ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2002-003

March 19, 2003

ALBERTA PHARMACISTS AND PHARMACIES

File Number H0036

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Summary: The Commissioner initiated an investigation under section 84(a) of the *Health Information Act* ("HIA") of this issue: Does the HIA permit Alberta pharmacists and pharmacies to disclose health services provider information to IMS HEALTH, Canada ("IMS")? After a public hearing, the Commissioner found that Alberta pharmacists and pharmacies were disclosing to IMS up to 37 data elements that pertained to prescribing activity. The Commissioner found that: 1) prescribing falls within a "health service" under the HIA, where it is included in the professional advice provided to an individual for one of the purposes stipulated in section 1(1)(m)(i)(A)-(E) of the HIA during a visit, and the professional advice is paid for directly and fully by the Department (excluding the services set out under section 1(1)(m)(iii)-(v)) ; 2) a prescriber who is paid by the Department for a visit in which the prescriber gives professional advice, which includes prescribing, is providing a "health service" and is a "health services provider" for the purposes of the HIA (excluding the services set out under section 1(1)(m)(iii)-(v)); 3) the first and last name of such a health services provider is "health services provider information" under the HIA; 4) disclosure of the first and last name of the health services provider in the context of the 35 other data elements disclosed to IMS would reveal "other information" about the health services provider within the meaning of section 37(2)(a) of the HIA; 5) the disclosure of the provider's first and last name in the context of other 35 data elements is prohibited under the HIA, unless the consent of the health services provider is obtained prior to the disclosure as per section 34 of the HIA. The Commissioner ordered Alberta pharmacists and pharmacies not to disclose to IMS a health services provider's first and last name in the context of the 35 other data elements, unless that health services provider's consent was obtained as stipulated under the Act.

The Commissioner allowed Alberta pharmacists and pharmacies six months to fully comply with his Order.

Statutes Cited: Provincial: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25; *Government Organization Act*, R.S.A. 2000, c. G-10, s. 16*; Health Information Act*, R.S.A. 2000, c. H-5, sections 1(1)(f)(x)-(xi); 1(1)(h); 1(1)(k); 1(1)(l)(i); 1(1)(m); 1(1)(n);1(1)(o); 1(1)(p); 1(1)(q); 1(1)(r);2(a)(b)(c), 31; 32(1); 34; 35; 36; 37; 38; 39; 40; 41; 42; 43; 44; 45; 80(3)(e) and (f); 80(4); 84(a) and (b).

Statutes Cited: Federal: *Canadian Charter of Rights and Freedoms*, section 2(b); *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, s.2.

Cases Cited: *R. v. Sharpe*, [2001] 1 S.C.R. 45, *R. v. Plant*, [1993] 3 S.C.R. 281.

Case Summaries Cited: *PIPED Act Case Summary #14*, *PIPED Act Case Summary #15*.

I. BACKGROUND

[para. 1.] The *Health Information Act*, R.S.A. 2000, c. H-5 ("HIA" or "the Act") came into force in Alberta on April 25, 2001. The HIA governs the collection, use, disclosure, processing and protection of health information in Alberta's publicly funded health system. As a result of the proclamation of the HIA, many persons in the health sector, including pharmacists, pharmacies and physicians, became custodians obligated to handle health information as stipulated under the HIA.

[para. 2.] Before the Act came into force, some Alberta pharmacists and pharmacies had a practice of disclosing information about the prescribing and dispensing of prescriptions to IMS HEALTH, Canada Ltd. ("IMS"), which used the information to create information products. IMS describes itself as part of IMS HEALTH, the "world's principal provider of information, statistical research and analysis to the health sector in over one hundred countries" (IMS submission, para. 6).

[para. 3.] As Information and Privacy Commissioner, I have oversight of the HIA and have various powers and duties that I can exercise to ensure that the purposes of the Act are achieved. After lengthy and co-operative discussions between IMS and my Office about how the HIA might impact the continuing practice of disclosing information about prescribing activity in Alberta, I decided to conduct an investigation to determine whether this practice complies with the HIA. (IMS remedy submission, para. 27)

[para. 4.] Therefore, on January 22, 2002, a Notice of Investigation and Oral Public Hearing was issued under section 84(a) of the HIA (the "Notice"). The Notice was issued to the attention of all pharmacists, pharmacies and physicians in Alberta, including specifically pharmacists and pharmacies that had disclosed information relating to the prescribing and dispensing of prescriptions to IMS since April 25, 2001.

[para. 5.] The Notice was also issued to the attention of a number of representative organizations: the Alberta College of Pharmacists (the "College of Pharmacists"), the Pharmacists' Association of Alberta ("RxA"), the Canadian Association of Chain Drug Stores ("CACDS"), the National Association of Pharmacy Regulatory Authorities ("NAPRA"), the College of Physicians and Surgeons of Alberta (the "College of Physicians"), the Alberta Medical Association (the "AMA"), Alberta Health and Wellness, and IMS. The Notice also invited the participation of individual pharmacists, pharmacies and physicians, on specified terms.

[para. 6.] Because individual notice of the investigation to each pharmacist, pharmacy and physician in Alberta was impracticable, I directed substitute measures to ensure that the Notice, and information about the investigation, was as widely publicized as possible. My staff contacted the College of Pharmacists and RxA, which both offered their assistance in disseminating news of the investigation. On January 24, 2002, the College of Pharmacists and RxA posted a one-page summary of the Notice on the home page of their respective web sites, with a hyperlink to the home page of my Office's web site. RxA also indicated that it would do a fax blast of the summary of the Notice to its members.

[para. 7.] On January 29, 2002, my office posted a summary of the Notice, and the Notice itself, on the home page of my office's web site. On January 30, 2002, the Public Notice was published in the *Edmonton Journal*, the *Edmonton Sun*, the *Calgary Herald*, the *Calgary Sun*, the *Lethbridge Herald*, the *Medicine Hat News*, the *Red Deer Advocate*, the Grande Prairie *Daily Herald-Tribune*, and the *Fort McMurray Today*.

[para. 8.] The Consumers' Association of Canada (Alberta) (the "CAC") applied by letter to intervene in the investigation to put forward the consumer perspective. I granted the CAC intervenor standing. No individual pharmacist, pharmacy or physician applied to participate in the oral hearing.

