ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2020-03

March 9, 2020

DR. KLAUS D. GENDEMANN

Case File Number 001512

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint to this Office that her former psychiatrist, Dr. Gendemann (the Custodian) accessed her health information on Netcare (EHR/Netcare) after he had ceased being her doctor. The Complainant argues that this access was not authorized under the *Health Information Act* (HIA).

The Adjudicator applied the principles set out by the Alberta Court of Appeal in *JK v. Gowrishankar* to section 27(1)(a) in the HIA (use of health information for providing health services). The Adjudicator determined that using health information to provide a health service includes using that information to defend the provision of the health service in a subsequent proceeding (see paras. 16-41 for the rationale, application, and limits of this interpretation).

The Adjudicator determined that the Custodian had authority to access the Complainant's health information in the EHR/Netcare under section 27(1)(a).

Statutes Cited: AB: *Health Information Act*, R.S.A. 2000 c. H-5, ss. 1, 3, 25, 27, 34, 35, 56.1, 56.5, 80

Authorities Cited: AB: Orders F2009-048, F2019-05, H2004-005

Cases Cited: *Alberta (Director of Child Welfare) v. C.H.S.*, 2005 ABQB 695 (CanLII), *Calgary Board of Education v. Alberta (Office of the Information and Privacy Commissioner)*, 2014 ABQB 189, *JK v. Gowrishankar*, 2019 ABCA 316

I. BACKGROUND

[para 1] An individual made a complaint to this Office that her former psychiatrist, Dr. Gendemann (the Custodian) accessed her health information on Netcare (EHR/Netcare) after August, 2014, when he had ceased being her doctor. The Complainant argues that this access was not authorized under the *Health Information Act* (HIA). Mediation was authorized but did not settle the issues. This Office received a request for inquiry from the Complainant and the Commissioner agreed to hold an inquiry.

[para 2] The Complainant's initial submission raised an additional issue (at para. 9): that the Custodian wrote to Dr. S, who had treated the Complainant prior to the Custodian's having done so. In the letter, the Custodian requested information about the Complainant from Dr. S. This issue was not raised in the Complainant's initial complaint or in her request for inquiry. Insofar as this concern relates to the Custodian's collection of health information from Dr. S, and Dr. S' disclosure of health information to the Custodian, it does not fall within the scope of the issues set out in the Notice of Inquiry. Parties cannot broaden the scope of an inquiry underway by raising new concerns in submissions. The issues identified in the Notice do not include a reference to collection of health information and as such, the Custodian has not had an opportunity to make arguments on that point. The Custodian is also not responsible for addressing the disclosure of health information by another custodian (Dr. S).

[para 3] Insofar as the Complainant's concern about information received from Dr. S relates to the Custodian's *use* of that information, I will address it. This is because the Custodian's use of health information more broadly is set as an issue in the Notice, and in his submission the Custodian has addressed the use of health information obtained from Dr. S.

[para 4] The Complainant also raised concerns about the quality of care provided to her, about the tone of comments made by the Custodian in documentation, and alleging that the Custodian fabricated a letter to Dr. H. None of these are issues I have jurisdiction over under the HIA.

II. ISSUES

[para 5] The issues set out in the Notice of Inquiry, dated January 30, 2019, are as follows:

1. Did the psychiatrist access the Complainant's health information?

   If the information was accessed, it may have been done either in the psychiatrist's capacity as a Custodian, or as the Affiliate of another Custodian, or both. In any event, both Custodians and Affiliates have duties and restrictions regarding access to information under the HIA.

2. Did the Custodian (or Affiliate) use the Complainant's health information? If yes, did he do so in contravention of Part 4 of the HIA?

III. DISCUSSION OF ISSUES

Preliminary issue – applicability of sections 34 and 35 of the HIA

[para 6] In his initial submission, the Custodian briefly referenced the application of sections 34 and 35 of the HIA. Section 34 permits disclosure of an individual's health information with consent of that individual. Section 35 sets out circumstances in which an individual's health information may be disclosed without the individual's consent, including for the purpose of a court or quasi-judicial proceeding (section 35(1)(h)).

