



Office of the Information and  
Privacy Commissioner of Alberta

# Investigation Report 2013-IR-02

*Investigation into the unauthorized use of  
health information for personal reasons*

**December 5, 2013**

Amani Pharmacy Ltd

*Investigation H4998*

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## Introduction

- [1] On August 10, 2012 the Information and Privacy Commissioner received a complaint that a pharmacist working at Amani Pharmacy Ltd. (i.e. “the pharmacy” or “the custodian”), the licensed provider at Shoppers Drug Mart #2326, had collected, used or disclosed health information in contravention of the *Health Information Act* (HIA). The complainant said that a pharmacist working at this location had provided health services to her and then contacted her on three separate occasions for a purpose not related to the health services provided. The complainant alleged that the pharmacist contacted her twice by phone and attempted to establish a relationship with her on Facebook, a social networking site. The complainant also lodged a complaint with the pharmacist’s professional regulatory body, the Alberta College of Pharmacists.
- [2] The Commissioner decided to open an investigation under section 85(e) of the HIA. This provision allows the Commissioner to investigate and attempt to resolve a complaint that health information has been collected, used, disclosed or created by a custodian in contravention of this Act.
- [3] This report outlines my findings and recommendations.

## Background

- [4] Shoppers Drug Mart #2326 is a retail drug store, but Shoppers Drug Mart Inc. does not operate the pharmacy located within. At the time of the complaint, this retail drug store hosted an independently owned and operated pharmacy pursuant to a licence agreement with Amani Pharmacy Ltd. Ms. Amani Chehade is a licensed pharmacist and the owner of Amani Pharmacy Ltd. Shoppers Drug Mart Inc. is not a custodian under the HIA. Amani Pharmacy Ltd. is the custodian and therefore the respondent in this investigation. This pharmacy and others licensed to operate under the Shoppers Drug Mart trade mark use the HealthWATCH pharmacy system to manage their patient medical records. In July 2011, Ms. Chehade hired a licensed pharmacist to provide relief pharmacy services on an as-needed basis at the Shoppers Drug Mart #2326 location. She states that this pharmacist was employed there on a strictly casual basis. Ms.

Cehade had an oral contract with the pharmacist to provide these services. He is no longer employed at the pharmacy.

- [5] The complainant attended the pharmacy on February 29, 2012 and again on July 27, 2012. She had a prescription filled by the relief pharmacist on both of these occasions. Her phone bill indicates that she received phone calls from the Shoppers Drug Mart location #2326 on February 29, 2012 and August 3, 2012. A screen shot of her Facebook account shows she also received a Facebook “friend request<sup>1</sup>” on August 3, 2012 from the relief pharmacist.

## Application of HIA

- [6] The *Health Information Act* (HIA) applies to “health information” in the custody or under the control of a “custodian”.
- [7] Health information is defined in section 1(1)(k) of the HIA as:  
*1(1)(k) “health information” means any or all of the following*  
*(i) diagnostic, treatment and care information;*  
*(ii) registration information*
- [8] Registration information is defined in section 1(1)(u) and includes demographic information, location information, residency information and telecommunications information. The pharmacist’s prescription records for filling the complainant’s prescription contained the complainant’s name, phone number and address. This information falls within this definition. Therefore, the complainant’s records at the pharmacy are “health information.”
- [9] Health information is generated through the provision of a “health service.”
- [10] The definition of “health service” in section (1)(1)(m) of the HIA includes (among other things) protecting, promoting or maintaining physical health, preventing illness and diagnosing and treating illness. Pharmacists provide a health service when they dispense medication.

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<sup>1</sup> A Facebook Friend request is a message sent from one user to another. If the receiving Facebook user accepts the request, the profiles become linked, allowing each other to see the others Facebook profile.

