

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER HIA2026-01

January 21, 2026

### AHMED ABUEL SHOUHOUD

Case File Number 018634

Office URL: [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant alleged that Ahmed Abuel Shouhoud (the Custodian), a pharmacist and also her supervisor at work, accessed her health information on Netcare in contravention of the *Health Information Act* (the HIA). The Complainant further alleged that the Custodian verbally disclosed her health information to a colleague (the Colleague) three times: once in her absence, verbally; once in her presence, verbally; and once when he turned a computer screen toward her in such a way that the Colleague was able to see her information displayed on the screen. Other issues that arose were whether the Custodian collected health information contrary to the HIA, and whether he had appropriate safeguards to protect health information as required by the HIA.

The Complainant also made a complaint to the Alberta College of Pharmacy concerning, among other things, disclosure of her health information to the Colleague. The Alberta College of Pharmacy's Hearing Tribunal (the Hearing Tribunal) concluded that the complaint regarding disclosure to the Colleague was not proven on the balance of probabilities.

The Adjudicator considered whether issue estoppel applied to the disclosure issues in the inquiry in light of the decision of the Hearing Tribunal. The Adjudicator found that issue estoppel did not apply since the parties before the Hearing Tribunal and in the inquiry were not the same.

The Adjudicator found that the Custodian used the Complainant's health information in contravention of the HIA when he accessed it on Netcare. Though the Custodian stated he accessed the health information as part of providing a health service (refilling the Complainant's overdue prescriptions) per section 27(1)(a) of the HIA, the Adjudicator found that he had merely assumed that the Complainant wanted her prescriptions refilled, when she did not. As a result,

refilling the prescriptions was not a health service provided to the Complainant, and accessing the Complainant's health information was therefore not part of providing a health service, and not permitted under the HIA. The Adjudicator found that collection of health information was not permitted for the same reason.

The Adjudicator found that the Custodian did not disclose the Complainant's health information when he turned his computer screen toward her. The Adjudicator found that there was insufficient evidence to conclude that the Custodian disclosed the Complainant's health information to the Colleague in the Complainant's absence. After assessing the credibility of the parties, the Adjudicator found that the Custodian disclosed the Complainant's health information to the Colleague in her presence, in a way that contravened the HIA.

The Adjudicator found that the Custodian did not establish that he had in place safeguards required under section 60 of the HIA.

After deciding that an order under the HIA was not rendered moot by sanctions already imposed by the Hearing Tribunal, the Adjudicator ordered the Custodian to cease using and disclosing the Complainant's health information in contravention of the HIA and to implement safeguards as required by section 60 of the HIA.

**Statutes Cited:** **AB:** *Health Information Act*, R.S.A. 2000 c. H-5 ss. 1(1)(d), 1(1)(i)(i), 1(1)(i)(ii), 1(1)(f)(ix), 1(1)(f)(x), 1(1)(k)(i), 1(1)(m), 1(1)(m)(i), 1(1)(m)(iii), 25, 27(1)(a), 31, 33, 56.1(b)(ii), 56.5(1), 56.5(1)(b)(i), 56.5(2), 56.5(3), 60, 60(1), 79, 80, 80(3), 107(2)(a); *Health Professions Act*, R.S.A. 2000, c. H-7, ss. 1(1)(p)(iii), 76, 80(1); *Health Statutes Amendment Act*, 2020 (No. 2), SA 2020, c 35

**Regulations Cited:** **AB:** *Health Information Regulation*, Alberta Regulation 70/2001, s. 2(2)(c)

**Authorities Cited:** **AB:** Orders H2007-005, H2014-02, H2023-08, H2023-09, H2024-03

**Cases Cited:** *Alberta Health Services v Information and Privacy Commissioner of Alberta*, 2018 ABQB 467; *Alberta (Workers' Compensation Board) v Appeals Commission*, 2005 ABCA 276; *British Columbia (Attorney General) v Malik*, 2011 SCC 18; *Faryna v. Chorny* [1952] 2 D.L.R.354; *FH v McDougall*, [2008] 3 SCR 41; *R v Hawkins*, [1996] 3 SCR 1043; *R v Lao*, 2001 ABPC 204; *R v Nyhus*, 2023 ABKB 567; *Sihota v Edmonton (City)*, 2013 ABCA 43; *Trang v Alberta (Director of Edmonton Remand Centre)*, 2002 ABQB 658; *Tsang v. Mok*, 2020 ABQB 17.

## I. BACKGROUND

[para 1] The Complainant was employed as a Beauty Boutique Manager at a drug store where Ahmed Abuel Shouhoud (the Custodian) was a pharmacist. The Custodian had two roles in respect of the Complainant: as her supervisor, and as her pharmacist.

[para 2] In 2019, the Complainant underwent a medical radiographic examination (the examination); the Custodian was aware of it. While both were at work, and in advance of a meeting (the meeting) with a colleague (the Colleague), the Custodian asked the Complainant whether she had received the results of the examination (the results), and offered to check

them on Netcare. The Complainant declined the offer, informing the Custodian that she wanted to be with her doctor when she received the results.

[para 3] After the Complainant stated that she did not want the results, the matter of refilling one or more of the Complainant's numerous prescriptions arose.

[para 4] What happened next is disputed between the parties as discussed in detail below. It is clear though that whatever the precise series of events was, in the process of refilling one or more of the Complainant's prescriptions, the Custodian accessed the results on Netcare.

[para 5] The Complainant alleges that after accessing the results the Custodian told the Colleague about them during a moment when the Complainant stepped out of the room before the meeting. The Complainant states that she learned of this disclosure from the Colleague following the meeting. The Complainant also alleges that after she had returned to the room, and just before commencing the meeting, the Custodian announced that the results were good or fine, and displayed them on his laptop in the presence of the Colleague. The Custodian denies disclosing the Complainant's health information.

[para 6] According to the Custodian, the Colleague was present when he revealed the results to the Complainant, but he revealed them by silently turning his computer screen toward the Complainant, in such a way that the Colleague could not see it.

[para 7] The Complainant filed a complaint about the Custodian's action with this Office, alleging that he accessed and disclosed her health information contrary to the *Health Information Act*, R.S.A. 2000 c. H-5 (the HIA). Investigation and mediation were authorized to attempt to resolve the complaint made to this Office, but did not do so. The matter proceeded to inquiry.

[para 8] In addition to the complaint made to this Office, the Complainant also filed a complaint with the Alberta College of Pharmacy, pursuant to the *Health Professions Act*, R.S.A. 2000, c. H-7 (the HPA). That complaint proceeded before the Alberta College of Pharmacy's Hearing Tribunal (the Hearing Tribunal) which had issued its findings prior to the commencement of this inquiry.

