

# CONSUMERS' ASSOCIATION OF CANADA, ALBERTA

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February 20, 2002

Mr. Frank Work  
Acting Information and Privacy Commissioner  
410, 9925-109 Street  
Edmonton, T5K 2J8  
Fax: 422-5682

RE: Section 37(2) Health Information Act and IPC FILE #H0036

Dear Mr. Work;

As directed by the Board of our Association on February 6<sup>th</sup>, 2002, I am writing to request that your Office take the steps required to provide an interpretation of Section 37(2) of the *Health Information Act* related to the limits it imposes on public access to information on the professional track record of providers. Furthermore, we are requesting that any interpretation of Section 37 (2) and the existence of this Section be made widely known to the new Transition Committee announced by the Minister of Health, Regional Health Authorities, Community Health Councils, patient advocacy and consumer groups, the Alberta Civil Liberties Association, Members of the Legislative Assembly and the general public. At this time, we would also like to declare our interest, and request an opportunity to intervene in your upcoming Hearing (File #H0036) related to disclosure of the prescribing practices of physicians because of its potential implications related to our original request.

## **Background:**

Our association opposed the inclusion of Section 37 (2) in the *Health Information Act* when it was introduced, as documented in a letter to Ms. Marlene Graham, MLA and copied to your office at the time. We are now even more concerned with the lack of clarity regarding how this Section could be applied, and the lack of awareness of its existence among policy makers and the general public.

This lack of awareness was recently brought to light when representatives of our association attended a pre-release meeting for the Report of the Premier’s Advisory Council on the Future of Health Care. While the Committee’s recommendations contained many of the frequently repeated themes in health reform such as enhancing “consumer choice” and “provider accountability”, their response to specific questions made it clear that they were unaware of the current substantive barriers to accessing information on providers, including Section 37 (2) of the Health Information Act. In our view, this information is necessary for informed choice and accountability.

In follow-up to our meeting with the Committee, a representative of our organization, contacted your office to ask if you had provided any specific direction or interpretation related to this Section. She was advised that you had not, but that the appropriate process to follow would be to write a letter requesting that your Office undertake such an activity. It was therefore disconcerting to learn only yesterday of your current Investigation. We were also disappointed that written notification was not specifically directed to CAC Alberta or any identifiable organization representing the constituency with the greatest stake in access to provider information – the people who rely upon and purchase health services in both public and private markets.

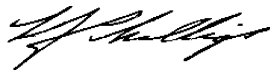
Given this oversight, and our limited resources and time frame for response, we are therefore requesting that you consider this letter in support of our association’s interest in this matter. Our interest rests not only with the specific issue under consideration, but with the precedent your ruling will create. We would also like to flag our concerns related to provisions in this Section related to limits on disclosure of provider information if it could affect the financial circumstances of providers, and how this could be interpreted in light of any other interpretation.

In our view, it is essential that public policy makers and plan members alike be made aware of the potential applications of this Section, particularly as it relates to public policies aimed at more “market oriented” health reforms. We are also concerned about the cumulative impact of other barriers to ensuring provider accountability such as the prohibitive charges for reviewing one’s own medical records.

If we are to improve the safety, quality, accountability, informed choice and informed consent of healthcare services, it is absolutely essential that business and/or professional track record of hospitals, programs, professionals and internal and external agencies be available to citizens, subject to extremely limited exclusions. Information on health providers related to their professional practices, competencies, and value for money should not be afforded more protection than information on a patient's sexual preferences, lifestyle habits, family circumstances, medical conditions, or genetic history. Only once you have provided direction on the application of this Section, will we be able to move forward in addressing these issues.

We urge you to allow us to participate in your current Investigation. It is imperative that you provide an interpretation of Section 37(2) and disseminate this information widely. Clearly, if information on provider performance can be concealed, there will be no market indicators for patients and no accountability for providers.

Yours truly,

A handwritten signature in black ink, appearing to read 'Larry Phillips', written in a cursive style.

Larry Phillips  
President, Alberta Chapter of Consumers' Association of Canada

cc: List of patient advocacy, consumer and public interest organizations

Members of the Legislative Assembly of Alberta

Appendix 1 – excerpts from the *Health Information Act*

Section 37

(2) A custodian may disclose the health services provider information described in section 1(1)(o)(i) to (iii), (vii), (xiv), (xv), (xviii) and (xix), other than home address, telephone number and licence number, to any person for any purpose without the consent of the individual who is the subject of the information, unless the disclosure (a) would reveal other information about the health services provider, or (b) could reasonably be expected to result in (i) harm to the health services provider's mental or physical health or safety, or (ii) undue financial harm to the health services provider.

Section 1.

(n) "health services provider" means an individual who provides health services;

(o) "health services provider information" means the following information relating to a health services provider: (i) name; (ii) business and home mailing addresses and electronic addresses; (iii) business and home telephone numbers and facsimile numbers; (iv) gender; (v) date of birth; (vi) unique identification number that (A) is assigned to the health services provider by a custodian for the purpose of the operations of the custodian, and (B) uniquely identifies the health services provider in relation to that custodian; (vii) type of health services provider and licence number, if a licence has been issued to the health services provider; (viii) date on which the health services provider became authorized to provide health services and the date, if any, on which the health services provider ceased to be authorized to provide health services; (ix) education completed, including entry level competencies attained in a basic education program and post-secondary educational degrees, diplomas or certificates completed; (x) continued competencies, skills and accreditations, including any specialty or advanced training acquired after completion of the education referred to in subclause (ix), and the dates they were acquired; (xi) restrictions that apply to the health services provider's right to provide health services in Alberta; (xii) decisions of a health professional body, or any other body at an appeal of a decision of a health professional body, pursuant to which the health services provider's right to provide health services in Alberta is suspended or cancelled or made subject to conditions, or a reprimand or fine is issued; (xiii) business arrangements relating to the payment of the health services provider's accounts; (xiv) profession; (xv) job classification; (xvi) employment status; (xvii) number of years the health services provider has practised the profession; (xviii) employer; (xix) municipality in which the health services provider's practice is located, but does not include information that is not written, photographed, recorded or stored in some manner in a record;