[para. 9.] An oral public hearing was held in Edmonton on April 11 and 12, 2002. The College of Physicians and Surgeons filed a written submission, but did not attend the hearing. The hearing was attended by the College of Pharmacists, RxA, the AMA, IMS, and the CAC. Representatives of the CACDS had planned to attend, but could not. Subsequently, in consideration of the participants' requests to speak to remedy, I issued a letter notifying the participants about my decision and invited written submissions on remedy. After receiving final written submissions on remedy in the fall of 2002, the investigation was concluded.

II. THE ISSUE

[para. 10.] There is one issue in this investigation: Does the HIA permit Alberta pharmacists and pharmacies to disclose health services provider information to IMS?

[para. 11.] I have divided this issue into five sub-issues, each of which must be answered in the affirmative to proceed to the next sub-issue:

A. Does prescribing fall within a "health service" under the HIA?

B. Are any prescribers "health services providers" under the HIA?

C. Is any information disclosed by pharmacists and pharmacies to IMS "health services provider information" under the HIA?

D. Would the disclosure of the "health services provider information" reveal "other information" "about" the health services provider within the meaning of section 37(2)(a) of the HIA?

E. If the disclosure would reveal "other information", is the disclosure of the health services provider information permitted under the HIA?

III. THE FACTS

A. Questions submitted to the participants

[para. 12.] The Notice posed several questions intended to elicit information about the practice:

- What types of information have Alberta pharmacies and pharmacists disclosed to IMS since April 25, 2001? (Identify the data elements and the combinations of these data elements in the disclosures.)

- Which Alberta pharmacists or pharmacies have disclosed information to IMS since April 25, 2001? (If available, provide a total number or an estimate.)

- How have Alberta pharmacies and pharmacists disclosed this information to IMS? (Describe the process and the information that is bundled into each transaction.)

- How frequently (daily, weekly, monthly) have these disclosures occurred since April 25, 2001?

- How many Alberta physicians have had information pertaining to their prescribing activity disclosed to IMS since April 25, 2001?

- Have any of the Alberta pharmacists or pharmacies who have disclosed this information to IMS obtained the consent of the health services provider (physician) who is the subject of the information? If so, how has the consent been obtained, and in what form is the consent? What are its elements? (See section 34(2) of the HIA.)

- Has any information or documentation relating to health services provider consent been provided to IMS?

B. Submissions on the information disclosed to IMS

[para. 13.] Most of the hearing participants did not have independent knowledge of the practice. In their written submissions they relied upon anecdotal information, information posted on the IMS web site, or reports of findings issued by the Federal Privacy Commissioner pursuant to two complaints made under the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 ("PIPEDA" and the "PIPEDA complaints").

[para. 14.] The PIPEDA complaints related to IMS's gathering of information about prescribing activity. These findings are posted on the Federal Privacy Commissioner's web site as *PIPED Act Case Summary #14* (which deals with both complaints in a summary fashion) and *PIPED Act Case Summary #15* (which is a redacted letter of findings to one of the complainants). One of the PIPEDA complainants applied in November of 2001 to the Federal Court for review of the Federal Privacy Commissioner's determination of his complaint. This case is styled as *Maheu v. IMS Health Canada and the Privacy Commissioner of Canada*. As of the date of this Order, there is no final decision from the Federal Court.

[para. 15.] In addition to relying on the information contained in the PIPEDA complaints, the AMA submitted that "it appears that gender, specialty interests…[and] the physician's home address and telephone number may form part of the disclosure [by pharmacists and pharmacies to IMS]." (AMA Submission, para 42.) As well, relying on D. Zoutman et al, "A Call for the Regulation of Prescription Data Mining," *Canadian Medical Association Journal*, October 31, 2000, the AMA submitted:

> IMS currently collects prescription data from over 4000 Canadian retail pharmacy outlets relying on agreements with the head offices of pharmaceutical chains, as well as agreements with software suppliers who, in turn, have agreements with pharmacists who have installed their programs. (AMA submission, para. 6)

[para. 16.] In its written submission, CACDS indicated that "pharmacies disclose 37 elements of data to IMS Health regarding their dispensing practices…33 of the data elements…contain non-individually identifying information…" CACDS took the position that, because of the federal *Competition Act*, it could not provide the specific details of the prescription information disclosed by CACDS members to IMS.

[para. 17.] IMS identified 37 separate pieces of information (what I will call "the 37 data elements") that Alberta pharmacies and pharmacists disclose to IMS. IMS submitted that the definition of each of these 37 data fields is in accordance with CPhA Pharmacy Claim Standard, Version 03. IMS noted: "[n]ot all disclosures [of prescribing information by pharmacies and pharmacies] always contain all 37 data elements, but most do." (IMS submission, para. 31 and Tab 4) The 37 data elements that IMS indicated are disclosed to it are these:

1. Store Number	14. Prescriber ID	27. Patient Gender
2. Store Postal Code	15. Prescriber Last Name	28. Patient Year of Birth
3. Transaction Date	16. Prescriber First Name	29. Medical Reason Reference
4. Dispensed Din	17. Prescriber Postal Code	30. Medical Condition/Reason for Use
5. Drug Name	18. Payment Type	31. Intervention/Exception Codes
6. Drug Form	19. Plan Code	32. Co-Pay to Collect
7. Drug Strength	20. BIN	33. Deductible to Collect
8. Manufacturer	21. Carrier ID	34. Co-Insurance to Collect
9. Quantity	22. Group Number or Code	35. Plan Pays
10. Drug Cost/Product Value	23. Refill/repeat Authorizations	36. Sequential Counter
11. Selling Price	24. Days Supply	37. Prescription Number
12. New/Refill Code	25. Product Selection Indicator	
13. Prescriber ID Reference	26. Signa	

[para. 18.] IMS took the position that "the identity and number of pharmacists and pharmacies is not relevant to the issue to be determined in this Investigation, but IMS confirms that at least one pharmacy has disclosed the 37 data elements identified…to IMS since April 25, 2001." (IMS Submission, para. 32)

[para. 19.] This information was affirmed in the statutory declaration of Roger Korman, Ph.D., the President of IMS (the "Korman statutory declaration"), which was filed as an exhibit at the hearing. (Korman statutory declaration, paras. 4, 27, Tab 4)

[para. 20.] In his statutory declaration, Korman disputed elements of the findings of fact made by the Federal Privacy Commissioner in the PIPEDA complaints. First, Korman deposed that IMS did not collect a prescriber's telephone number from a pharmacy or pharmacist (Korman statutory declaration, para. 35). Second, Korman deposed that IMS did not collect the date of birth of a patient who received the prescription, only the patient's year of birth (Korman statutory declaration, para. 37). In support of his declaration, Korman appended a copy of a letter from Kie Delgaty of the Federal Privacy Commissioner's Office, dated October 18, 2001, to Gary Fabian, Vice-President, Corporate Relations and Development of IMS. In that letter, Delgaty wrote to Fabian:

> The letter of finding issued by the Privacy Commissioner indicates that IMS collects the date of birth of patients, but does not specify that this refers only to the year of birth. I mentioned when we spoke that this clarification has no material impact on the Commissioner's decision, and is not related to the issue raised in the complaint, namely, the collection and sale of physician prescribing information.