[para 7] In this case, the issues properly raised in this inquiry are the Custodian's access and use of the Complainant's health information. The Custodian argues that the information was accessed and used for the purpose of responding to a complaint being investigated by the College of Physicians and Surgeons (College); sections 34 and/or 35(1)(h) may be relevant to a determination of whether health information could be *disclosed* in these circumstances, but they do not authorize the *use* of health information.

[para 8] Sections 56.5(1), (2) and (3) of the HIA specify that accessing health information via the EHR/Netcare is a *use* of that health information, and not a collection or disclosure. Therefore, provisions with respect to the collection and disclosure of health information are not relevant to whether the health information was accessed from the EHR/Netcare with authority. Rather, the provisions in the HIA addressing authority to *use* health information are the relevant provisions.

1. Did the psychiatrist access the Complainant's health information?

[para 9] "Health information" is defined in section 1(1)(k) of the HIA, with reference to section 1(1)(i). By virtue of these definitions, mental health information is included as health information.

[para 10] The Complainant states that the Custodian was her psychiatrist beginning in January 2014. She faxed a letter to the Custodian in August 2014, informing him that she would no longer be his patient. The Complainant states that she briefly spoke to the Custodian in December 2014 while she was a patient in hospital. Due to her legal blindness, the Complainant was not aware that she was talking to the Custodian; she found out from a nurse later.

[para 11] The Complainant states that she received a copy of an audit log from the EHR/Netcare for February 3, 2015 to July 20, 2015. The log shows that on February 5, 2015, the Custodian accessed and printed multiple reports created by other health care providers after the Complainant had ceased being treated by the Custodian:

- a discharge summary prepared by Dr. V dated December 24, 2014,
- a discharge summary prepared by M.A. dated January 28, 2015,
- a consultation report prepared by Dr. G dated January 10, 2015,
- reports by M.G. and W.M.

[para 12] The Complainant requested and received a copy of her file from the Custodian. She states that the file she received shows that the Custodian printed her health information from the EHR/Netcare from the time of her first appointment in January 2014 up to January 2015. The Complainant provided me a copy of these printed records.

[para 13] The Custodian states that he received a letter dated February 2, 2015, from the College of a complaint made by the Complainant regarding the care provided by the Custodian. The College requested a written response from the Custodian. The College also requested supporting medical documentation related to the complaint.

[para 14] The Custodian had a copy of the Complainant's the EHR/Netcare records printed for his review. He states that he

> added records to his chart that related to his involvement with [the Complainant], particularly: a copy of [Dr. V's] consultation with [the Complainant] dated December 6, 2014 which formed part of [the Complainant's] history the day before he had attended with her on December 7, 2014; a copy of [Dr. G's] letter dated January 10, 2015 addressed to [the Complainant's] family physician regarding her hospitalization at the Grey Nuns Community Hospital; and, a copy of [the Complainant's] admission to the Royal Alexandra Hospital on January 28, 2015.

[para 15] The Custodian agrees that he accessed the Complainant's health information via the EHR/Netcare. While his submissions state another health practitioner actually printed the records, it was at his direction and on his behalf. Therefore, the answer to this first issue is "yes".

2. Did the Custodian (or Affiliate) use the Complainant's health information? If yes, did he do so in contravention of Part 4 of the HIA?

[para 16] Section 25 of the HIA states that no custodian shall use health information except in accordance with the Act.

[para 17] Section 56.5 clarifies that an access of the EHR/Netcare is a *use* of health information. It states:

> *56.5(1) Subject to the regulations,*
>
> *(a) an authorized custodian referred to in section 56.1(b)(i) may use prescribed health information that is accessible via the Alberta EHR for any purpose that is authorized by section 27;*
>
> *(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*
>
> *(ii) section 27(1)(g), but only to the extent necessary for obtaining or processing payment for health services.*

(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.

