

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2020-01

February 19, 2020

Saeed Sattari, Affiliate

Case File Number 002669

Office URL: www.oipc.ab.ca

Summary: The Complainant provided evidence (Netcare logs) of access to her health information by pharmacist Saeed Sattari, an Affiliate of the custodian of a pharmacy. Mr. Sattari responded that he did not access the health information but that it must have been done by someone else using his password. He did not provide any evidence or suggestions as to how this could have happened. The Adjudicator found on a balance of probabilities that Mr. Sattari had accessed the health information without authority, and ordered him to stop doing so.

Statutes Cited: AB: *Health Information Act*, R.S.A. 2000, c. H-5, ss. 28, 56.5, 62(4), 80.

I. BACKGROUND

[para 1] The Office of the Information and Privacy Commissioner received a complaint of improper access of health information on Netcare, in violation of the *Health Information Act* (HIA or “the Act”). The Complainant submitted Netcare logs showing access of her health information occurred from Shoppers Drug Mart #363 on May 6, 2015. Among others, one of the individuals accessing the health information was Saeed Sattari, who the Complainant says was an employee of the pharmacy. On May 6, 2015, the licenced pharmacy at Shoppers Drug Mart #363 was Somayeh Pharmacy Ltd., operated by pharmacist Somayeh Sattari.

II. ISSUES IN THE INQUIRY

[para 2] The issues set out in the Notice of Inquiry were as follows:

1. Was Somayeh Pharmacy Ltd. the custodian/authorized custodian of the health information?
2. If yes, was Mr. Sattari an affiliate of the custodian?
3. If yes, did Mr. Sattari use the Complainant's health information in contravention of section 62(4) of the Act?

III. DISCUSSION OF ISSUES

[para 3] The licenced pharmacy at Shoppers Drug Mart #363 was Somayeh Pharmacy Ltd., operated by pharmacist Somayeh Sattari, and the licenced pharmacy and/or Ms. Sattari was the custodian of the health information.¹ Mr. Sattari acknowledges that he was an employee and affiliate of the custodian at the time of the accesses.

Section 62(4) of the HIA provides as follows:

(4) Each affiliate of a custodian must comply with

(a) this Act and the regulations, and

(b) the policies and procedures established or adopted under section 63.

[para 4] In its submissions for a related inquiry (Case File # 006413) the operating pharmacist explained that at the relevant time, Shoppers Drug Mart had policies in place to require confidentiality and non-disclosure of health information. She also said that pharmacy staff including Mr. Sattari had signed a confidentiality agreement with regards to the Electronic Health Record (EHR) and Alberta Netcare, and that all staff were trained on the pharmacy's privacy policies, HIA, and appropriate Netcare use, including that employees were not to access and use the information in the EHR for unauthorized purposes. She said that staff with access to Netcare completed an online training module.

[para 5] Access by an affiliate to health information without authority, in these circumstances, is a contravention of section 62(4)(b). It is also a failure by the affiliate to comply with his duty under section 28 of the Act, which requires affiliates to use health

¹ I do not have sufficient information before me at the present time to determine whether the custodian was the licenced pharmacy or the pharmacist (both of which may be custodians under the HIA), or both. This question will be further addressed in the related Order in Case File #006413. It is not necessary to answer this question in order to determine the remaining issues in this case.

information only in a manner that is in accordance with the affiliate's duties to the custodian.²

[para 6] Further, access to EHR information by an affiliate without any authority to do so is a contravention of section 62(4)(a) of the Act. An affiliate can access health information only for the purposes for which a custodian can access it. There is no suggestion that the custodian had any authority to access the information respecting which the complaint was brought.

[para 7] In his initial response to the Notice, Mr. Sattari disputed that he was responsible for accessing the health information of the Complainant. He said that he did not use the Complainant's health information.

[para 8] When informed by me that the Netcare log indicated that the accesses had been done by him, Mr. Sattari responded by saying that he had been the Complainant's teacher and her friend, and that if he had had questions about her health, he would have asked her directly. He offered the possible explanation that someone else in the pharmacy may have used his password to access the information.

[para 9] When I sent a further letter asking whether Mr. Sattari has information as to who else had access to his password, why they would have it, and whether he had shared it with anyone, he did not reply. As he had taken the position that he was not the person who had accessed the information, Mr. Sattari did not provide any ostensible authority for accessing it.

[para 10] I provided the Complainant with an opportunity to respond to Mr. Sattari's submissions. She did not do so.

[para 11] While the Complainant did not respond to Mr. Sattari's suggestion that they were friends and he could have asked her about her health directly, the fact that she made a complaint against him contradicts Mr. Sattari's position.

[para 12] I believe Mr. Sattari was in the best position to explain how these accesses, which were done using his login information, might have happened. In view of the foregoing evidence, including that Mr. Sattari made no suggestion as to how his password may have been obtained and used to access the information, I find, on a balance of probabilities, that Mr. Sattari accessed the Complainant's health information. No authority for doing so was suggested, and I find there was none. I therefore conclude that Mr. Sattari, as an affiliate of the custodian, used the Complainant's health information in contravention of section 62(4) of the Act.

² Under section 56.5 of the HIA, an access of health information in the EHR is a use of the information, rather than a collection or disclosure.

IV. ORDER

[para 13] I make this Order under section 80 of the Act.

[para 14] I order Mr. Sattari, when acting in the capacity of an affiliate to a custodian, to comply with his duties to the custodian, and to stop using the Complainant's health information in contravention of the Act.

Christina Gauk, Ph.D.
Adjudicator and Director of Adjudication