## II. ISSUES

[para 9] The issues in this inquiry are:

- A. **Did the Custodian (or Affiliate) collect the Complainant's health information in contravention of Part 3 of the HIA?**
- B. **Did the Custodian (or Affiliate) use the Complainant's health information in contravention of Part 4 of the HIA?**
- C. **Did the Custodian (or Affiliate) disclose the Complainant's health information in contravention of Part 5 of the HIA?**

**D. Did the Custodian fail to safeguard health information in contravention of section 60 of the HIA (Duty to Protect)?<sup>1</sup>**

**III. DISCUSSION OF ISSUES**

*Preliminary Matter – Legal considerations in respect of the decision of the Hearing Tribunal*

[para 10] As mentioned above, the Alberta College of Pharmacy’s Hearing Tribunal has issued its decision regarding the complaint made to it by the Complainant. The Complainant included a private copy of the decision in her submissions in this inquiry. The private copy is unredacted and contains specific details about the Complainant and the Custodian that the public copy issued by the Alberta College of Pharmacy does not.

*Decision of the Alberta College of Pharmacy Hearing Tribunal and issue estoppel*

[para 11] The Hearing Tribunal did not consider the issues related to use (accessing the results on Netcare) and collection of health information under the HIA, or the matter of whether the Custodian had appropriate safeguards in place as required by section 60 of the HIA, which are issues in this inquiry. It did consider the same disclosure of health information issues involving the Colleague that are before me in this inquiry, as a matter of whether the Custodian’s actions amounted to unprofessional conduct under the HPA.

[para 12] The Hearing Tribunal’s authority to determine whether the Custodian’s actions amounted to unprofessional conduct is stated in section 80(1) of the HPA:

*80(1) The hearing tribunal may decide that the conduct of an investigated person does or does not constitute unprofessional conduct.*

[para 13] Determining unprofessional conduct may include considering whether the Custodian contravened the HIA. Section 1(1)(pp)(iii) of the HPA defines “unprofessional conduct” as,

*(pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:*

...

*(iii) contravention of another enactment that applies to the profession;*

...

[para 14] Since the HIA applies to pharmacists defined as custodians therein, it applies to the pharmacy profession. One of the allegations made before the Hearing Tribunal is that the Custodian failed to comply with section 31 of the HIA and therefore committed professional misconduct.

[para 15] Section 31 of the HIA is broad, and prohibits disclosure except in accordance with the HIA:

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

[para 16] Regarding the alleged verbal disclosure between the Custodian and Colleague in the absence of the Complainant (the first instance of alleged verbal disclosure) the Hearing Tribunal held that it was not necessary for it to decide whether a disclosure of the Complainant's information was in fact made to the Colleague. The Hearing Tribunal reasoned that even if the disclosure was made as alleged, it did not constitute disclosure of the Complainant's health information.

[para 17] Regarding the alleged disclosure made by the Custodian in front of the Complainant and the Colleague (the second instance of alleged verbal disclosure), the Hearing Tribunal held that the burden of proving a disclosure of health information had not been met by the Complaints Director, and that it could not determine what was said by the Custodian, or if anything that was disclosed was health information.

[para 18] Regarding visual disclosure to the Colleague (by turning the computer screen displaying the results), the Hearing Tribunal concluded that the Colleague did not see the screen.

[para 19] In light of the above findings, the Custodian argues that the Alberta College of Pharmacy has comprehensively investigated and satisfactorily addressed the allegations concerning disclosure of health information to the Colleague. The Custodian argues that further action regarding allegations of disclosure would be disproportionate and unfair and could result in "punitive consequences beyond what is reasonable and necessary."

[para 20] Given the jurisdiction of the Hearing Tribunal and its consideration of the same facts and disclosure issues, determining whether the disclosure issues in this inquiry should be heard, is a matter of the applicability of the doctrine of issue estoppel. Accordingly, though not expressly argued by the Custodian, I consider issue estoppel as a matter of my own jurisdiction. The Custodian's concerns about proceeding to hear the disclosure issues are subsumed in that consideration.

[para 21] Issue estoppel can arise from decisions of administrative tribunals. In *Sihota v Edmonton (City)*, 2013 ABCA 43, the Alberta Court of Appeal found at para. 8,

The leading decision on issue estoppel arising from the decisions of administrative tribunals is *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460. An Employment Standards Officer dismissed Danyluk's claim for commissions, and when she commenced an action to recover them, her former employer asserted issue estoppel. The Supreme Court of Canada confirmed that issue estoppel can arise as a result of administrative proceedings in some circumstances. In order for the doctrine to be engaged:

- (a) the same issue must be involved,
- (b) the decision said to create the estoppel must be final,
- (c) the same parties or their privies must be involved, and
- (d) as a discretionary matter, it must be fair and just to apply the doctrine of issue estoppel in the particular circumstances.

As a threshold consideration, there must be a "judicial" aspect to the decision for issue estoppel to arise. The decision maker must be capable of exercising adjudicative authority, the particular decision must be one required to be made in a judicial manner, and the decision must in fact be made in a judicial manner.

[para 22] I find that issue estoppel does not arise in this case since (c) above is not met.

[para 23] While the Complainant made the initial complaint both to this Office and the Alberta College of Pharmacy, the parties in this inquiry and before the Hearing Tribunal are not the same. The Complaints Director brought the complaint made to the College of Pharmacy before the Hearing Tribunal, not the Complainant; rather, the Complainant was called as one of the Complaints Director's witnesses. It is not necessarily the case that the Complaints Director was advancing the same interests before the Hearing Tribunal as the Complainant has in this inquiry.

*References to statements and evidence reported in the Hearing Tribunal Decision*

[para 24] There is no bar to the admission of the decision of the Hearing Tribunal in this case. No statute prohibits it and there is no common-law rule that bars a civil decision from a court or tribunal from being admitted as evidence in a subsequent civil proceeding. As stated in *Trang v Alberta (Director of Edmonton Remand Centre)*, 2002 ABQB 658 at para. 44,

At para. 24 of his decision Burrows J. concluded, "I do not accept that there is a common-law rule that evidence of a previous civil judgment is inadmissible as evidence of the facts in a subsequent civil proceeding." I adopt the reasoning in *Spectra*, and, accordingly, would hold that the law permits that relevant findings of a court or a tribunal, not prejudicing either party, can be admitted in a subsequent civil matter.

[para 25] At a later point in this order, I agree with the Hearing Tribunal's findings regarding a point related to credibility. To that extent, I accept the Hearing Tribunal's decision as proof of that finding. I do so mindful of the provisos stated in *R v Nyhus*, 2023 ABKB 567 (*Nyhus*) at para. 31:

A relevant judgment in a prior civil or criminal case is admissible in a subsequent proceeding as proof of its findings, provided the parties are the same or were themselves participants in the prior proceedings on similar or related issues. Any prejudice can be cured by giving the parties an opportunity to lead evidence to contradict or lessen the weight of the prior judgment: *Cowichan* at para 47. If there is a strong nexus between the issues, a prior judgment will be admissible even if the parties in the prior proceedings were different: *Trang* at para 50.

[para 26] The Complainant, Colleague, and Custodian each gave sworn testimony to the Hearing Tribunal, and were subject to cross examination by legal counsel (either counsel for the Complaints Director or the Custodian) in the Hearing Tribunal's hearing. While the parties before the Hearing Tribunal were not the same, the Complainant is the same in each case, as are the issues regarding disclosure. In both cases, the Custodian is the respondent.