- [11] Section 1(1)(a)(i) and (ii) of the HIA defines “affiliate” as an individual employed by the custodian or person who performs a service for the custodian as an appointee, volunteer or student or under a contract or agency relationship with the custodian. The relief pharmacist was an affiliate of the custodian because Ms. Chehade paid him and he provided these services under a verbal contract with her.
- [12] Section 28 of the HIA states that an affiliate of a custodian must not use health information in any manner that is not in accordance with the affiliate’s duties to the custodian.
- [13] Section 60 of the HIA places a duty on custodians to take reasonable steps to maintain administrative, technical and physical safeguards that protect the confidentiality of health information and to protect against reasonably anticipated threats to security, integrity, and unauthorized use, disclosure or access to health information.

### **Pharmacists, Pharmacies and the HIA**

- [14] Both pharmacists and pharmacies are considered custodians under the HIA. Amani Pharmacy Ltd. falls under the definition of “custodian” as set out in section 1(1)(f)(x) of the HIA because it is a licensed pharmacy as defined in the *Pharmacy and Drug Act*. A pharmacist may also be a custodian under section 1(1)(f)(ix) of the HIA and 2(2)(a) of the *Health Information Regulation*. This raises the question of whether Ms. Chehade or Amani Pharmacy Ltd. is the responsible “custodian” in this matter. A pharmacy is the physical location in a store where pharmacy is practiced, but an individual must be responsible for the actions undertaken by staff at the pharmacy. Each pharmacy operates under a licensee, who must be a pharmacist. As the “licensee” of Amani Pharmacy Ltd under s. 10(2) of the *Pharmacy and Drug Act*, Ms. Chehade must manage, control and supervise the operation of the licensed pharmacy. As such, she is responsible for hiring staff to work at the pharmacy. Therefore, Amani Pharmacy Ltd. is the “custodian” in relation to the health information at issue, while the pharmacy licensee, Ms. Chehade, is responding to this matter because she is responsible for the operation of this pharmacy. The operation of the pharmacy includes the hiring and management of staff employed at the pharmacy. Shoppers Drug Mart Inc. is not a custodian under the HIA. Amani Pharmacy Ltd. is the custodian and therefore the respondent in this investigation.

## Issues

[15] As a custodian, Amani Pharmacy Ltd. has a duty under the HIA to take reasonable steps to protect health information under its custody and control from threats such as unauthorised access to health information. I therefore identified the following three issues in this investigation:

- a. Did the affiliate (the relief pharmacist) use health information in compliance with Part 4 of the HIA?
- b. Did the custodian use health information in compliance with Part 4 of the HIA?
- c. Did the custodian safeguard health information in compliance with section 60 of the HIA?

## Analysis and Findings

### ***Issue A: Did the affiliate (the relief pharmacist) use health information in compliance with Part 4 of the HIA?***

[16] In my investigation into this matter I reviewed the pharmacy's dispensing records as well as the complainant's phone bill. I also viewed a copy of a screen shot taken of the complainant's Facebook account showing the "friend" request the complainant received from the relief pharmacist. Finally, I communicated several times with Shoppers Drug Mart Inc. as well as Ms. Chehade, the pharmacy licensee, via letter and phone.

[17] My review of these materials has determined that the complainant's health information was accessed on February 29, 2012 and July 27, 2012 by the relief pharmacist for the purposes of dispensing a prescription. This is demonstrated by the HealthWATCH dispensing records provided to me by Shoppers Drug Mart Inc. This system logs activity performed on an individual's health records. In this case the complainant received prescriptions on both of these days.

[18] The phone bill provided to me by the complainant shows that she received a phone call from Shoppers Drug Mart #2326, one hour after she received her prescription on February 29, 2012 and again on August 3, 2012, one week after filling her second prescription. Shoppers Drug Mart

Inc. advised me that the phone number for this location is not restricted for use by the pharmacy, therefore I am unable to determine if the calls came from within the pharmacy or from the other areas within the retail drug store. However, the relief pharmacist was working on each of the above noted days, and during the time the initial prescription was filled. Ms. Chehade confirmed this in a letter. I also note that no transaction was logged in HealthWATCH on August 3, 2012. (I will discuss this in more detail in the latter part of this report.)