> If we receive further inquiries in this regard we will refer callers to IMS for a clarification of its information collection practices, and confirm our understanding of this issue. (Korman statutory declaration, Tab A)

[para. 21.] Korman deposed that pharmacists and pharmacies could disclose the 37 data elements to IMS by several means, including:

- a pharmacy downloads the data onto a diskette and mails or couriers it to IMS in Montreal;

- a pharmacy enters into an agreement with a pharmacy software vendor to extract the data, compile it from several sources, and send it to IMS in Montreal;

- the corporate head office of a pharmacy extracts the data from participating member pharmacies, compiles it, and sends it to IMS in Montreal, or to RxCanada in Toronto, which then sends it on to IMS in Montreal. (Korman statutory declaration, para. 28)

[para. 22.] Korman deposed: "IMS has no knowledge about whether any Alberta pharmacist or pharmacy has obtained consent from any prescriber to disclose the identity of the prescriber to IMS". (IMS submission, para. 36, Korman statutory declaration, para. 31).

C. Findings of fact

[para. 23.] I accept the evidence of IMS about the 37 data elements disclosed by Alberta pharmacists and pharmacies to IMS, as this information was corroborated by way of a statutory declaration, and is generally consistent with the findings of fact set out in the PIPEDA complaints. I find that the 37 data elements about prescribing activity set out in this Order constitute the information disclosed by Alberta pharmacists and pharmacies to IMS.

[para. 24.] I also accept the evidence of IMS that the disclosure of the 37 data elements by Alberta pharmacists and pharmacies to IMS has continued since the proclamation of the HIA. I find that at least one Alberta pharmacist or pharmacy has disclosed the 37 data elements to IMS since April 25, 2001.

[para. 25.] Furthermore, it is non-contentious that Alberta pharmacists and pharmacists are "custodians" for the purposes of the Act, as set out in section 1(1)(f)(x) and (xi) of the HIA.

[para. 26.] There was some dispute about the status of IMS under the HIA. IMS is a private sector corporation that lies outside of the publicly funded health system. I find that IMS does not fall within the Act's definition of a "custodian" and consequently is not a custodian under the HIA.

IV. DISCUSSION OF THE ISSUE

My approach to interpreting the HIA

[para. 27.] McLachlin C.J., writing for the majority in *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 33, stated in general terms the proper approach to interpreting legislation, which I will follow:

> Much has been written about the interpretation of legislation…. E. A. Driedger in *Construction of Statutes* (2nd ed. 1983) best captures the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87, Driedger states: 'Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.'

A. Does prescribing fall within a "health service" under the HIA?

[para. 28.] The threshold issue in this investigation is whether any of the 37 data elements disclosed by Alberta pharmacists and pharmacies to IMS is "health services provider information" under the HIA. For there to be "health services provider information", there must be a "health service" provided to an individual by a "health service provider". The "Department" must pay for the "health service".

[para. 29.] It was understood at the outset that this investigation concerns the disclosure of information relating to prescribers. I must decide whether "prescribing" falls within a "health service" that is paid for by the "Department". If not, a prescriber cannot be a "health services provider" and there can be no "health services provider information" disclosed when a pharmacist or pharmacy discloses the 37 data elements to IMS. Consequently, this investigation would end. As the College of Pharmacists put it in its submission: "[i]f the Department does not pay for the service of 'prescribing', none of the other legal issues posed by the Commissioner are engaged because the prescriber is not then a health services provider within the meaning of the HIA." (College of Pharmacists submission, para. 18)

i. The law

[para. 30.] "Health service" is defined in section 1(1)(m) as follows:

> 1(1)(m) 'health service' means a service that is provided to an individual
>
> (i) <u>for any of the following purposes and is directly or indirectly and fully or partially paid for by the Department:</u>
>
> (A) <u>protecting, promoting or maintaining physical and mental health;</u>

(B) preventing illness;

(C) diagnosing and treating illness;

(D) rehabilitation;

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

or

(ii) by a pharmacist engaging in the practice of pharmacy as defined in the *Pharmaceutical Profession Act* regardless of how the service is paid for,

but does not include a service that is provided to an individual

(iii) by an ambulance attendant as defined in the *Ambulance Services Act*,

(iv) by the Alberta Alcohol and Drug Abuse Commission continued under the *Alcohol and Drug Abuse Act*, or

(v) by a Community Board or a Facility Board, as those terms are defined in the *Persons with Developmental Disabilities Community Governance Act*;

[para. 31.] A "health service" is a service provided to an individual for any of the purposes set out in section 1(1)(m)(i)(A)-(E), that is paid for by the "Department," or a service provided by a pharmacist engaging in the practice of pharmacy, regardless of how the service is paid for (excluding the services set out under section 1(1)(m)(iii)-(v)). The "Department" is defined in section 1(1)(h) as "the Department administered by the Minister". "Minister" is in turn defined in section 1(1)(q) as "the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act." The Minister responsible for the HIA is the Minister of Health and Wellness, currently the Honourable Gary Mar.

ii. Arguments

[para. 32.] IMS argued that prescribing was not a "health service" under the HIA, and the investigation ought to end immediately, as the Act did not regulate the disclosure of any of the information at issue:

> There is no billing code in the *Alberta Health Care Insurance Plan—Schedule of Medical Benefits* for ordering a prescription (or for authorizing it over the telephone to be refilled). As a result, ordering a prescription is *not* a 'health service' within the definition contained in section 1(1)(m)(i) of the HIA, the prescriber performing that service is *not* a 'health services provider' within the definition contained in section 1(1)(n), and

> information relating to the prescriber is not 'health services provider information' within the definition contained in section 1(1)(o), and section 37 of the *HIA* does not regulate the disclosure of any information relating to prescribers. (IMS submission, para. 72)

[para. 33.] In support of that argument, at the hearing IMS submitted a copy of the *Alberta Health Care Insurance Plan—Schedule of Medical Benefits* (the "Schedule of Medical Benefits") and a record of Explanatory Codes.