[para 27] Beyond the credibility finding, I review the Hearing Tribunal's decision with an eye for what the Complainant, Colleague, and Custodian are reported to have said during the hearing.

[para 28] Where the Hearing Tribunal reports a statement or summarizes the evidence of the Complainant, Colleague, and Custodian I may regard what it reports as prima facie an accurate indication of what was said. The decision of the Hearing Tribunal is a public document. As such, what is recorded there is regarded as a true record of the hearing resulting in the Hearing Tribunal Decision (*R v Lao*, 2001 ABPC 204, at paras. 11 – 13; *British Columbia (Attorney General) v Malik*, 2011 SCC 18 at para. 38). I may review the decision of the Hearing Tribunal and conclude that what the Hearing Tribunal states were the positions and statements of the Complainant, Colleague, and Custodian, are the positions and statements held and made by those individuals in that hearing.

[para 29] Statements made by a person in a prior adjudicative proceeding may be considered as hearsay evidence. (*R v Hawkins*, [1996] 3 SCR 1043 at paras. 58 – 60). There is no issue regarding the admissibility of hearsay evidence per se in this inquiry. The HIA does not expressly prescribe that strict rules of evidence apply, and so I am not bound by strict rules of evidence, including restrictions on the use of hearsay *Alberta (Workers' Compensation Board) v Appeals Commission*, 2005 ABCA 276 at para. 63).

[para 30] I am cognizant however, that I must not simply accept hearsay statements from the Hearing Tribunal decision as proof of facts. I must weigh hearsay statements in the context of the evidence and statements provided in this inquiry to ensure that any reliance upon them to reach a conclusion meets the proper burden of proof (*Nyhus*, at para. 46). This is particularly so regarding statements of the Colleague reported in the Hearing Tribunal decision. No statement from the Colleague was offered in this inquiry, and so neither party has had the chance to directly rebut any statement from the Colleague made in this proceeding.

#### *Statements made by the Custodian reported in the Hearing Tribunal Decision*

[para 31] While I consider statements and summaries of evidence reported in the decision of the Hearing Tribunal, I do so mindful of the limitation on the use of such evidence in section 76 of the HPA:

*76(1) A witness including the investigated person may be examined under oath, may give evidence on all matters relevant to the hearing before the hearing tribunal and is not excused from answering a question because the answer may*

*(a) tend to incriminate the witness,*

*(b) subject the witness to orders under this Part, or*

*(c) tend to establish the witness's liability in a civil proceeding or a prosecution under this or any other enactment.*

*(2) If an answer given under subsection (1) by a witness could*

(a) *establish the witness's liability in a court proceeding or proceedings under any enactment, or*

(b) *incriminate the witness,*

*that answer may not be used or received against the witness in a civil proceeding, a prosecution under this Act or proceedings under any other Act, but that answer may be used or received against the witness in proceedings in respect of perjury or giving contradictory evidence under this Act.*

[para 32] Given the prospect that the Custodian may, in this inquiry, be found liable to take steps to comply with the HIA, I do not rely on the statements or summarized evidence of the Custodian reported in the Hearing Tribunal Decision that tend to establish his liability in reaching any findings that he has contravened the HIA. I have taken care throughout my decision to consider statements made in his submissions in this inquiry to ground any findings, and have clearly indicated where I reference any statements of the Custodian from the Hearing Tribunal decision. Those statements I reference are either consistent with those of the Custodian in this inquiry, or help to provide uncontested background information, rather than serve to establish any liability. In one instance I consider a statement of denial made by the Custodian to the Hearing Tribunal since, in contrast to establishing liability, it tends to bolster his position that he did not contravene the HIA.

#### *Disclosure to Complainant Considered by Hearing Tribunal*

[para 33] Finally, I observe that in making its determinations the Hearing Tribunal considered the allegation that the Custodian disclosed the Complainant's health information to the Complainant. Disclosure of the Complainant's health information to the Complainant is not an issue in this inquiry. The HIA does not restrict custodians from disclosing health information to the person the health information is about. To the contrary, section 33 of the HIA expressly allows it.

[para 34] I now turn to the issues. I consider Issue B before Issue A since the conclusions regarding use of information affect determination of whether or not there was collection of information.

#### **B. Did the Custodian (or Affiliate) use the Complainant's health information in contravention of Part 4 of the HIA?**

##### *Burden of Proof*

[para 35] The HIA does not prescribe which party carries the burden of proof in an inquiry regarding a complaint. Section 79 speaks to the matter of burden of proof only with regard to inquiries concerning access requests. In cases of complaints under the HIA, the Complainant carries an initial evidential burden, at which point the burden shifts to the Custodian to demonstrate that he complied with the HIA. As stated in order H2007-005 at para. 18

As with PIPA and the FOIP Act, the individual initiating the complaint under HIA has the onus of pointing to evidence that suggests his or her health information has been

collected, used, or disclosed. Once a complainant has met this evidential burden, the onus then shifts to the custodian to establish that its collection, use or disclosure of the complainant's personal information was authorized by HIA.

[para 36] I begin by discussing the legislative framework governing the Custodian's use of information under the HIA.

[para 37] There is no dispute that the Custodian accessed and viewed the results of the examination on Netcare (referred to as the "Alberta EHR" in the HIA), which is considered a use of health information. The Adjudicator in Order H2014-02 stated at paras. 20 - 21,

To conclude, in my view, calling up and reading health information from Netcare falls within the definition of "use" within the terms of section 1(1)(w). As the HIA has as a purpose "establishing strong and effective mechanisms to protect the privacy of individuals and protecting the confidentiality of health information", as well as the purpose of prescribing rules for the use of health information, which are to be carried out in the most limited manner, I find that interpreting "use" as incorporating the act of calling up and reading health information better achieves these goals than would interpreting "use" as excluding these actions.

It follows that when calling up and reading health information from Netcare, a custodian must have a purpose in doing so that is authorized by section 27(1) of the HIA.

[para 38] The Custodian is a registered member of the Alberta College of Pharmacy. As such, he is a custodian as defined in section 1(1)(f)(xiv) of the HIA and section 2(2)(c) of *Health Information Regulation*, Alberta Regulation 70/2001 (the HIR)<sup>2</sup>.

[para 39] Under the HIA, the Custodian is an "authorized custodian" for the purposes of accessing, collecting, using, and disclosing health information on Netcare under section 56.1(b)(ii). As such, his authority to use health information on Netcare under the circumstances of this case, was at the time prescribed in section 56.5(1)(b)(i) of the HIA<sup>3</sup>:

*56.5(1) Subject to the regulations,*

...

*(b) an authorized custodian referred to in section 56.1(b)(ii) may use prescribed health information that is accessible via the Alberta EHR, and that is not otherwise in the custody or under the control of that authorized custodian, only for a purpose that is authorized by*

*(i) section 27(1)(a), (b) or (f), or*

...