- [19] Ms. Chehade stated the relief pharmacist confirmed that he contacted the complainant via phone on February 29, 2012. She also states the relief pharmacist told her the purpose of the call was to verify prescription information. The complainant however alleges that there was no discussion about prescriptions and instead the relief pharmacist contacted her strictly for social purposes. I am unable to objectively verify the purpose of this call.
- [20] The complainant provided me with a screen shot of her Facebook account. It showed she received a “friend” request from the relief pharmacist on August 3, 2012, the same day as she states she received the second call from the relief pharmacist. The complainant indicated that she did not accept this request and that she felt it was inappropriate given their pharmacist - patient relationship.
- [21] Ms. Chehade confirmed that “friending” patients on social networking sites was not in accordance with the relief pharmacist’s duties. Further to this, she states that Amani Pharmacy Ltd. has no policies or procedures that permit “friending” patients on social networking sites.
- [22] The complainant’s phone bill shows she received a call from the retail drug store the same day as the friend request, August 3, 2012. The complainant did not answer this call. Even though he was on shift that day (as noted above) Ms. Chehade claims the relief pharmacist was not in the retail drug store at the time of this call. Further, there was no transaction related to the complainant logged in HealthWATCH on that day. Despite the coincidental timing of the friend request and the second call, there is no evidence to directly link the relief pharmacist to the call.
- [23] While I was not able to verify the purpose of the two phone calls the complainant received, the fact remains that the relief pharmacist sent a “friend” request to the complainant, contrary to his duties at the pharmacy. The relief pharmacist and the complainant had no prior relationship,

so he did not know her name before she visited the pharmacy. The HealthWATCH logs clearly show the relief pharmacist had access to the complainant's contact information through his employment at the pharmacy. On the balance of probabilities, I conclude the relief pharmacist used the complainant's health information to find her in Facebook and send her the "friend" request. Therefore, I find that the relief pharmacist (the affiliate) contravened section 28 of the HIA when he used health information in a manner not in accordance with his duties to the custodian.

***Issue B: Did the custodian use the Complainant's health information in compliance with section 25 of the HIA?***

[24] Section 25 of the HIA states that no custodian shall use health information except in accordance with this Act. Acceptable uses of health information are listed in section 27 of the HIA. If a custodian or its affiliate uses health information for a reason not listed under section 27 of the HIA, this contravenes section 25 of the HIA. The custodian has stated that using health information to contact a patient via a social networking web site is not an acceptable use of health information by an affiliate.

[24] A custodian is responsible for any use of health information by its affiliates under section 62(2) of the HIA. Consequently the custodian is ultimately responsible for this misuse of health information. Therefore Amani Pharmacy Ltd. contravened section 25 of the HIA.

***Issue C: Did the custodian safeguard health information in compliance with section 60 of the HIA?***

[25] Section 60(1)(c)(ii) of the HIA states:  
*A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will protect against any reasonably anticipated unauthorized use, disclosure or modification of the health information or unauthorized access to the health information*

[26] Section 8(6) of the *Health Information Regulation* further requires that a custodian ensure that its affiliates are aware of and adhere to all of the custodian's administrative, technical and physical safeguards.



[27] My investigation relates to the actions of an employee who was authorized to be in the pharmacy. Physical safeguards would not have prevented this incident; as a result I will focus only on administrative and technical safeguards.

### **Administrative Safeguards**

[28] Ms. Chehade and Shoppers Drug Mart Inc. each confirmed that the relief pharmacist was employed by Amani Pharmacy Ltd to provide health services without a written contract. Shoppers Drug Mart Inc. does have privacy policies and privacy training for its licensed operators of retail drug stores like Amani Pharmacy Ltd. These policies were provided to this office in a previous privacy impact assessment submission. The licensed operators of the retail drug stores are responsible for training their staff in privacy and security. Ms. Chehade however confirmed that the relief pharmacist was not provided with privacy or security training, asked to review the policies or sign a confidentiality agreement when he assumed this role. Therefore, the custodian failed to make its affiliate aware of its safeguards, as required by section 8(6) of the *Health Information Regulation*.