[para. 34.] IMS argued that there are many different types of health professionals who, in their professional capacity, are authorized to write prescriptions that are dispensed by pharmacists and pharmacies, including: physicians, osteopaths, dentists, optometrists, midwives, nurses in remote locations, podiatrists, out-of-province-professionals, and veterinarians. IMS submitted that some of these prescribing services are not paid for by the Department. Consequently, even though a prescription is provided to a patient, a "health service" is not being provided, and the professional is not a "health services provider" for the purposes of the HIA.

> … it is clear that prescribers who are paid for their services by someone other than Alberta Health & Wellness are not performing a 'health service' within the meaning of the *HIA*. These include:
>
> - prescribers who are paid by the Workers' Compensation Board.
> - prescribers for a member of the Canadian Forces who are paid by the federal government.
> - prescribers for members of the RCMP who are paid by the federal government.
> - prescribers for inmates in penitentiaries who are paid by the federal government.
> - prescribers who have opted out of AHCIP.
> - prescribers providing services which are not covered by AHCIP (such as many services provided by optometrists, ophthalmologists or cosmetic surgeons, for example).
> - prescribers for out-of-province residents.
> - out-of-province prescribers whose prescriptions are dispensed in Alberta.
> - most dental prescribers.
>
> In addition, prescribers providing services covered by AADAC (*e.g.*, the methadone program) are not providing a 'health service' by virtue of section 1(1)(m)(iv).
>
> Under the *HIA*, none of these prescribers' services is a 'health service' within the definition contained in section 1(1)(m), none of these prescribers is a 'health care services provider' within the definition contained in section 1(1)(n), and none of the information about those prescribers is 'health care services provider information' within the definition

contained in section 1(1)(o), and section 37 of the *HIA* does not regulate the disclosure of any information relating to these prescribers. (IMS submission, para. 71)

iii. Discussion

[para. 35.] I agree that there is no discrete billing code for prescribing in the Schedule of Medical Benefits that was provided to me. But does the lack of a discrete billing code for prescribing mean that prescribing cannot fall within a "health service"?

[para. 36.] It is significant that an individual must attend (or "visit") a prescriber to obtain a prescription at all. A prescription is the end result of the application of a prescriber's knowledge, skill and observation of an individual to determine potential treatments for an individual. A prescription is, in essence, a common form of professional advice about recommended treatment options.

[para. 37.] There is a billing category code for a "Visit" ("V") listed under the heading "2.5 Category Codes" in the Schedule of Medical Benefits. In turn, under the heading "4.2 Visits- Definitions" there are seven different types of visits which are defined in general terms. For example:

> 4.2.2 Limited Visit: A limited assessment, of a patient, which includes a history limited to and related to the presenting problem, and an examination which is limited to relevant body systems, an appropriate record, and advice to the patient. It includes the ordering of appropriate diagnostic tests and procedures as well as discussion with the patient. [my emphasis]
>
> 4.2.3 Comprehensive Visit: An in-depth evaluation of a patient. This service includes the recording of a complete history and performing a complete physical examination…an appropriate record and advice to the patient. It may include the ordering of appropriate diagnostic tests and procedures as well as discussion with the patient. [my emphasis]

[para. 38.] A prescriber gets paid by the Department for a visit in which the prescriber gives professional advice, which includes prescribing. I am satisfied that prescribing falls within a "health service" under the HIA, where it is included in the professional advice provided to an individual for one of the purposes stipulated in section 1(1)(m)(i)(A-E) of the HIA during a visit, and the professional advice is paid for directly and fully by the Department (excluding the services set out under section 1(1)(m)(iii)-(v)). Therefore, the lack of a discrete billing code for prescribing does not determine whether prescribing falls within a "health service" under the HIA.

[para. 39.] I find support for this interpretation in the Act's definition of "diagnostic, treatment and care information", which includes information about "a drug as defined in the *Pharmaceutical Profession Act* provided to an individual" (section 1(1)(i)(iv)) and a "health care aid, device, product equipment provided to an individual pursuant to a prescription or other authorization…. (section 1(1)(i)(v))" [my emphasis] . The argument that prescribing does not fall within a "health service" would result in a strained regime in which a physician who prescribed an antibiotic for a sick child would not be providing

a "health service" to that child in so far as the prescription was concerned. However, a pharmacist filling that prescription would be providing a "health service" to that child, regardless of how the service is paid for, under section 1(1)(m)(ii) of the Act. This cannot be what the Legislature intended.

B. Are any prescribers "health services providers" under the HIA?

[para. 40.] A "health services provider" is defined in section 1(1)(n):

> 1(1)(n) 'health services provider' means an individual who provides health services.

[para. 41.] It follows that a prescriber who is paid by the Department for a visit in which the prescriber gives professional advice, which includes prescribing, is providing a "health service" and is a "health services provider" for the purposes of the HIA (excluding the services set out under section 1(1)(m)(iii)-(v)).

C. Is any information disclosed by pharmacists and pharmacies to IMS "health services provider information" under the HIA?

[para. 42.] "Health services provider information" is defined in section 1(1)(o), as follows:

> 1(1)(o) 'health services provider information' means the following information relating to a health services provider:
>
> (i) name;
>
> (ii) business and home mailing addresses and electronic addresses;
>
> (iii) business and home telephone numbers and facsimile numbers;
>
> (iv) gender;
>
> (v) date of birth;
>
> (vi) unique identification number that
>
> (A) is assigned to the health services provider by a custodian for the purpose of the operations of the custodian, and
>
> (B) uniquely identifies the health services provider in relation to that custodian;
>
> (vii) type of health services provider and licence number, if a licence has been issued to the health services provider;

(viii) date on which the health services provider became authorized to provide health services and the date, if any, on which the health services provider ceased to be authorized to provide health services;

(ix) education completed, including entry level competencies attained in a basic education program and post-secondary educational degrees, diplomas or certificates completed;

(x) continued competencies, skills and accreditations, including any specialty or advanced training acquired after completion of the education referred to in subclause (ix), and the dates they were acquired;

(xi) restrictions that apply to the health services provider's right to provide health services in Alberta;

(xii) decisions of a health professional body, or any other body at an appeal of a decision of a health professional body, pursuant to which the health services provider's right to provide health services in Alberta is suspended or cancelled or made subject to conditions, or a reprimand or fine is issued;

(xiii) business arrangements relating to the payment of the health services provider's accounts;

(xiv) profession;

(xv) job classification;

(xvi) employment status;

(xvii) number of years the health services provider has practised the profession;

(xviii) employer;

(xix) municipality in which the health services provider's practice is located,

but does not include information that is not written, photographed, recorded or stored in some manner in a record.