[para 40] Under section 1(1)(k)(i) of the HIA, "health information" is defined to include "diagnostic, treatment and care information." "Diagnostic, treatment and care information"

includes information about the physical health of an individual per section 1(1)(i)(i), and information about a “health service” provided to an individual in section 1(1)(i)(ii).

[para 41] “Health service” is defined in section 1(1)(m) as follows:

*(m) “health service” means a service that is provided to an individual for any of the following purposes:*

*(i) protecting, promoting or maintaining physical and mental health;*

*(ii) preventing illness;*

*(iii) diagnosing and treating illness;*

*(iv) rehabilitation;*

*(v) caring for the health needs of the ill, disabled, injured or dying,*

*but does not include a service excluded by the regulations;*

[para 42] The results of the exam serve to diagnose and treat illness. Per section 1(1)(m)(iii), information about the examination and the results are health information under the HIA.

[para 43] Health information may not be used other than in accordance with the HIA, as stipulated in section 25:

*25 No custodian shall use health information except in accordance with this Act.*

[para 44] The Custodian asserts that his use of health information was pursuant to section 27(1)(a) of the HIA, which states,

*27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*

*(a) providing health services*

...

[para 45] In view of the above, the pertinent question for this issue is whether the Custodian accessed the results for the purpose of providing a health service, pursuant to sections and 56.5(1)(b)(i) and 27(1)(a) of the HIA. There are two possible health services in the scenario in this case that may involve accessing the results: 1) accessing the results in order to inform the Complainant of them; and, 2) accessing the results as part of refilling the Complainant’s prescriptions. I discuss each in turn.

*Accessing the results to inform the Complainant of them*

[para 46] Normally, accessing health information in order to inform someone of their examination results is part of a health service. However, in this case it is not. It is clear that the Complainant did not want to know the results, and refused the Custodian's offer to provide them. Faced with the Complainant's refusal to hear the results, there was no health service for the Custodian to provide to the Complainant in that regard; such service had been refused.

[para 47] I now consider the Custodian's assertion that he accessed the results as part of refilling the Complainant's prescriptions.

*Accessing the results as part of refilling the Complainant's prescriptions*

[para 48] Refilling a prescription is a health service under the HIA. Depending on the reason for which a drug is prescribed, the act of filling a prescription might fit under any of subsections (i) through (v), of 1(1)(m) of the HIA, above.

[para 49] Both parties state that the Custodian raised the matter of refilling the Complainant's prescriptions. The position of the parties, both in this inquiry and before the Hearing Tribunal conflict with each other on what exactly was said by either of them in that conversation.

[para 50] According to statements contained in the Complainant's submission in this inquiry, which was prepared by legal counsel, and not accompanied by an affidavit from the Complainant, she asserts that she had not asked the Custodian to refill any prescriptions. Rather, the Complainant asserts that the Custodian "pressed her about her prescriptions" which she did not need and did not ask the Custodian for. The Complainant further asserts that the Custodian only offered to refill her prescriptions as a pretext to accessing the results, after she had indicated she did not want them.

[para 51] The Custodian's position is that the Complainant asked for a prescription refill, and that her statements regarding her request have changed over time. He observes that the Complainant stated before the Hearing Tribunal that she asked the Custodian for a refill of one medication, which I refer to as "Medication A", in contrast to her statements in this inquiry, wherein she states she did not request any prescriptions.

[para 52] In this inquiry, the Custodian asserts that he mentioned to the Complainant that her medications were due for refill and that in response, the Complainant instructed him to refill her medications "as normal." Then, to quote from the Custodian's submissions in this inquiry, "Interpreting this directive, the Respondent understood it to mean that the Complainant wished for all overdue medications to be refilled."

[para 53] The result was that the Custodian refilled prescriptions for numerous medications, including one which I refer to as "Medication B." According to the Custodian, refilling Medication B required him to view the results in order to determine if a condition previously experienced by the Complainant had returned, since Medication B was contraindicated for people with that condition. The Custodian adds that such was his professional responsibility as a pharmacist. Medication A was not a medication that required the Custodian to view the results.

[para 54] While it might otherwise be unusual for a pharmacist to interpret what prescriptions a patient wishes to refill, the dynamic between the Complainant and Custodian was not the

typical one where a patient sees a pharmacist only “on the other side of the counter”, so to speak. The Complainant and Custodian worked together and had a working relationship. In this inquiry, the Custodian describes the relationship as cordial.

[para 55] The working relationship between the parties blended with the pharmacist-patient relationship, which included a relaxed approach to prescribing the Complainant’s medication. In this inquiry, the Custodian observed that the Complainant would request medication refills during casual encounters in the workplace and described such requests as occurring “without adherence to the formal process that a regular patient would.” For her part, the Complainant stated before the Hearing Tribunal that the Custodian regularly refilled her prescriptions without her request for a refill. The Complainant further confirmed before the Hearing Tribunal that she had a bag of unused medication that she did not need.

[para 56] Given the above, it is perhaps unsurprising that the Custodian felt comfortable both interpreting what the Complainant wanted, and, acting on his interpretation, assuming that she wanted all medications refilled without seeking clarity from her, or mentioning that he would or may access the results as part of refilling those prescriptions.

[para 57] Whether the Custodian interpreted and assumed which prescriptions to refill only on this one occasion, or repeatedly over this time as the Complainant’s pharmacist, does not matter when considering whether the Custodian viewed the results as part of providing a health service. In order to comply with section 27(1)(a), he must have been providing a health service on this occasion.

[para 58] Similar to how disclosing the results when the Complainant did not want them is not a health service, refilling the prescriptions if the Complainant did not seek to have them refilled is not a health service. It is simply a pharmacist acting unilaterally and as such would not be a health service “provided to” an individual; this is so even if a custodian assumes that a health service is requested or will be requested. This point was discussed in Order H2014-02; upheld on judicial review in *Alberta Health Services v Information and Privacy Commissioner of Alberta*, 2018 ABQB 467.

[para 59] Order H2014-02 concerned a complainant who had been undergoing physiotherapy and then decided to stop. The complainant informed the physiotherapy clinic of his decision and never requested further treatment. Despite the complainant’s decision to stop therapy, the custodian continued to access the complainant’s health information through Netcare after the complainant’s last treatment. The adjudicator concluded that the Custodian had accessed the complainant’s health information on the basis of an assumption, or in anticipation, that the complainant would request further therapy sessions (Order H2014-02 at para. 33). The adjudicator stated at paras. 38 and 39,

A health service cannot be provided in the absence of the agreement of the patient or someone who acts on behalf of the patient. If an individual has requested that a health service provider provide him or her with health services, or has requested a health service provider’s advice regarding a health service that could be given, or someone else with authority to do so on that person’s behalf has requested such a service, then the terms of the provision are met that there is a purpose of providing a health service. Under these

circumstances, section 27(1)(a) would authorize the use of health information for the purpose of providing that health service.