[29] The custodian missed three opportunities to inform the relief pharmacist of expectations and obligations with respect to patient privacy: the employment contract, through training, and in signing a confidentiality agreement. All three of these are reasonable safeguards that custodians in Alberta typically put in place to protect patient confidentiality regardless of the staff member's status as casual, part time or full time. I find that the custodian failed to implement reasonable administrative safeguards to protect confidentiality in relation to the relief pharmacist and therefore contravened section 60 of the HIA.

### **Technical Safeguards**

[30] Shoppers Drug Mart Inc. has implemented a system called HealthWATCH to manage health information in most of its licensed retail drug stores, including Amani Pharmacy Ltd. Electronic information systems such as HealthWATCH must be equipped with sufficient technical safeguards to reasonably protect the health information contained within them.

[31] I requested copies of audit logs from the HealthWATCH system used by Amani Pharmacy Ltd. The purpose of my request was to provide a technical account of each time the complainant's information was viewed or used by the relief pharmacist. Previous investigation reports H2009-IR-005 and H2009-IR-006 note the importance of audit logs to detect and deter those who are tempted to misuse their access privileges and in helping to ensure users are individually accountable for their actions.

[32] In response to my request for these logs, Shoppers Drug Mart Inc. described the following with respect to what activity the HealthWATCH system records:

*Each time a prescription is filled, the pharmacist scans the barcode on his/her security pass, which is then transmitted into the HealthWATCH system so that the initials of the dispensing pharmacist and the time of filling that prescription are automatically captured. At the time of the pickup of the prescription, the prescription label is also scanned so that the name of the pharmacist and time of pick up are also recorded.*

[33] This only provides information about when a transaction is performed on a patient's record. I confirmed with Shoppers Drug Mart Inc. that HealthWATCH does not record when a user simply views, or accesses, patient information without entering a transaction. The ability to log views is an important technical safeguard to protect health information because it allows the custodian to verify whether its affiliates are only viewing health information where essential to fulfill their duties. The custodian's duty to verify whether its affiliates are adhering to its safeguards is required by section 8(6) of the *Health Information Regulation*. Further to this, previous Investigation Reports H2009-IR-005 and H2009-IR-006 have established the ability to log viewing of health information as a reasonable safeguard for the protection of health information. I also note that section 6(1) of the *Alberta Electronic Health Record Regulation* requires systems to have this audit capability prior to connecting to Alberta's Electronic Health Record (commonly known as Netcare). The HealthWATCH system does not have this capability now but it will be required before their system can be connected to Netcare in the coming years. Shoppers Drug Mart has recognized this deficiency and is committed to implementing this requirement. As a result I will make a recommendation to Shoppers Drug Mart in this regard.

## Recommendations

- [34] I recommend that Amani Pharmacy Ltd. through Ms. Chehade, review and follow Shoppers Drug Mart Inc. policies and training requirements for all contracted staff to ensure administrative safeguards are in place during this process. I am pleased to say that Ms. Chehade has accepted this recommendation.
- [35] I recommend that Shoppers Drug Mart review the information currently being logged by their HealthWATCH system and implement additional logging capability to include logging when a user views health information. Shoppers Drug Mart has agreed to provide the Commissioner with quarterly updates on their progress towards meeting this requirement.

## Conclusions

- [36] In conclusion, this investigation uncovered the misuse of health information by an employee with authorized access to that information. It further found a failure to implement certain administrative and technical safeguards to protect health information. Shoppers Drug Mart Inc. does provide its licensed operators of retail drug stores with privacy policies and training; however the relief pharmacist was not made aware of them by Ms. Chehade, thus rendering these controls ineffective. The HealthWATCH system does log transactions performed on patient files, but does not log viewing of the record. Custodians need to implement view logs in order to be able to verify the actions of their affiliates. If they cannot verify their affiliates' use of health information, they cannot assess the effectiveness of their safeguards, prove or disprove allegations against affiliates, or effectively administer discipline.
- [37] I would like to thank the complainant for bringing this matter to our attention. I would also like to thank Shoppers Drug Mart Inc. and Ms. Chehade for their cooperation with this investigation.

Rachel Hayward  
Portfolio Officer, Health Information Act