

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

Report on the Investigation into the Disclosure of Health Information

by

**The Medicine Shoppe
#312, 401 – 9th Avenue, Calgary**

and

Janice Moriyami, Pharmacist

November 25, 2002

Investigation Report H2002-IR-002

I. Introduction

[para 1] On May 13, 2002, the Information and Privacy Commissioner (Commissioner) received a complaint that The Medicine Shoppe at #312, 401 – 9th Avenue, Calgary (the Pharmacy) had improperly disclosed health information.

[para 2] The Commissioner ordered an investigation into this matter under section 84(a) of the *Health Information Act* (HIA). This report outlines the findings and recommendations of this Office.

II. Background

[para 3] On approximately April 30, 2002, the Complainant attended her lawyer's office and learned that her husband had obtained a printout of her prescription drug history for medications that were purchased from the Pharmacy. The printout was dated January 23, 2002 and provided a listing of transactions for the period January 1, 2001 to December 31, 2001. The printout contained the Complainant's name and address and specific information about the drugs provided during the transaction period. The printout included a listing of the prescription number; drug name; drug strength and dosage; manufacture identification code; drug identification number; refills; doctor's name, address and phone number; quantity; date filled and prescription price.

[para 4] That same day, the Complainant approached the pharmacist at the Pharmacy to question how her husband had come into possession of a printout of her prescription drugs. The pharmacist confirmed that the printout had been provided to the Complainant's husband by the Pharmacy in response to his request. The pharmacist advised that she assumed the information was required for income tax purposes. The Complainant asked for a written explanation as to

how this could have occurred without her knowledge or consent. The pharmacist advised the Complainant that a letter of explanation would be provided to her the following day.

[para 5] The Complainant picked up a letter from the Pharmacy on May 1, 2002 that said:

To Whom It May Concern:

RE: Release of (Complainant's) patient information to (Complainant's husband)

On or about January 23, 2002 our pharmacy received a telephone request from (Complainant's husband) for a list of medications for (the Complainant). Due to the fact that this request came around income tax time, we assumed that the list would be used for tax purposes. At this pharmacy, we provide many other patients with exactly the same sort of list as we did to (the Complainant's husband) without question. It was later that we learned from (the Complainant) that (the Complainant's husband) had other intentions for the list.

(The Complainant's husband) used our good faith to obtain personal information regarding his wife for false intentions. Had our pharmacy known the current state of affairs of (the Complainant and her husband) we would not have released the information to him.

III. Investigation Findings

[para 6] The following issues are examined in this report:

1. Did the Custodians disclose individually identifying health information in contravention of the HIA?
2. Did the Custodians take reasonable steps to protect the Complainant's health information in accordance with section 60(1)(a) of the HIA?
3. Did the Custodians establish or adopt policies and procedures that would facilitate implementation of the HIA as required by section 63(1) of the HIA?

[para 7] Before I can address these issues I need to establish the following facts:

- ◇ This complaint is about a custodian as defined by the HIA.
- ◇ The information in the printout is 'individually identifying health information' as defined by the HIA.

[para 8] Alberta's HIA came into force on April 25, 2001. This law applies to custodians. A custodian is defined in section 1(1)(f)(x) and (xi) of the HIA and includes a licensed pharmacy and a pharmacist as defined in the *Pharmaceutical Profession Act*.

[para 9] Section 1(1)(n) of the *Pharmaceutical Profession Act* defines a licensed pharmacy as

a pharmacy that sells drugs to the public in respect of which a pharmacy license is issued under section 26;

[para 10] Section 1(1)(s) of the *Pharmaceutical Profession Act* defines a pharmacist as

an individual, other than a restricted practitioner, who is issued a certificate of registration under this Act and who holds an annual certificate entitling the individual to engage in the practice of pharmacy pursuant to this Act and the regulations;

[para 11] The Pharmacy is a licensed pharmacy. Janice Moriyami is employed by the Pharmacy as a pharmacist and is the individual who disclosed the information. I find that the Pharmacy and the pharmacist are both custodians within the definition of the HIA. For the purpose of this report I will refer to them collectively as the Custodians.