However, in a case where an individual or someone authorized on their behalf has not requested or otherwise agreed to the individual's receiving a health service or obtaining advice about a health service from the health service provider, there is no health service that is to be provided. The provision neither states, nor, in my view, does it contemplate, use of health information both for the purpose of providing a health service, as well as for possibly providing a health service should the need arise. Even if one were to limit the idea to a reasonably anticipated need, the latter interpretation would unreasonably strain the language chosen by the legislators.

[para 60] More recently, in Order H2024-03, the adjudicator considered a situation where a caller<sup>4</sup> had navigated an automated answering system until reaching a booking agent at Canadian Diagnostic Centres (CDC). The booking agent proceeded to view the complainant's health information on Netcare. The booking agent reviewed the complainant's patient demographic information in order to confirm the identity of the person making the call. The booking agent went further and reviewed diagnostic imaging results as well in order to ensure that should the complainant access the clinic's services, a radiologist would be able to access relevant diagnostic images. The Adjudicator noted, however, that the caller never booked an appointment. The Adjudicator considered whether viewing the diagnostic images was for the purposes of providing a health service under those circumstances; she concluded at para. 46,

In order for section 27(1)(a) to authorize the use of health information, the health service must be one that is provided or is to be provided. It may be argued that by proceeding to the booking agent in the manner the caller did (i.e. by choosing the options they did, to proceed to the booking agent), a request for breast imaging was reasonably contemplated. However, I disagree that merely contacting a booking agent is sufficient to meet the requirements of section 27(1)(a). As stated by the adjudicator in H2014-02, and confirmed by the Court in *Alberta Health Services*, the patient, or a person authorized to act on behalf of the patient, must agree to the health service.

[para 61] Regarding the fact that the caller had navigated the automated answering service and selected a choice to speak to a booking agent, the adjudicator stated at paras. 47 to 48,

A caller may contact the CDC and proceed through to a booking agent for reasons other than making an appointment at that time. For example, perhaps the caller was contacting multiple service providers to find the earliest appointment date, or to inquire about the possibility of booking several services together. It may be that the caller wanted other information they believed a booking agent could provide, and did not specifically intend to book a service at that time.

In such situations, a health service is not contemplated within the terms discussed in Order H2014-02 and *Alberta Health Services*, such that section 27(1)(a) is engaged.

[para 62] While the circumstances in this case are more ambiguous, and more interpersonal than in either Order H2014-02 or Order H2024-03, I find that the reasoning in those cases applies in this case regarding the refill of Medication B. The underlying problem is the same: in

each of these cases a custodian made an assumption about what, if any, health service an individual was actually seeking. In each case, the result was that the custodian accessed and viewed health information on Netcare for a health service that had not clearly been requested (or possibly had not been requested at all), and thus used information that was not for that purpose. The same reasoning applies in respect of the Custodian viewing the results in order to refill Medication B.

[para 63] In view of the preceding, it makes no matter that the Complainant's narrative regarding whether she requested a refill of Medication A has changed. In his own submission in this inquiry, the Custodian states that he interpreted what the Complainant wanted, and assumed, incorrectly, that she wanted a refill of Medication B. The Complainant's changing narrative is irrelevant to the Custodian's clear statement that he interpreted her "directive." As in Order H2023-08, the burden was on the Custodian to establish that he was providing a health service to the Complainant when he accessed the results, and he has not done so. (Order H2023-08 at paras. 43 – 44.) Even if the Complainant had requested Medication A, it is clear that the Custodian would still have had to interpret what the Complainant wanted in order to reach his own conclusion that she wanted him to refill Medication B as well.

[para 64] For the reasons given above, I find that the Custodian contravened section 25 of the HIA when he accessed the results. There was no request for the health service that the Custodian states required him to look at the results, and therefore no health service provided to the Complainant as required under section 27(1)(a), and no authority under section 56.5(1)(b). The Custodian does not argue that accessing the results was permitted under any other section of the HIA, and I do not see that any other would apply.

[para 65] In closing on this issue, I think it useful to remark on the dynamic between the Complainant and the Custodian and how the HIA applies to such situations. Other Orders of this Office have remarked upon how accessing health information in the context of relationships outside of strict custodian-patient interactions can lead to violations of the HIA (See, for example, Order H2023-09). As a matter between colleagues at work, the sort of misunderstanding which took place in this case, where one presumes a meaning the other did not intend, might often be of little consequence, or perhaps regarded as a reasonable misunderstanding between individuals. However, the HIA does not prescribe any point at which a custodian and a patient become familiar enough with each other that its restrictions on collection, use, and disclosure of health information relax or no longer apply. Specific to section 27(1)(a), a custodian accessing Netcare to view health information should be sure that a health service that requires using health information this way has been requested.

[para 66] I also note that I make no finding about whether as a matter of a pharmacist's practice it was actually necessary for the Custodian to review the results. In the circumstances of this case, viewing the results ran afoul of the HIA for the very reason that the health service (refilling prescriptions) that would be the foundation for the exercise of the Custodian's practice as a pharmacist was incorrectly assumed by the Custodian in the first place.

**A. Did the Custodian (or Affiliate) collect the Complainant's health information in contravention of Part 3 of the HIA?**

[para 67] Part 3 of the HIA regulates collection of health information by custodians. "Collect" is defined in section 1(1)(d) of the HIA:

*(d) "collect" means to gather, acquire, receive or obtain health information;*

[para 68] At the time of the events in question, section 56.5(2) of the HIA stated that accessing information on Netcare pursuant to section 56.5(1) (at para. 39 above) does not constitute collection:

*(2) For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute collection of that information under this Act.<sup>5</sup>*

[para 69] In view of the above, the collection with which this inquiry is concerned is the Custodian's acquisition and retention of knowledge of the Complainant's test results, not any use of the information, or the bare fact that he accessed the results on Netcare. As described throughout this order, the Custodian first accessed the results in process of refilling the Complainant's prescriptions and then retained that information to bring it up again during a meeting later on.

[para 70] The custodian argues that collection was permitted for the purpose in section 27(1)(a): to provide a health service. Section 20(b) of the HIA allows for collection for that purpose:

*20 A custodian may collect individually identifying health information*

*(b) if that information relates directly to and is necessary to enable the custodian to carry out a purpose that is authorized under section 27.*

[para 71] My findings regarding section 27(1)(a) and the Custodian's purpose for accessing the Complainant's information on Netcare from Issue B, above, apply here as well. I find that there was no health service provided to the Complainant. Thus, collection was not for the purpose of providing a health service.

**C. Did the Custodian (or Affiliate) disclose the Complainant's health information in contravention of Part 5 of the HIA?**

[para 72] This issue engages two considerations: Whether the Custodian made the disclosures alleged, and whether what was disclosed is the Complainant's health information under the HIA. I address whether disclosure occurred first.

