

A Balancing Act: *The Right to Know and PHIA*

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Not this kind of balancing...



The Personal Health Information Act (PHIA)

GENERAL DUTIES OF TRUSTEES

General duty of trustees re use and disclosure

- ▶ 20(1) A trustee shall not use or disclose personal health information except as authorized under this Division.

Limit on amount of information used or disclosed

- ▶ 20(2) Every use and disclosure by a trustee of personal health information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.

Limit on the trustee's employees

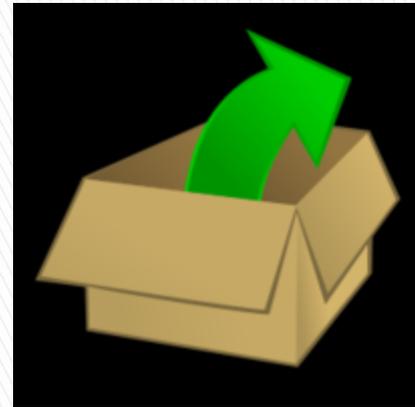
- ▶ 20(3) A trustee shall limit the use of personal health information it maintains to those of its employees and agents who need to know the information to carry out the purpose for which the information was collected or received or to carry out a purpose authorized under section 21.

Use v. Disclosure: The Difference

“use” refers to what is done with the personal health information within the trustee organization (**internal**).

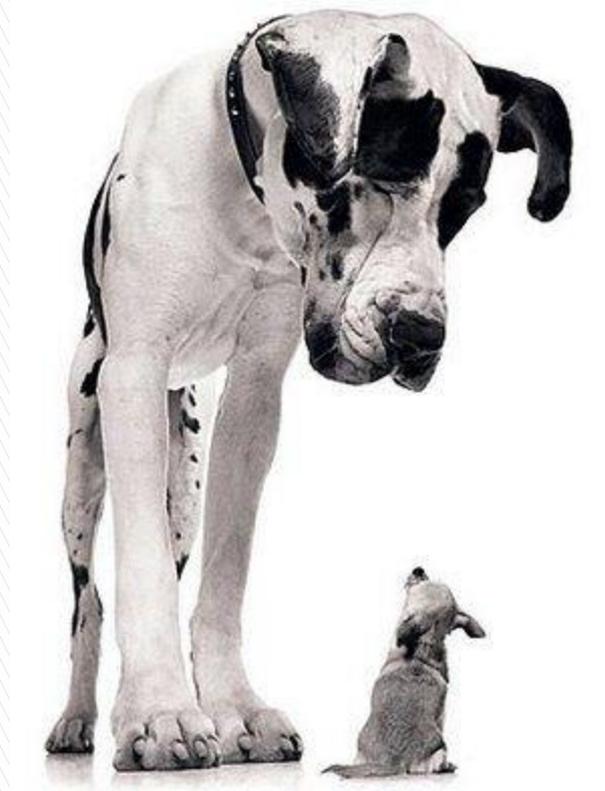


“disclosure” involves revealing personal health information outside the trustee organization to other trustees, to the individual’s friends and family or to other individuals (**external**).



Key Language of PHIA:

- ▶ Every use or disclosure by a trustee of personal health information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.



“minimum amount necessary”

If the small dog can do the job....

WRHA Confidentiality of Personal Health Information Policy 10.40.020

- ▶ 3.3 Use or Disclosure of Personal Health Information is acceptable only as part of one's job duties and responsibilities (including reporting duties imposed by legislation) and based on the need to know.
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WRHA policy: Use of Personal Health Information 10.40.100