[para. 43.] Section 1(1)(o) of the HIA provides an exhaustive definition of the types of information that constitute “health services provider information” under the HIA. If a data element is not included in the types of information found in that definition, then it is

not "health services provider information", even if the information generally relates to the provider.

[para. 44.] Several of the 37 data elements pertain to internal industry information about the drug, and are clearly not health services provider information. Other data elements, such as #27, #28, #29, and #30, relate to a non-identifiable patient for whom the prescription was prepared. Four of the 37 data elements relate to an identifiable prescriber and could be "health services provider information" under the HIA: data elements #13, #14, #15, and #16.

1. Data elements #13 (prescriber ID reference) and #14 (prescriber ID)

[para. 45.] IMS submitted that data element #13 ("prescriber ID reference") refers to the professional body to which the prescriber belongs (IMS submission para. 79; Korman statutory declaration, para. 35).

[para. 46.] I accept that data element #13 refers to the professional body to which the prescriber belongs. This professional body code does not come within the definition of health services provider information. Accordingly, I find that data element #13 is not health services provider information for the purposes of the HIA.

[para. 47.] IMS submitted that data element #14 (prescriber ID) is "generally the prescriber's registration number in the public register maintained by the professional body to which the prescriber belongs" (IMS submission para. 79, Tab 15; Korman statutory declaration, para. 35)

[para. 48.] I accept that the "prescriber ID" number refers to the prescriber's registration number in the public register maintained by the professional body to which the prescriber belongs.

[para. 49.] In its submission, the AMA argued that a "physician identifying number" is "health services provider information" under the HIA (AMA submission, para. 36.) RxA argued that the identification number disclosed by pharmacies to IMS is not health services provider information, as it does not come within section 1(1)(o) of the HIA (RxA submission, para. 21). IMS argued the same position as RxA:

> While it is recognized that paragraph 1(1)(o)(vii) includes 'licence number, if a licence has been issued to the health services provider' as a category of 'health services provider information', it is submitted that this reference cannot be to the provider's 'registration number'. In the first place, the Legislature did not define 'licence' or 'licence number' in the *HIA*, so this phrase must be given a purposive meaning in the entire legislative context. Secondly, the Legislature must be taken to have known that it has used 'registration' and 'licence' as two distinct concepts throughout the legislation governing health (and other) professionals. The various professional regulatory statutes invariably speak about 'registration' as being the act resulting from a person's initial qualification for admission to the profession. This is not the same as the annual licence to practise. See, for example:

- the distinction between 'registration' and 'the status of the member's practice permit, including whether it is suspended or cancelled' which is made in section 33(3) of the *Health Professions HIA*. [TAB 19]

- the distinction between 'registration' and the 'annual certificate' issued to a registered member of the nursing profession who pays an annual fee: section 25 of the *Nursing Profession HIA*. [TAB 20]

Further, with respect to pharmacies and pharmacists, it is the *pharmacy* which is *licensed*, and the *pharmacist* who is *registered*.

Accordingly, it is clear that section 1(1)(o)(vii) does not refer to a provider's registration number, but only to the entirely different concept of that person's licence number (if a licence has been issued).

….

Accordingly, it is submitted that the data in Elements 13 and 14—the prescriber's registration number—do not constitute "health services provider information", even if the prescriber is a "health services provider". (IMS submission, paras. 82-84)

[para. 50.] A unique identification number is "health services provider information" under section 1(1)(o) only if the number is assigned by a custodian, or uniquely identifies the health services provider in relation to that custodian. Although data element #14 is a "unique identification number," it is not assigned to a prescriber by a custodian. I am therefore satisfied that data element #14, prescriber ID reference, is not health services provider information under section 1(1)(o) of the HIA.

2. Data elements #15 (prescriber last name) and #16 (prescriber first name)

[para. 51.] RxA argued that only the first and last name of a prescriber could be considered individually identifiable health services provider information (RxA submission, para. 22). The College of Pharmacists submitted: "[o]nly the information identifying the prescriber's name… is 'health services provider information'." (College of Pharmacists submission, para. 23). IMS submitted: "[t]he prescriber's name (Elements 15 and 16) clearly constitute 'health services provider information' because of paragraph 1(1)(o)(i)." (IMS Submission, para. 80).

[para. 52.] I am satisfied that data elements #15 (prescriber last name) and #16 (prescriber first name) are "health services provider information", as per section 1(1)(o)(i) of the HIA.

D. Would the disclosure of the "health services provider information" reveal "other information" "about" the health services provider within the meaning of section 37(2)(a) of the HIA?

[para. 53.] The provision that bears directly on this sub-issue is section 37(2)(a) of the HIA:

> 37(2) A custodian may disclose the health services provider information described in section 1(1)(o)(i) to (iii), (vii), (xiv), (xv), (xviii) and (xix), other than home address, telephone number and licence number, to any person for any purpose without the consent of the individual who is the subject of the information, unless the disclosure
>
> (a) would reveal other information about the health services provider, or
>
> (b) could reasonably be expected to result in
>
> (i) harm to the health services provider's mental or physical health or safety, or
>
> (ii) undue financial harm to the health services provider.

1. Participant arguments on the proper interpretation of section 37(2)(a)

[para. 54.] I have considered the arguments of the participants about how I should interpret this provision. I will not rehearse those arguments blow by blow, but highlight some of the salient arguments.