*Did the Custodian make the disclosures alleged?*

[para 73] There are factual disputes about whether the results were disclosed to the Colleague when the Custodian displayed them to the Complainant using his computer, and

whether the Custodian verbally disclosed the results, or parts of them, to the Colleague. For the reasons that follow, I conclude that the Colleague did not see the results on the Custodian's computer and that the evidence does not establish that he disclosed the Complainant's health information to the Colleague when the Complainant was out of the room. I find that the Custodian did verbally disclose the Complainant's health information in front of the Colleague while the Complainant was present in the room.

*Did the Colleague see the results?*

[para 74] This issue is one that the Colleague would be in the best position to address. While the Colleague did not participate in this inquiry, she was a witness before the Hearing Tribunal. The Hearing Tribunal's decision contains a detailed description of the Colleague's testimony; the Hearing Tribunal noted that, according to the Colleague's testimony, "at no point did she see the computer screen."

[para 75] The Custodian's submission in this inquiry describes the seating arrangement of the parties and the Colleague when he displayed the results on a computer screen. The Custodian states that the Colleague was seated across from him and could not see the results.

[para 76] Considering all of the above, the Colleague's statements in particular, I reach the same conclusion as the Hearing Tribunal: the Custodian did not disclose the results to the Colleague by displaying them on the computer screen.

*Did the Custodian verbally disclose the Complainant's health information to the Colleague in the absence of the Complainant?*

[para 77] I first address the allegation that the Custodian disclosed the Complainant's health information to the Colleague when the Complainant was out of the room prior to the meeting. I find that the evidence does not establish what, if anything, was said by the Custodian while the Complainant was out of the room.

[para 78] The Complainant's evidence regarding this allegation rests upon what the Colleague told her about what the Custodian allegedly said. The Complainant did not witness any statement by the Custodian, and no statement from the Colleague was provided to me in this inquiry. While the Colleague stated before the Hearing Tribunal that the Custodian made the alleged comments, that comment is hearsay and while consistent with the Complainant's version of events, does not amount to much more than evidence that the Colleague said to the Complainant what the Complainant alleges she said.

[para 79] In contrast, the Custodian, as the one who allegedly made the disclosure, has first-hand knowledge of the situation and disputes the Complainant's allegations.

[para 80] The evidence suggesting that the Custodian made the alleged disclosure is minimal, ultimately resting on reported statements by the Complainant and the Hearing Tribunal. In view of the limited evidence regarding this allegation, I cannot find that it is more probable than not that the Custodian made the disclosure alleged by the Complainant.

*Did the Custodian verbally disclose the Complainant's health information to the Colleague in the presence of the Complainant?*

[para 81] I now consider whether the Custodian disclosed the Complainant's health information to the Colleague when the Complainant was present. A key distinction between this alleged disclosure and the one discussed above is that the Complainant was in the presence of the Custodian and the Colleague at the time when disclosure allegedly took place and was able to witness what the Custodian said first-hand.

[para 82] Much of my decision here examines the credibility of the parties regarding their submissions about what was said by the Custodian. The assessment of credibility will determine the outcome of this case. This situation is of the sort described in *FH v McDougall*, [2008] 3 SCR 41 at para. 86:

However, in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case...

[para 83] The circumstances in which the statements attributed to the Custodian are made are helpful in considering credibility, as is the evidence of what the Colleague reported to the Hearing Tribunal; I discuss those first.

[para 84] There is no disagreement that the Custodian and Colleague were in the office awaiting the Complainant's return when she walked in to start the meeting.

[para 85] The Complainant, Colleague, and Custodian are consistent in their descriptions of the seating arrangements of them and the Colleague at the meeting.

[para 86] The Complainant described to the Hearing Tribunal the seating arrangements of herself, the Colleague, and the Custodian when the statement was allegedly made. The Custodian was seated behind a desk while the Colleague and the Complainant sat in two chairs in front of the desk.

[para 87] The Colleague described to the Hearing Tribunal the same seating arrangement between the three individuals as the Complainant.

[para 88] In his submissions in this inquiry, the Custodian gave a description of the seating arrangements during the meeting that is consistent with that of the Complainant and what was stated by the Colleague: that the Colleague was seated across from him when the Complainant returned to the meeting. The Custodian described the Complainant sitting down, but does not state where. Neither in this inquiry nor before the Hearing Tribunal did the Custodian contest the Complainant's or Colleague statements regarding the seating arrangements.

[para 89] There is no disagreement that when the parties were seated, the Custodian had a computer on the desk. The Custodian himself confirms in his submissions in this inquiry that the Complainant's results were on the screen. There is no disagreement that he turned the computer screen to the Complainant so she could see the results.

[para 90] Despite the Complainant's earlier statements to the Custodian that she did not want to know the results and wanted to be with her doctor when she received them, the Custodian believed that she did not want to "hear bad news." In his submission in this inquiry, the Custodian states that he turned the computer screen toward the Complainant, "...to show her that the results [name of medical exam] were normal."

[para 91] As reported by the Hearing Tribunal, the Colleague testified that the Custodian stated with regard to the results he had looked up on his computer that "they're good, they're good", following which the Complainant sat down, and the Custodian turned the computer screen to the Complainant.

[para 92] In its findings, the Hearing Tribunal recorded that both the Complainant and the Colleague indicated that the Custodian stated out loud that the Complainant's results were fine.

[para 93] I now turn to the Complainant's and Custodian's statements in this inquiry regarding what the Complainant alleges the Custodian said in front of the Colleague.

[para 94] In her complaint, the Complainant writes that the Custodian said that the results were good, and that looking at the results was fine, because they were good. The Complainant further describes that the Custodian then turned the computer toward her and read parts of the results out loud, although she does not specify what part. In her submission in this inquiry, the Complainant describes that the Custodian stated the results "were good." Before the Hearing Tribunal, the Complainant stated that the Custodian said her lab test results "were fine." What, if anything, the Custodian read out loud is separate from the alleged disclosure, that the results were good or fine. The former, being unspecified, is not an issue in this inquiry.

[para 95] In his submissions in this inquiry, the Custodian submits that "he did not disclose the Complainant's health information to the Colleague verbally or otherwise" and that he silently turned the laptop toward the Complainant, to show her that the results were normal. The Custodian made a similar denial to the Hearing Tribunal, adding a specific reference to "Netcare results." As reported on p. 25 of the Hearing Tribunal decision, "Mr. Abuel Shouhoud testified that he did not discuss or read anything out loud regarding the Complainant's health information or Netcare results when [the Colleague] was present in the office."

### *Considering Credibility*

[para 96] I do not consider the lengthier submissions on credibility summarized in the decision of the Hearing Tribunal on which it made no findings. The parties have neither adopted them nor reiterated them in their submissions in this inquiry. Rather, I consider credibility on the basis of the evidence and arguments presented before me in this proceeding.