[para 12] Under section 1(1)(k) of the HIA, ‘health information’ means any or all of the following:

(i) *diagnostic, treatment and care information;*

[para 13] Section 1(1)(i)(ii) of the HIA defines ‘diagnostic, treatment and care information’ to include information about a health service provided to an individual. Also, section 1(1)(m)(ii) of the HIA defines ‘a health service’ to include a service provided to an individual by a pharmacist engaging in the practice of pharmacy as defined by the *Pharmaceutical Profession Act*.

[para 14] Section 1(1)(u) of the *Pharmaceutical Profession Act* defines the ‘practice of pharmacy’ as

the preparation, compounding, dispensing, storing, controlling, handling and selling of drugs, non-prescription medications and health related products, and includes

(i) *the exclusive scope areas of the practice of pharmacy,*

(ii) *the dissemination of information on the appropriate use of drugs, non-prescription medications and health related products,*

(iii) *the operation of a pharmacy, and*

(iv) *other related activities, including patient counselling, drug therapy monitoring and drug use evaluation.*

[para 15] In the course of my investigation I was advised that the prescription drug printout was generated by the computer system that is used exclusively by the pharmacists and was provided to the Complainant’s husband by the pharmacist. I find that the printout was created by a pharmacist during the ‘practice of pharmacy’ as defined by the *Pharmaceutical Profession Act*.

[para 16] The prescription drug printout contains specific information about the medications that were dispensed to the Complainant, including her name, the prescription number, drug name, drug strength and dosage, manufacture identification code, drug identification number, refills, doctor’s name, address and phone number, quantity, date filled and prescription price. I find that the information contained in the printout is ‘health information’ as defined by the HIA.

[para 17] Under section 1(1)(p) of the HIA

individually identifying’, when used to describe health information, means that the identity of the individual who is the subject of the information can be readily ascertained from the information.

[para 18] I find the information contained in the printout is ‘individually identifying health information’ as defined by the HIA.

[para 19] Having established that this complaint is about a custodian and that the information is individually identifying health information, I will now address the three issues previously identified.

Issue 1. Did the Custodians disclose individually identifying health information in contravention of the HIA?

[para 20] The relevant sections of the HIA state:

s. 31 No custodian shall disclose health information except in accordance with this Act.

s. 34(1) Subject to sections 35 to 40, a custodian may disclose individually identifying health information to a person other than the individual who is the subject of the information if the individual has consented to the disclosure.

s. 35(1) A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information

.....

(c) to family members of the individual or to another person with whom the individual is believed to have a close personal relationship, if the information is given in general terms and concerns the presence, location, condition, diagnosis, progress and prognosis of the individual on the day on which the information is disclosed and the disclosure is not contrary to the express request of the individual,

[para 21] The HIA allows disclosure of individually identifying health information to the individual the information is about or to some other person with the individual’s consent. The Custodians acknowledged that the Complainant’s health information was disclosed to the Complainant’s husband. The Custodians further acknowledged that the Complainant’s husband did not provide any written or other authorization from the Complainant that would be considered as the Complainant’s consent to disclose her health information. The Custodians further acknowledged that they did not contact the Complainant to obtain her consent for the disclosure. I find that the Custodians disclosed the Complainant’s individually identifying health information without her consent and therefore not pursuant to section 34(1) of the HIA.

[para 22] The HIA allows disclosure of individually identifying health information without consent in very limited and specific situations. Most of these situations fall within the provisions of section 35(1)(a) to (q). The only situation that I identified that may apply to this case is found in section 35(1)(c). This provision allows for a disclosure of information to a member of the individual’s family if the information is given in general terms and is limited to the status of the individual on the day of the disclosure. In this case, the information contained in the printout

was very specific information and spanned the period January to December 2001. Therefore, I find that the disclosure of Complainant's individually identifying health information did not fall within section 35(1)(c) of the HIA.