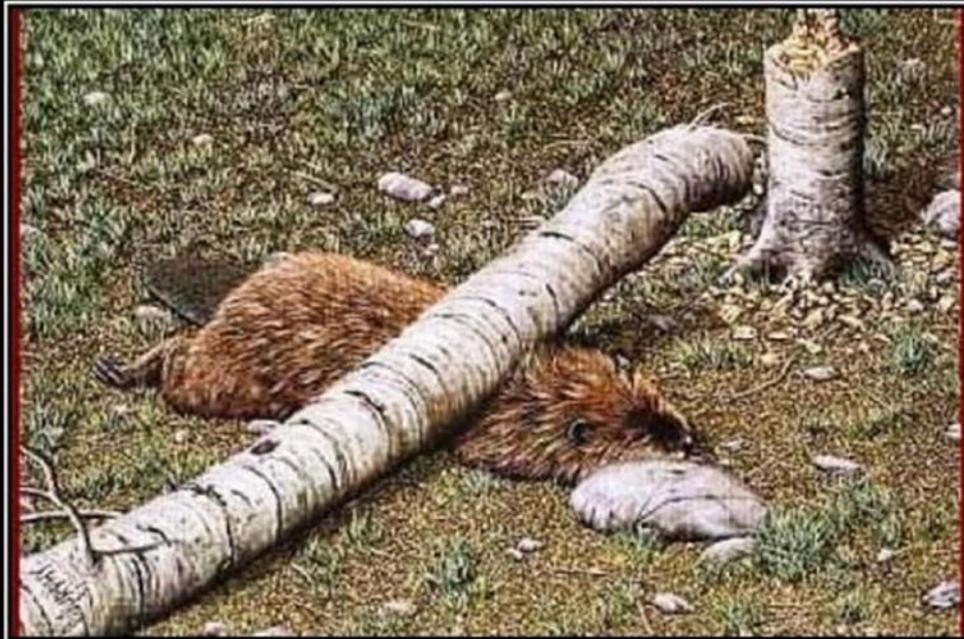
- ▶ 3.2 A Trustee shall limit the Use of Personal Health Information to those Persons Associated with the Trustee who needs to know the information to carry out the purpose for which the information was collected or received.

Exceptions:

- ▶ Is there another statute that would permit use beyond the minimum extent necessary to do the work? (section 22(2)(o) of PHIA)
- ▶ Is there consent?
 - PHI can always be used beyond the minimum extent necessary with the consent of the individual.



Hazard Alert



HEALTH AND SAFETY IN THE WORKPLACE

You never know when you might need it.

WRHA Workplace Safety Policies

20.20 WORKPLACE SAFETY & HEALTH

- ▶ 20.20.020 Sharps, Safe Handling, Use and Disposal (including Safety–Engineered Needle (SEN Exemption)
 - ▶ 20.20.030 Workplace Safety and Health
 - ▶ 20.20.040 Violence Prevention Program for Health Care Workers
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The Workplace Safety and Health Act (WSH Act)

Further duties of employer

4(2) Without limiting the generality of an employer's duty under subsection (1), every employer shall

- ▶ (a) provide and maintain a workplace, necessary equipment, systems and tools that are safe and without risks to health, so far as is reasonably practicable;
- ▶ (b) provide to all his workers such information, instruction, training, supervision and facilities to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his workers;
- ▶ (c) ensure that all his workers, and particularly his supervisors, foremen, chargehands or similar persons, are acquainted with any safety or health hazards which may be encountered by the workers in the course of their service, and that workers are familiar with the use of all devices or equipment provided for their protection;

Workers also have duties:

General duties of workers

5 Every worker while at work shall, in accordance with the objects and purposes of this Act,

- ▶ (a) take reasonable care to protect his safety and health and the safety and health of other persons who may be affected by his acts or omissions at work;
- ▶ (b) at all times, when the nature of his work requires, use all devices and wear all articles of clothing and personal protective equipment designated and provided for his protection by his employer, or required to be used and worn by him by the regulations;

The Workplace Safety and Health Regulation: Part 39

- ▶ Part 39 of the Regulation deals specifically with Health Care Facilities.
- ▶ Health care facilities is not term that is defined in the WSH Act, but it is defined in PHIA to include: hospitals, PCHs, Psych facilities, med clinics, labs, CancerCare and other designated facilities.
- ▶ The regs in general terms describe the requirement of the facility to develop safe work procedures for various things such as handling infectious materials, waste, transferring patients, use of laser equipment, and handling sharps.

Finding the right balance...

- ▶ Every situation is unique....



The Workplace Safety and Health Act (WSH Act)

Right to refuse dangerous work

- ▶ 43(1) Subject to this section, a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person.

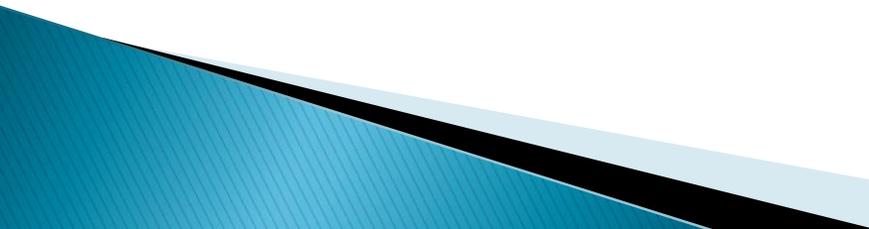
Reporting the refusal

- ▶ 43(2) A worker who refuses to work or do particular work under subsection (1) shall promptly report the refusal and the reasons for it to his or her employer or immediate supervisor, or to any other person in charge at the workplace.