[para 97] The relevant considerations for credibility were stated in *Faryna v. Chorny* [1952] 2 D.L.R.354 at 357, and more recently summarized in *Tsang v. Mok*, 2020 ABQB 17 at para. 25:

In assessing credibility and reliability, the whole tapestry of the evidence is considered, both in scope and nature. The Court may accept all, some or none of a witness's evidence: *R v J.H.S.*, [2008] 2 SCR 152, 2008 SCC 30, Binnie J at para 10. The inquiry includes an evaluation of the story's "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354, at 357 (BCCA). Evidence is assessed using several factors including internal consistency, consistency over time, compatibility and incompatibility with other evidence, corroboration, plausibility, quality of memory, admissions against interest, evasiveness, exaggeration, bias, motivation, and demeanour.

[para 98] I do not consider demeanour since submissions were accepted in writing in this inquiry.

[para 99] Given the descriptions of the seating arrangements, there is no doubt that the Colleague and Complainant were in position to hear what the Custodian said at the time when he is alleged to have disclosed the Complainant's health information. Further there is no evidence before me that either of them had any memory impairment or condition that would prevent either of them from being able to recall what was said. The same is true for the Custodian.

[para 100] In this inquiry, the Custodian did not argue that the Complainant made any statements that amount to exaggeration or that the Complainant was biased.

[para 101] In this inquiry, the Complainant argued that the Custodian was motivated to fabricate a reason for accessing the results on Netcare in order to conceal his real reason for doing so, which the Complainant posits was to satisfy his own curiosity about the results. The suggestion is little more than conjecture, and I do not find that any ulterior motive on the part of the Custodian has been established.

[para 102] The Custodian made one argument in this inquiry that attacks the Complainant's credibility. As mentioned earlier, he notes that the Complainant's statements regarding whether she requested a refill of Medication A have varied. I do not find that the change in the Complainant's statements regarding whether or what prescriptions she requested the Custodian refill affect the credibility of her statements regarding what the Custodian said in front of the Colleague.

[para 103] While the Complainant's version of the events leading the Custodian to refill her prescriptions has changed, her statements regarding what was said by the Custodian in front of the Colleague have been consistent throughout. She has maintained that he stated "it's fine, the results are good" or that the results are good or fine. The Hearing Tribunal reports that she stated that the Custodian stated that her results were fine. The statement is also consistent with what she wrote in an internal complaint email made to Shoppers Drug Mart. I have no reasons to doubt the credibility of the Complainant's statements on what was said.

[para 104] I consider that the Hearing Tribunal reports that the Colleague stated both that the Custodian stated the results are good, and that the results are fine. Those statements are

consistent with what the Complainant alleges is the case here and are in direct opposition to what the Custodian argues is the case.

[para 105] The Custodian denies the Complainant's allegations. Here I consider not only his denial made in this inquiry, but also the fuller denial reported in the Hearing Tribunal decision, (which I may rely on because it tends to support his case rather than establishing his liability, hence such reliance does not amount to a contravention of section 76(2) of the HPA).

[para 106] In his inquiry submissions, the Custodian's denial specifically states that he, "...did not disclose the Complainant's health information verbally or otherwise." Before the Hearing Tribunal, he stated that: "...he did not disclose or read anything out loud regarding the Complainant's health information or Netcare results when [the Colleague] was present in the office."

[para 107] The Custodian's denial in his inquiry submissions might be understood as premised on the legal conclusion that the information allegedly disclosed is not "health information" within the terms of the HIA. That is, it might conceivably be taken not as a denial that he disclosed information about the outcome of a medical test, but only a statement based on the view that his disclosure did not amount to a disclosure of "health information" under the HIA. Whether this is so is a question for me, rather than the Custodian, to answer in this inquiry.

[para 108] Regardless, before the Hearing Tribunal, the Custodian also denied discussing or reading anything out loud about the Netcare results. The latter is a denial of the facts alleged, rather than an assertion of a legal conclusion.

[para 109] I also consider the Custodian's statement in this inquiry that he silently turned the computer toward the Complainant. In this context, the statement about the Custodian turning the computer "silently" does not speak to anything else that may have been said by the Custodian during the period in question. That statement accounts only for what the Custodian said while turning the computer, and not the whole of the time during which the alleged disclosure was made.

[para 110] In this inquiry, the Custodian also states that upon seeing the screen, the Complainant asked him why he accessed her Netcare, and that he did not want to discuss the Complainant's results in front of the Colleague, but rather intended to speak to her in private at the conclusion of the meeting. The Custodian did not state what, if anything, he actually said to the Complainant in response to her question about why he accessed her Netcare, including whether he said to her that he would speak to her in private. It seems he did not have the chance for any meeting since the Complainant left immediately after it ended.

[para 111] Ultimately, when the statements of the Complainant and the Custodian are considered along with the other evidence in this case, the preponderance of the evidence leads to the conclusion that, on the balance of probability, the Custodian made the statements alleged by the Complainant, in front of the Colleague.

[para 112] Based upon statements from the Complainant, Custodian, and those of the Colleague reported in the Hearing Tribunal decision, disclosure was alleged to have been made during the time when the Complainant entered the office and sat down, and the Custodian

turned the computer. There was time during this brief period for a short statement such as, “The results are good” to be made even if the time spent turning the computer was silent.

[para 113] During that time, the scene was set for such a disclosure to occur. The Custodian was aware that the Complainant had been for testing and that the results were available. At the outset of the discussion regarding prescription refills, which took place earlier that day, he had already offered in conversation to check the results for the Complainant. During the meeting, the three individuals were together where all of them could hear what the Custodian was saying. The results were on the computer screen, and the Custodian, believing the Complainant did not want to see the results only because they might be bad, had a mind to share the normal results with her. It is clear that he did so by turning the computer toward her, which indicates that despite his stated intention to discuss the results with the Complainant after the meeting, he had no mind to wait until a later time and wished her to know results during the meeting,

[para 114] In that context, the Complainant states she heard the disclosure, either that the results were fine or that the results were good. The Hearing Tribunal reports that the Colleague testified to the same, stating that the Custodian stated of the results “They’re good, they’re good” or that they were fine. There is no ulterior motive for the Complainant or the Colleague to fabricate such a story.

[para 115] In the face of the above evidence, it is more than plausible that the Complainant made the disclosure as alleged. The only directly contrary piece of evidence is the Custodian’s denial. His statement that he intended to speak to the Complainant in private does not address the subject of what he said during the meeting. Even accepting that was his intention, the balance of the evidence indicates he made the statement in front of the Colleague despite his better intention. Taking all of the evidence together, I find the Complainant’s version of events to be credible, and, beyond plausible, probable.

*Was the information the Custodian disclosed the Complainant’s health information?*

[para 116] “Health information” is defined in section 1(1)(k)(i) of the HIA to include “diagnostic, treatment and care information” which is defined to include information about the physical and mental health of an individual in section 1(1)(i)(i) and information about a health service provided to an individual in section 1(1)(i)(ii). “Health service” is defined in section 1(1)(m) and includes the following at sections 1(1)(m)(i) and 1(1)(m)(iii):

*(m) “health service” means a service that is provided to an individual for any of the following purposes:*

*(i) protecting, promoting or maintaining physical and mental health;*

...

*(iii) diagnosing and treating illness;*

...