[para 23] I was unable to identify any other provision in the HIA that would allow for disclosure of individually identifying health information without consent nor did the Custodians suggest that such a provision exists within the HIA.

[para 24] As the Custodians did not obtain the Complainant's consent prior to the disclosure, and as there is no provision in the HIA that allowed for the disclosure without consent, I find that the disclosure of the Complainant's health information was in contravention of the HIA.

Issue 2: Did the Custodian take reasonable steps to protect the Complainant's health information in accordance with section 60(1)(a) of the HIA?

[para 25] The relevant sections of the HIA and the Health Information Regulation state:

(HIA)

s. 60(1) A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will

(a) protect the confidentiality of health information that is in its custody or under its control and the privacy of the individuals who are the subjects of that information

(Health Information Regulation)

s. 8(1) A custodian must identify, and maintain a written record of, all of its administrative, technical and physical safeguards in respect of health information.

...

(3) A custodian must periodically assess its administrative, technical and physical safeguards in respect of

(a) the confidentiality of the health information that is in its custody or control and the privacy of the individuals who are the subjects of that information.

[para 26] The HIA places a mandatory obligation on a custodian to maintain administrative, technical and physical safeguards that will protect the confidentiality of health information and the privacy of the individuals who are the subjects of that information. This case deals with the disclosure of health information. Disclosure of information is generally protected by administrative safeguards, rather than physical or technical safeguards. Administrative safeguards include a custodian's policies, practices and procedures. This investigation examines whether the Custodians maintained policies and procedures designed to protect the confidentiality of health information and the privacy of the individuals who are the subjects of that information.

[para 27] During my investigation, the Custodians advised me that they have no written policies or procedures relating to the disclosure of health information. However, the letter provided to the Complainant by the Custodians refers to a practice of disclosure whereby they "*provide many other patients with exactly the same sort of list as we did to (the Complainant's husband) without question*". Earlier in this report I found that this practice is contrary to the provisions of the HIA. The Custodians also advised that they had not reassessed this practice when the HIA

became law. Therefore I find that the Custodians did not take reasonable steps to protect the confidentiality and privacy of the Complainant's health information in accordance section 60(1)(a) of the HIA.

Issue 3: Did the Custodians establish or adopt policies and procedures that would facilitate implementation of the HIA as required by section 63(1) of the HIA?

[para 28] The relevant section of the HIA states:

63(1) Each custodian must establish or adopt policies and procedures that will facilitate the implementation of this Act and the regulations.

[para 29] The Custodians advised me that they had an awareness of the HIA based on a brief review of information they received from Alberta Health and Wellness and from our office around the time of proclamation in April 2001. The Custodians also advised that, prior to this complaint, they had not determined how the HIA affected them and what they had to do to facilitate its implementation at their Pharmacy.

[para 30] Based on information provided by the Custodians, I conclude that the Custodians did not meet the requirements of section 63(1) of the HIA.

Recommendations

[para 31] I found that the Custodians disclosure of the Complainant's health information was in contravention of the HIA. I also found that the Custodians have not complied with section 60(1)(a) and section 63(1) of the HIA and section 8 of the Regulation.

[para 32] I have discussed this matter with the Custodians. It was agreed that the disclosure of the Complainant's health information would likely not have occurred had policies and procedures, based on the provisions and requirements of the HIA, been in place.

[para 33] The Custodians have agreed to accept my recommendation that they provide the Commissioner, within one month, with a copy of a comprehensive plan that will facilitate implementation of the HIA at their Pharmacy.

[para 34] Additionally, within three months of the release of this report, the Custodians have agreed to provide the Commissioner with a copy of their adopted policies and procedures that reflect the provisions and requirements of the HIA. These policies are to provide for a process for responding to requests for access to health information, as well as those needed to ensure compliance with the confidentiality and privacy provisions of the HIA.

Submitted by

Dan Cameron
Health Portfolio Officer