Definitions:

- ▶ “danger” is not defined in the WSH Act. Use the every day ordinary meaning of the word: *a person or thing that is likely to cause harm or injury.*
- ▶ "health" means the condition of being sound in body, mind and spirit, and shall be interpreted in accordance with the objects and purposes of this Act;
- ▶ "safety" means the prevention of physical injury to workers and the prevention of physical injury to other persons arising out of or in connection with activities in the workplace

What happens when a refusal to work occurs:

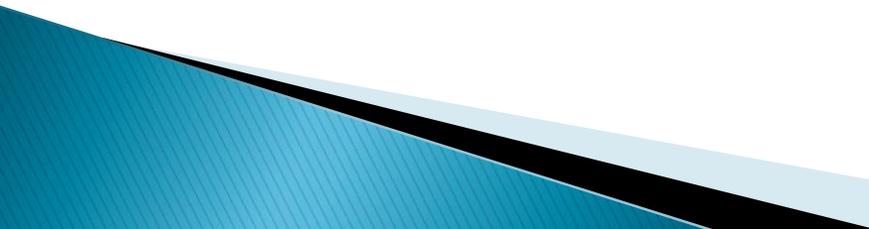
- ▶ If the employer and the worker(s) are unable to agree on a resolution, and workers are not satisfied that an employer has taken necessary steps to remedy the dangerous condition Manitoba Workplace Safety and Health (WSH) may investigate the 'right to refuse.'
 - ▶ **Right to refuse is a high priority issue for WSH.**
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Workplace Safety and Health Officer...



Investigating the Right to Refuse:

When WSH is advised of a right to refuse:

- ▶ A Safety and Health Officer (SHO) is assigned immediately. Where necessary, the SHO will attend the workplace.
 - ▶ The assigned SHO meets with the worker, supervisor, workplace safety and health committee co-chairs or representative (if applicable) to resolve the safety and health concern.
 - ▶ If the employer and the worker(s) are still unable to agree on a resolution, the assigned SHO will make a decision on whether or not the job situation or task that has been refused is dangerous to the safety and health of the worker or any other person at the workplace.
 - ▶ If the SHO determines there is a danger, the employer may be issued orders to correct the issue.
 - ▶ If the SHO determines that there is no danger, the SHO will explain their determination to the worker, and advise that the right to refuse exercised for the job task or situation is no longer valid.
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Case example:

- ▶ Home Care Aid attends client in the home...
- ▶ Observes nurse wearing personal protective gear when treating client...
- ▶ Should Home Care Aid be advised of the client's diagnosis?

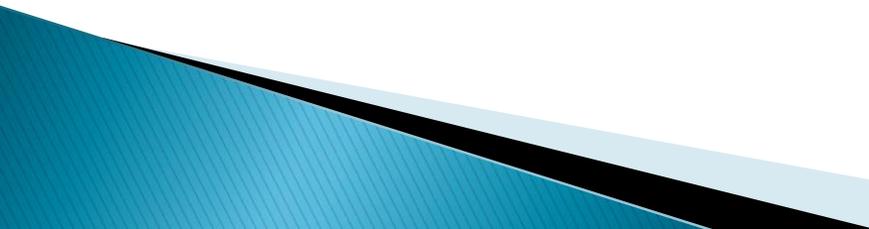


Answer:

- ▶ The typical legal answer: ... “it depends”
- ▶ Which is lawyer code for, “I don’t know the answer but let me go think about it for awhile and I’ll give you a very expensive well articulated letter...”



The questions that need to be answered:

1. Does the staff person need to know the diagnosis to do their job? (If not, is there consent or another statute at play such as Workplace Safety and Health Act?)
 2. Is there a safety or health hazard posed by the condition?
 3. What is the minimum amount of information that could be shared with the staff person to acquaint the staff member with the hazard and to provide them with information to ensure their safety and health?
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Finding the right balance means sometimes you just have to trust your co-workers...