[para 117] Notably, the definitions of “health information” and “health services” are broad enough to encompass a phrase such as “the results are good” without further specifics. For the purposes of disclosing health information, whether the Custodian disclosed “the results are good” or “the results are fine” or both is immaterial. Either wording conveys essentially the same information.

[para 118] When considered in the context in the information was uttered in this case – by a pharmacist with Netcare access - the phrase indicates that there are medical results and hence a medical test of some kind, and that the results of that test are good. That information is both about a health service (the examination) and about an individual’s physical or mental health (the results), both of which are specified categories of health information per sections 1(1)(i)(i), 1(1)(m)(i), and 1(1)(m)(iii) of the HIA. That the Custodian turned the monitor so she could see it at or near the same time as he made the comment revealed that the phrase was about the Complainant’s in particular, meaning it was her individually identifying health information. That the Colleague stated to the Hearing Tribunal that she did not know which test was referred to until later makes no difference. The statement as alleged is health information regardless of whether the Colleague ever knew which test, specifically, was referred to.

[para 119] I find that the information that I have found the Custodian disclosed to the Colleague was the Complainant’s health information.

*Was the verbal disclosure permitted under the HIA?*

[para 120] The Custodian has offered no argument that disclosure would be authorized under the HIA. Upon reviewing the disclosure provisions of the HIA, I do not see that disclosure would be authorized in this case.

**D. Did the Custodian fail to safeguard health information in contravention of section 60 of the HIA (Duty to Protect)?**

[para 121] Section 60 of the HIA states,

*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,*

*(b) protect the confidentiality of health information that is to be stored or used in a jurisdiction outside Alberta or that is to be disclosed by the custodian to a person in a jurisdiction outside Alberta and the privacy of the individuals who are the subjects of that information,*

*(c) protect against any reasonably anticipated*

*(i) threat or hazard to the security or integrity of the health information or of loss of the health information, or*

*(ii) unauthorized use, disclosure or modification of the health information or unauthorized access to the health information,*

*and*

*(d) otherwise ensure compliance with this Act by the custodian and its affiliates.*

*(2) The safeguards to be maintained under subsection (1) must include appropriate measures*

*(a) for the security and confidentiality of records, which measures must address the risks associated with electronic health records, and*

*(b) for the proper disposal of records to prevent any reasonably anticipated unauthorized use or disclosure of the health information or unauthorized access to the health information following its disposal.*

*(3) In subsection (2)(a), “electronic health records” means records of health information in electronic form.*

[para 122] The Custodian’s submissions on this issue are brief, consisting of an assertion that he took reasonable measures to protect the Complainant’s health information. He also states that he has not had the chance to discuss what he describes as “any misunderstanding whether the Complainant did not want the Respondent to access her Netcare profile contrary to her instructions to have her prescriptions refilled...”

[para 123] The latter point raised by the Custodian is irrelevant to determining whether he had taken reasonable steps to safeguard the Complainant’s health information. Whether there was a misunderstanding or not, or whether it could be explained, does not relieve the requirement under section 60 of the HIA to have the proper safeguards in place.

[para 124] The Custodian does not reference any administrative, technical and physical safeguards that he may have had in place. The facts of the matter further suggest that there is a lack of physical and administrative safeguards, at a minimum. While the Colleague did not see the screen containing the results, the Custodian had the results on the screen in the presence of the Colleague, rather than in a private setting where only he and the Complainant could see them. The results were “out in the open” in this regard. Neither did the Custodian speak about the results in a place where what was said would remain private. The Complainant’s health information was secured neither visually nor audibly, when it should have remained private.

[para 125] The same circumstances also indicate the lack of an administrative safeguard that would restrict the Custodian from accessing Netcare in the presence of those to whom health information cannot be disclosed, or to refrain from announcing information on Netcare in the presence of those to whom health information cannot be disclosed.

[para 126] I find that the Custodian has not demonstrated that he complied with section 60 of the HIA.

### *Scope of Order*

[para 127] The Custodian's argues that the Hearing Tribunal imposed fines upon him, and required him to pay a portion of the costs associated with investigating and hearing the complaint made to the Alberta College of Pharmacy, and that no further monetary penalty should be made. This argument appears in response to the Complainant argued that the Custodian may be fined up to \$200,000.00 under section 107(2)(a) of the HIA for knowingly collecting, using, or disclosing health information in contravention of the HIA.

[para 128] Section 107(2)(a) is an offence provision of the HIA, which I do not have authority to consider in this inquiry. My order powers in this inquiry are limited to providing such remedies that are listed in section 80(3), and do not include the authority to issue fines or find that an offence has been committed. Accordingly, I do not consider any possible fine or whether the sanctions have rendered them redundant.

[para 129] I also note that the Hearing Tribunal has sanctioned the Custodian and therefore consider whether any further order in respect of him under the HIA is redundant or punitive. I find an order would not be. The Hearing Tribunal specifically sanctioned the Custodian for improperly disclosing the Complainant's health information to the Complainant and in an unprofessional manner. My order is in respect of different findings than those for which the Custodian has been sanctioned. I have concluded that the Custodian improperly accessed the results on Netcare, improperly disclosed the Complainant's health information to the Colleague, and has not complied with section 60 of the HIA. No order or remedy for those contraventions of the HIA was made by the Hearing Tribunal, and so an order here in respect of them is neither redundant nor punitive.

### **V. ORDER**

[para 130] I make this Order under section 80 of the HIA.

[para 131] I order the Custodian to cease using and disclosing the Complainant's health information in contravention of the HIA.

[para 132] I order the Custodian to implement safeguards as required under section 60 of the HIA.

[para 133] I order the Custodian to confirm to me and to the Complainant in writing that he complied with this Order within 50 days of receiving a copy of it.

[para 134] As part of the confirmation ordered above, I order the Custodian to provide to me and the Complainant documentation of the safeguards put in place as required by section 60 of the HIA.

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John Gabriele  
Adjudicator

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<sup>1</sup> The Notice of Inquiry inadvertently used the term “Applicant” instead of “Complainant” for issues A, B, and C. The wording has been corrected here.

<sup>2</sup> I note that the pharmacy at the drug store where the parties work is also a custodian under the HIA pursuant to section 1(1)(f)(x). However, the Complainant clarified that the complaint was made in respect of the Custodian.

<sup>3</sup> Amendments to section 56.5 of the HIA made in the *Health Statutes Amendment Act, 2020* (No. 2), SA 2020, c 35 have since come into force.

<sup>4</sup> In Order H2024-03 there was a factual dispute as to whether the person who complained about access to their health information was in fact the person who called the custodian’s clinic. That aspect of Order H2024-03 is not germane to my discussion here. The portions of Order H2024-03 I refer to, relate to the question of whether an unrequested health service may be considered a health service provided to an individual under section 27(1) of the HIA, irrespective of whether the caller was the same person as the complainant.

<sup>5</sup> Amendments to section 56.5(2) of the HIA made in the *Health Statutes Amendment Act, 2020* (No. 2), SA 2020, c 35 have since come into force and it no longer reads the same.