[para. 55.] IMS argued that the Legislature used two different terms--"disclose" and "reveal"--which imply that it intended to refer to two different concepts. IMS argued: "it must be the disclosure of the information in question which would result in the revelation of the prohibited information". (IMS submission, para. 99).The "other information" must be different than the information which is disclosed. (IMS submission, para. 100) The disclosure of the 33 non-identifying elements is permitted by section 32(1), and the disclosure of the four "prescriber data elements" does not reveal any "other information". Therefore, section 37(2)(a) does not apply. (IMS submission, para. 101).

[para. 56.] IMS argued that another approach was to identify the "other information" which would be revealed by the disclosure of the health services provider information in question. The "other information" referred to in the provision cannot be any of the other 33 non-individually-identifying data elements which are disclosed along with the four data elements analysed above. There must be some further or additional information that is the "other information" that would be revealed. (IMS submission, para. 104) IMS submitted that the phrase "other information" could be interpreted to mean "other health

services provider information": i.e. "the 11 other categories of health services provider information contained in the definition in section 1(1)(o) besides those eight specific categories which are identified at the beginning of section 37(2) as being able to be disclosed without consent". (IMS submission, para. 106) If this is the correct interpretation, then section 37(2)(a) would not apply to the disclosure under investigation.

[para. 57.] In the alternative, the meaning of the reference to "other information" "about" the health services provider "cannot literally mean any and all information about the provider, regardless of whether that information is connected to the context" of the HIA:

> [a]t the very least…the phrase 'information about the health services provider' must relate to information which is relevant to the person in his or her capacity as a 'health services provider.' In addition, the phrase cannot include all of the various types of information which are covered by the HIA, but only those types which are relevant to a 'health services provider'. Similarly, the phrase clearly cannot include information which is not covered by the HIA at all. (IMS submission, para. 107)

[para. 58.] If the investigation identified "some 'other information' which is revealed by the disclosure of the prescriber data elements", then IMS relied upon the tribunal level findings of the Maheu PIPEDA complaint, and the language of the *Freedom of Information and Protection of Privacy Act*, to argue that information about a prescription written by a provider is not information "about" that health services provider, but is at best "work product" information that does not relate to the health services provider in a personal, intimate or meaningful way. (IMS submission, paras. 108-128) If this is the correct interpretation, then section 37(2)(a) would not apply to the disclosure under investigation.

[para. 59.] The College of Pharmacists argued:

> [t]he disclosure of a physician's name and the disclosure of drug information about a patient does not reveal 'other information about the health services provider.' The other information it reveals is about the patient. If that other information about the patient does not individually identify the patient, it can be disclosed under section 32(1) of the HIA. (College of Pharmacists submission, para. 35)

[para. 60.] The College also submitted that "other information about the health services provider" "cannot mean information that is not in any way protected by the HIA" and it cannot mean other information that the HIA expressly allows a custodian to disclose. To interpret the HIA to "suppress the disclosure of two pieces of information that are individually disclosable simply because they are conjoined, offends the presumption that 'legislation is not intended to produce absurd consequences.'" (College of Pharmacists submission, paras. 36-37) As well, "there is another interpretation the words "other information" will reasonably bear—other information about the health services provider that cannot be disclosed under the HIA". (College of Pharmacists submission, para. 38).

[para. 61.] The College also relied upon the findings in the PIPEDA complaints to argue that a prescription "does not constitute personal, private information of the prescriber." (College of Pharmacists submission, paras. 40-44). Finally, an interpretation of section 37(2)(a) that "suppresses the disclosure of information that is publicly available or is otherwise disclosable is not consistent with Charter values", specifically freedom of expression, and would fail the proportionality test under section 1 of the Charter. (College of Pharmacists submission, paras. 46-47). The College argued that the information could be disclosed without consent. (College of Pharmacists submission, para. 48).

[para. 62.] The Pharmacists' Association argued, in summary, that section 37(2)(a) did not apply:

> [t]he disclosed HSPI [health services provider information] does not reveal 'other information' about the health services provider, because
>
> (a) the revelation of the other information has to arise from the disclosure;
> (b) the 'other information' as used in s. 37(2)(a) should be interpreted as personal information in which a privacy interest exists;
> (c) personal information does not equate to information which is disclosed in a professional capacity; and
> (d) the physician has no ownership right in the prescription record.
>
> (RxA submission, para. 26)

[para. 63.] Specifically, RxA submitted that the interpretation of "other information" should be guided by the stated purposes of the HIA, one of which is to establish strong and effective mechanisms to protect the privacy of individuals and their health information, and to protect the confidentiality of that information. (RxA submission, para. 28) Section 37(2) was intended to prevent "information of a personal or private nature about health services providers from being revealed". Privacy interests of individuals are "generally engaged only when the information being revealed deals with a 'biological [sic-biographical] core of personal information' which would tend to reveal intimate details of the lifestyle and personal choices of the individual" as per *R. v. Plant*, [1993] 3 S.C.R. 281. (RxA submission, para. 29-30) For information to be "about" an individual, the information has to be personal information, which means that the individual must be the subject of the information, not merely its author. The prescription information disclosed is "about" the patient or the diagnostic and treatment process, and is in no meaningful way "about" the prescriber. This analysis is supported by the report of findings in the PIPEDA complaints, and an Ontario order under the Ontario *Freedom of Information and Protection of Privacy Act.* Lastly, a physician's lack of ownership rights in a prescription record suggest that a physician has assigned all rights in relation to the prescription information to the patient, so that the information in it cannot be construed as personal information of the physician. (RxA submission, paras. 33-41)

[para. 64.] The Alberta Medical Association argued that much of the information which falls into section 37(2) "would, in turn, reveal other information about the physician".

"For example, in many cases the release of the name of the physician will, in turn, lead to information regarding the physician's gender." (AMA submission, paras. 52-53)

2. My interpretation of section 37(2)(a) in the context of this investigation

[para. 65.] Before turning to the specific language of section 37(2)(a) and interpreting it as per *Sharpe*, I will set out the immediate statutory context of this provision. Section 37(2) is located in Part 5 of the HIA. Part 5 deals with the disclosure of health information. Part 5 is divided into Division 1 ("General Disclosure Rules") (sections 31 to 45), Division 2 ("Disclosure for Health System Purposes") (sections 46 to 47), and Division 3 ("Disclosure for Research Purposes") (sections 48 to 56). Section 37(2) is found in Division 1 of Part 5 of the HIA.

