

Practice Advisory:

Releasing Psychological Reports of Third Party Assessments

Psychologists are often uncertain about the rules surrounding the release of reports they prepare on people who are the subjects of assessments they conduct on behalf of lawyers or insurance companies (e.g., IMEs) and other third parties (e.g., Veterans Affairs Canada, WCB, MPIC, and PAM or other regulatory bodies). In order to assist you in making decisions on the release of these reports, PAM legal counsel was consulted and the following practice advisory represents a summary of that advice. The Personal Health Information Act (<https://www.gov.mb.ca/health/phia/index.html>) is frequently referenced in this advisory and the reader is therefore encouraged to be familiar with this legislation and any periodic updates made to it. This advisory is intended to be an aid in decision making but does not replace the judgement required in individual situations. Rather, it is intended to highlight for registrants, the focus of the PHIA on openness and transparency.

Under sections 5-10 of PHIA, a psychologist (if asked) must provide a report done for a third party to the individual that report is about unless a clear exception under section 11 of PHIA applies. One exception that may apply for reports done for lawyers or insurance companies is when the report was compiled for use in a *civil (e.g., custody-access assessment), criminal (e.g., forensic risk assessment), or quasi-judicial (e.g., compensation benefits appeal) proceeding*. However, a psychologist refusing access under this exception (or any other exception) should ensure they are in compliance with section 7(1)(c) of PHIA in refusing access. They must notify the individual in writing that his or her request is refused, give the specified reason under section 11, and advise the individual of a right to make a complaint under PHIA. As it may not always be apparent from the referral, how the assessment report will be utilized and if the matter will be proceeding to a hearing, the Psychologist is well advised to clarify these issues from the outset to assist in determining how best to handle a later request for a copy of the report.

Please also note that PAM has been advised that an IME does NOT meet the threshold criteria for a *civil, criminal, or quasi-judicial proceeding*, unless it is prepared for litigation or a formal administrative hearing is anticipated to follow the assessment. As such, it is more likely permissible to deny requests for the release of assessment reports done for court litigation purposes, AICAC (Automobile Injury Compensation Appeal Commission), or the WCB Medical Review Panel (where hearings are anticipated).

Finally, it is unlikely that a consent form stipulating that the individual will not receive a copy of the report would allow a psychologist to refuse access under PHIA. Firstly, no clear exception (based on such a consent form) under section 11 of PHIA applies. Secondly, a recent decision from the Manitoba Ombudsman and the Information and Privacy Adjudicator suggests that PHIA will mostly likely prevail over another contractual or legislative obligation not to disclose health information. Lastly, "consent" with respect to the use and disclosure of health information under PHIA can be withdrawn at any time by the individual notifying the trustee under section 19.2. Based on this and the purpose of PHIA generally, it seems likely that an individual could simply withdraw a previous consent to not receive a copy of a report dealing with his or her personal health information (i.e., the IME).

As always, feel free to contact the Registrar with any questions regarding the above.

Approved: June 13, 2018