[para 18] Different provisions in section 27(1) are 'available' to different types of custodians, depending whether the custodian falls within the scope of section 56.1(b)(i) or (ii). These provisions state:

56.1 In this Part,

…

(b) "authorized custodian" means

(i) a custodian referred to in section 1(1)(f)(iii), (iv), (vii), (xii) or (xiii), other than the Health Quality Council of Alberta, and

(ii) any other custodian that meets the eligibility requirements to be an authorized custodian;

[para 19] The custodians referred to in section 1(1)(f)(iii), (iv), (vii), (xii) or (xiii), that fall within the scope of section 56.1(b)(i), are provincial health boards, regional health authorities, and the Department and Minister responsible for the HIA. All other custodians, such as physicians providing services from privately run clinics, fall under section 56.1(b)(ii).

[para 20] The Custodian in this case falls under section 56.1(b)(ii). Per section 56.5 (above), he may use health information from the EHR/Netcare only for the purposes authorized under section 27(1)(a), (b), (f) or (g). These provisions state:

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;

(b) determining or verifying the eligibility of an individual to receive a health service;

…

(f) carrying out any purpose authorized by an enactment of Alberta or Canada;

(g) for internal management purposes, including planning, resource allocation, policy development, quality improvement, monitoring, audit, evaluation, reporting, obtaining or processing payment for health services and human resource management.

[para 21] Also per section 56.5(1)(b)(ii) (cited above), the Custodian may rely on section 27(1)(g) "only to the extent necessary for obtaining or processing payment for health services."

[para 22] In *JK v. Gowrishankar*, 2019 ABCA 316 (*Gowrishankar*), the Court of Appeal considered the use of health information by physicians responding to a complaint made about their care. In the excerpt below, the Court was considering the use by physicians when

responding to an investigation being conducted by Alberta Health Services (AHS). In that case, the physicians were affiliates of AHS at the time. The Court stated (at paras. 84-89):

> Section 27(1)(c) allows a custodian to use health information for the purpose of "conducting investigations, discipline proceedings, practice reviews or inspections relating to the members of a health profession or health discipline." An affiliate may also use health information for that same purpose. That is what occurred here.
>
> Any investigation requires the gathering of relevant information. An investigation is also contextual in that the information gathered will depend on the nature of the matter being investigated. At a minimum, it requires information surrounding the matter under investigation. It also assists the investigation if the person being investigated provides their response to the matter at issue. The response of the person being investigated is not for their personal benefit but for the benefit of the investigation as a whole.
>
> We agree with AHS and the physicians that the *HIA* permits the use of health information by custodians and affiliates for various purposes. Use of information is not predicated on what is used or who created the information; rather use of health information is permitted so long as it is for a purpose provided by the *HIA* and only health information essential to carrying out the intended purpose is used.
>
> The scope of the complaint will necessarily inform what information is essential to resolving the complaint and what information is appropriately shared and accessed. The scope of the complaint will thus inform what conduct is reasonably permitted under the *HIA*. There was no finding by the adjudicator, nor any suggestion on the record, that the physicians accessed health information that was not essential to enable the physicians to reply to the complaint and not essential for the Department Chair to complete the investigation.
>
> The complaint that began the Department Chair's investigation was respecting the physicians' care of JK. This care included their diagnosis of the presenting health issue. The sole reason the physicians used JK's health information was to reply to the complaint.
>
> A diagnosis is based upon a physician gathering information from a number of sources such as the medical history from the patient, past and current medical tests (for example, blood work), and past diagnoses of other health care providers. The physicians, as affiliates of the Capital Health Authority, were permitted to use JK's health information to respond to the complaint. Their reply, in turn, permitted the Department Chair to complete his investigation after which he replied to JK's mother.

[para 23] In *Gowrishankar*, the Court of Appeal also considered the same situation as is present in this case: a physician's use of health information for responding to a complaint made by a patient to the College. The College is not a custodian under the HIA, and therefore the College's investigation was not an investigation undertaken by a custodian. Nevertheless, the Court found that section 27(1)(c) authorized the physician's use of the patient's health information for responding to that investigation. It said (at para. 97):

> First, the complaint to the College put into issue the physicians' diagnoses and care of JK. The purpose of the physicians' use of JK's health information in 2012 was to respond to the complaint. As we said above, the physicians, as affiliates, were permitted by s 27(1)(c) to use health information that was essential to enable them to respond to the complaint.

