients have timely access to their personal health information. However, long-standing unforeseen circumstances, no matter how valid, are not acceptable grounds under the *Act* to delay access to patient records indefinitely.

[89] Primary care physicians play a vital role in patient health care, serving as the main point of contact for most patients to access care and referrals for testing and specialized services. The patient files held by primary care physicians are often the most comprehensive collection of a patient's personal health information.

[90] For this reason, it is imperative that custodians have contingency plans and arrangements in place to ensure that patients have timely access to their records, including when custodians may be unavailable for extended periods of time.

[91] In this case, it is commendable that the custodian continued to have staff working in the office after she announced her retirement and her ensuing absence from the office, but unfortunately this still resulted in serious compliance gaps and an unacceptable delay in the Complainant getting full access to their file.

[92] As explained above, I decided to publish a report not only to address the compliance issues encountered in this case, but also to raise awareness of custodians' obligations under the *Act* to provide timely access to patient's own personal health information upon request and the need to cooperate promptly and fully with our office to address complaints.

[93] Unfortunately, this is not the first time this office has encountered challenges with physicians during complaint processes. Despite these challenges, we are often able to resolve matters after explaining our role and what we need from the custodian to address the concerns raised in a particular complaint.

[94] In this case, the issue was ensuring that the Complainant received a full copy of their patient file as requested, which should have been a straightforward matter and readily and quickly resolved.

RECOMMENDATIONS

[95] I recommend under paragraph 73(1)(a) of the *Act* that the custodian disclose to the Complainant the remaining records in their patient file if the custodian has not already done so.

[96] As set out in section 74 of the *Act*, the custodian must give written notice of her decision with respect to this recommendation to the Complainant and my office within 15 days of receipt of this Report of Findings.

[97] I also recommend under paragraph 65.2(f) that the custodian:

- take steps to ensure that patients seeking to request their records can reach the custodian in writing;
- advise this office of the current contact information where patients can make requests for their medical files so that we can direct anyone who contacts our office for assistance accordingly;
- provide this office with a de-identified copy of the notice to patients confirming where the patient records will be held, along with confirmation of the date on which all patients have been notified.

[98] While recommendations issued under section 65.2 are not subject to the legislated time periods set out in section 74, I nevertheless ask that the custodian inform this office whether it accepts the above recommendations within 15 days of receipt of this Report of Findings.

This Report is issued in Fredericton, New Brunswick this 30th day of April, 2024.

Marie-France Pelletier
Ombud for New Brunswick