[para. 66.] Part 5 opens with the general prohibition stated in section 31:

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

[para. 67.] "Health information " is defined in section 1(1)(k)(ii) as including three types of information: "diagnostic, treatment and care information"; "health services provider information"; and "registration information."

[para. 68.] Section 32 sets out the general rule allowing a custodian to disclose non-identifying health information. Section 33 permits a custodian to disclose individually identifying health information to the person who is the subject of the information, or to a person who is acting on behalf of that individual.

[para. 69.] Section 34(1) is a key provision. It deals with the disclosure of individually identifying health information (health services provider information is, as indicated above, a subset of health information). Section 34(1) states the general rule—that health information is to be disclosed only if the individual who is the subject of the information has consented to the disclosure—and flags the exceptions which are set out in sections 35 to 40:

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

[para. 70.] Section 35 sets out when a custodian may disclose individually identifying diagnostic, treatment and care information without individual consent. Section 36 sets out when a custodian may disclose individually identifying registration information without individual consent. Section 37 sets out when a custodian may disclose individually identifying health services provider information without individual consent. Section 38 sets out when a custodian may disclose individually identifying health information without consent to the Provincial Archives, or any archive subject to the HIA or the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"). Section 39 sets out when the Minister or the Department may disclose individually identifying

diagnostic, treatment and care information without consent to another Minister. Section 40 sets out when a custodian other than the Minister may disclose individually identifying health information to the Minister. The remaining provisions (section 41 to 45) are more procedural in nature, and are not relevant to this investigation.

[para. 71.] The point of this overview is that section 37 contains a defined exception to the general requirement, stated in section 34(1), that a custodian must obtain the consent of the person who is the subject of individually identifying health information before disclosing that health information.

[para. 72.] Following *Sharpe*, I will interpret section 37(2)(a) looking to the words actually used by the Legislature. As IMS pointed out in its submission at paragraph 63, discussing how I should interpret the Act, "if the words are not ambiguous, they are to be applied using their ordinary meaning." A useful supplementary aid to interpretation, adverted to in the submissions of the participants, is the presumption of consistent expression:

> [i]t is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings. Another way of understanding this presumption is to say that the legislature is presumed to avoid stylistic variation. Once a particular way of expressing a meaning has been adopted, it is used each time that meaning is intended. Given this practice, it then makes sense to infer that where a different form of expression is used, a different meaning is intended. (Driedger on Statutory Interpretation, (3rd Ed.) page 163)

[para. 73.] The general words in section 37(2) permit a custodian to disclose basic business card type of information about a health services provider "to any person for any purpose without the consent of the individual who is the subject of the information", unless the disclosure would "reveal other information about the health services provider". Then the disclosure is prohibited, unless consent is obtained, as per the general rule stated in section 34(1).

[para. 74.] The Concise Oxford Dictionary (9th Edition) defines "reveal" as: "display or show; allow to appear." This is what I take the ordinary meaning of the word "reveal" to mean. Section 37(2)(a) simply refers to "the disclosure", and does not use limiting words to restrict the consideration of the type of information. Consequently, I read section 37(2)(a) as a direction to consider what the disclosure of all of the information in question would reveal. In the context of this investigation, section 37(2)(a) requires a custodian to consider what disclosing the health services provider's first and last name in the context of the surrounding 35 data elements would display or show to IMS.

[para. 75.] Given the Legislature's insistence on what the disclosure would "reveal", a custodian cannot conduct the analysis required under section 37(2)(a) by looking at each piece of information in isolation, or by isolating non-identifying health information from health services provider information, or public domain information (e.g. information in a public register or the Telus Super Pages) from confidential information, and then

analysing what the disclosure of each subset of information would reveal. Nor could a custodian ignore the effect that disclosing non-identifying health information would have, on the basis that section 32(1) absolutely permits the disclosure. A proper consideration of what the contemplated disclosure would reveal requires a custodian to consider what inferences could be reasonably drawn from the whole of the information disclosed, what additional information could be derived from the data disclosed.

[para. 76.] In that regard, it is helpful to consider that IMS uses the 37 data elements to compile what it terms a "confidential prescribing practice analysis" of a prescriber (IMS submission, para. 10, Tab 6; Korman statutory declaration, para. 5, Tab 6). IMS submitted a sample Confidential Prescribing Practice which is made from the information disclosed to it by pharmacies and pharmacies. The Explanatory Notes which preface the sample analysis read in part:

> This prescribing analysis has been produced from prescriptions dispensed in a sample of Canadian retail pharmacies during the most recent 12 months of data currently available. The actual time period appears on the report in the top right quadrant.
>
> ….
>
> The summary appearing in the top right hand corner of the report shows your total estimated number of prescriptions dispensed, compared with the average for all physicians on a national basis, the average for all physicians in your province, and the average for all GP/FMs in your province….
>
> The body of the report shows up to 30 therapeutic classes in which you wrote prescriptions (SELF), ranked by % share of your total estimated prescriptions… (IMS submission, Tab 6; Korman statutory declaration, Tab 6)

[para. 77.] At the bottom of the Explanatory Notes is a notice in bold face:

> **The information contained in this report is highly confidential. Only the health professional can obtain access to the individual prescribing information upon written request to IMS HEALTH, Canada.** (IMS submission, Tab 6; Korman statutory declaration, Tab 6)

[para. 78.] There is nothing in the HIA that indicates that health services provider information must be of a personal or intimate nature. Likewise, there is nothing in the HIA that indicates that "work product" type of information is not information "about" the health services provider.

[para. 79.] I find that the "other information" that is revealed by each disclosure of the provider's first and last name in the context of the other 35 data elements is information about how the prescriber, in his or her professional capacity, chose to diagnose and treat a patient of a particular age, with a particular condition, and specifically what medication was used, in what dosage, and for how long. The information revealed by the disclosure of the data permits IMS to compile a prescribing analysis which IMS itself treats as confidential and available only to the prescriber whom the analysis is about. The

evidence satisfies me that the information about prescribing activity disclosed by Alberta pharmacists and pharmacies to IMS reveals "other information" that is indeed "about" the individual prescriber, within the meaning of section 37(2)(a).

[para. 80.] In making this determination under sub-issue D, I did not accept the interpretative arguments that relied upon PIPEDA or the FOIP Act. A review of the definitions section of PIPEDA (section 2) shows that "personal information" is defined as "information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee or an organization." PIPEDA's master category, personal information, is unlike the definition of health information, and health services provider information, in HIA. As for the argument that I should read the phrase "other information" in section 37(2)(a) as "other personal information", looking to the language of the FOIP Act, I do not agree. The language of section 37(2)(a) is sufficiently clear and unambiguous for me to stay within the corners of the HIA. Moreover, the FOIP Act and the HIA deal with similar, but not identical, types of information within the public sector. The FOIP Act and the HIA have similar, but not identical, objects. I find it significant that the Legislature decided to carve "health information" out of the realm of the FOIP Act's definition of personal information, and create a stand-alone Act that does not use the FOIP Act's concept of "personal information", but instead employs a distinct concept, that of "health information." Finally, the HIA deals in the custody and control of information, and in access rights, but not in the ownership of information as such.

[para. 81.] In summary, on sub-issue D, my finding is that disclosure of the health services provider's first and last name, which is "health services provider information," in the context of the 35 other data elements reveals "other information" about the health services provider within the meaning of section 37(2)(a) of the HIA.

E. If the disclosure would reveal "other information", is the disclosure of the health services provider information permitted under the HIA?

[para. 82.] As the disclosure of the health services provider's first and last name in the context of the 35 other data elements reveals other information about the health services provider within the meaning of section 37(2)(a) of the HIA, disclosure of the health service provider's first and last name in the context of the 35 other data elements to IMS is permitted only if the health services provider has given his or her consent, as stipulated under section 34 of the HIA. Otherwise, the disclosure is prohibited under the Act.

V. REMARKS ON THE SCOPE OF THE INVESTIGATION

[para. 83.] As part of the submissions on the main issue, and the remedy, some participants raised sketchy concerns that my decision would necessarily apply to many other disclosures of health information. The College of Pharmacists, IMS, RxA, and the Consumers' Association submitted that limiting the disclosure of information regarding prescriptions would, to summarize their concerns in a comment from the College of Pharmacists, "defeat substantial public policy interests related to professional

governance, research, education and consumer welfare" (College of Pharmacists submission, para. 12). IMS argued that limiting the disclosure of information about prescribing activity to it would necessarily impair the functioning of the health care system, asserting: "[a]ny ruling arising out of this Investigation must apply not only to IMS, but also to every one to whom pharmacists disclose prescriber information." (IMS submission, Executive Summary) [my emphasis]. IMS argued that an adverse outcome in this investigation could impair the narcotic Triplicate Prescription program administered by the College of Physicians and Surgeons, the Drug Utilization Program, the Academic Detailing Program, and third party insurers.

[para. 84.] No cogent evidence was presented to show that the disclosure of the 37 data elements to IMS was factually or legally analogous to the Triplicate Prescription program, or the other programs or activities mentioned in the submissions. In my view, these concerns are speculative. The impact of this investigation is far narrower than the participants fear. Under the HIA, each disclosure of information must be tested on the facts of the particular case. The outcome of this investigation does not predetermine whether the other disclosures mentioned are permitted, or prohibited, under the HIA.

[para. 85.] I am satisfied that my interpretation is consistent with the HIA, particularly the confidentiality and highest degree of anonymity objects set out in section 2(a) and (c) of the HIA. The identity of a prescriber can continue to be indirectly disclosed through the means of the registration number to IMS under the HIA. In that way, the practice under investigation essentially continues, with one significant modification. The name of a provider cannot be linked directly to the 35 other data elements and disclosed to IMS. The result is that the HIA creates a degree of confidentiality and what privacy experts call "practical obscurity" around the prescribing activity of a health services provider. In this case, section 37(2)(a) creates a legislative screen that protects the provider against casual disclosures about his or her professional activity, while minimizing infringement on a pharmacy or a pharmacist's expressive freedom.

[para. 86.] I want to thank all of the participants for the quality of their submissions and arguments.

VI. ORDER

Issue: Does the HIA permit Alberta pharmacists and pharmacies to disclose health services provider information to IMS?

A. Does prescribing fall within a "health service" under the HIA?

[para. 87.] Prescribing falls within a "health service" under the HIA, where it is included in the professional advice provided to an individual for one of the purposes stipulated in section 1(1)(m)(i)(A-E) of the HIA during a visit, and the professional advice is paid for directly and fully by the Department (excluding the services set out under section 1(1)(m)(iii)-(v)).

B. Are any prescribers "health services providers" under the HIA?

[para. 88.] A prescriber who is paid by the Department for a visit in which the prescriber gives professional advice, which includes prescribing, is providing a "health service" and is a "health services provider" for the purposes of the HIA (excluding the services set out under section 1(1)(m)(iii)-(v)).

C. Is any information disclosed by pharmacists and pharmacies to IMS "health services provider information" under the HIA?

[para. 89.] A health services provider's first and last name is "health services provider information" for the purposes of the HIA.

D. Would the disclosure of the "health services provider information" reveal "other information" "about" the health services provider within the meaning of section 37(2)(a) of the HIA?

[para. 90.] Disclosure of the health services provider's first and last name, in the context of the 35 other data elements listed in this Order, reveals "other information" about the health services provider within the meaning of section 37(2)(a) of the HIA.

E. If the disclosure would reveal "other information", is the disclosure of the health services provider information permitted under the HIA?

[para. 91.] Disclosure to IMS of the health service provider's first and last name in the context of the other 35 other data elements is permitted only if the health services provider has given his or her consent, as stipulated under section 34 of the HIA. Otherwise, the disclosure is prohibited under the Act.

[para. 92.] Consequently, pursuant to section 84(b) and section 80(3)(e) of the Act, I order Alberta pharmacists and pharmacies not to disclose to IMS the first and last name of a health services provider in the context of the other 35 data elements listed in this Order, unless the consent of that health services provider is obtained, as per section 34 of the Act.

[para. 93.] Pursuant to section 80(4) of the Act, within 50 days of the date of this Order, I order Alberta pharmacists and pharmacies to take steps to begin complying with this Order. To accommodate the participants' requests for a six-month period to make changes to operational practices and information systems, I order pharmacists and pharmacies to have fully complied with this Order within six months of the date of this Order. Thereafter, I intend to investigate complaints about non-compliance with the Act as I have interpreted it in this Order, and may conduct spot audits to ensure compliance.

Frank J. Work, Q.C.
Information and Privacy Commissioner