[para 24] There is an important distinction between the facts in *Gowrishankar* and the facts here that affect the applicability of that case. In *Gowrishankar*, the physicians were affiliates of AHS, which is an authorized custodian under section 56.1(b)(i). As such, AHS can access the EHR/Netcare for any purpose set out in section 27 of the HIA (per section 56.5(1)(a), cited above). Because the physicians in the *Gowrishankar* case were affiliates of AHS, they could also access the EHR/Netcare for any purpose set out in section 27.

[para 25] In contrast and as already discussed, the Custodian in this case is authorized under section 56.1(b)(ii) and can access the EHR/Netcare only for the purposes set out in section 27(1)(a), (b), (f) or (g). Notably missing from this latter list is section 27(1)(c), which was the authority cited by the Court in *Gowrishankar*.

[para 26] In other words, because the Custodian is an "authorized custodian" under section 56.1(b)(ii) (and not section 56.1(b)(i)), he cannot access the EHR/Netcare for the purpose of conducting an investigation, whereas a custodian like AHS (or affiliate of that type of custodian) can.

[para 27] This seems at odds with how I interpret the Court of Appeal's direction in *Gowrishankar*. I interpret the Court's view to be that physicians ought to be permitted to use health information in the EHR/Netcare that is essential to respond to complaints made about the way they provided health services. However, if section 27(1)(c) is the authority to use the health information for this purpose, then the use is permitted *only* when physicians are providing health services as affiliates of specified custodians (for example, physicians working as affiliates of AHS). It is not permitted when the physician is providing the health service as a custodians in their own right. There is no clear justification for this disparity.

[para 28] I prefer an interpretation relying on section 27(1)(a) of the HIA, which does not distinguish between physicians as affiliates of larger custodians and physicians as custodians in their own right, and which is consistent with the conclusion in *Gowrishankar*.

[para 29] Under the proposed analysis, defending the provision of a health service is an extension of providing that health service. Where a health care provider had authority under section 27(1)(a) to use health information to provide a health service, the health care provider is also authorized to continue to use that health information to defend themselves against a complaint about how they provided the health service. This interpretation would apply to complaints made to the College, to civil court actions, and other such proceedings arising out of the provision of the health service.

[para 30] This interpretation also applies to information directly related to and emanating from the health service provided, such as the physician's report of the outcome of the health service, plans for ongoing care, and discharge reports that document the health service provided. In some cases, this information cannot be said to have been used by the health care provider when providing the health service in question, as it resulted from (i.e. came after) the service had concluded. However, such documentation is a direct result of and reports on the health service. It seems nonsensical to suggest that that in a complaint or similar proceeding arising from the provision of a health service, a health service provider can use health information they reviewed

when providing the service (e.g. lab results used to diagnose an illness), but cannot use the information generated from the service, such as a follow-up report.

[para 31] Therefore, health information used by a health service provider while providing a health service under section 27(1)(a) can continue to be used under the same authority in later proceedings arising from the provision of that health service (e.g. defending against a complaint). The information that directly relates to and emanated from the provision of the health service, such as documentation of the service, can also be used in those proceedings under the same authority.

[para 32] This interpretation is consistent with similar circumstances under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Where a public body is authorized to collect and use personal information for the purpose of one of its programs or services, that authority extends to include later proceedings that arose from the provision of the program or service (see *Alberta (Director of Child Welfare) v. C.H.S.*, 2005 ABQB 695 (CanLII), at para. 24, Order F2019-05, at para. 59). The general principle is that defending the way a program or service is provided is directly connected with providing that program or service.

[para 33] The FOIP Act and the HIA contain different authorities for the use of personal information and health information, due to the different needs and functions of public bodies and custodians. However, in my view, these differences do not preclude the extension of the general principle cited above to custodians under the HIA. I conclude that where a custodian (or affiliate) has used health information for the purpose of providing a health service under section 27(1)(a), that authority to use the health information extends to defending the provision of the health service in a subsequent proceeding.

[para 34] This principle is not without limit in the FOIP context, and should be similarly interpreted under the HIA. For example, in Order F2009-048, it was determined that the use of the personal information in a legal proceeding did not relate to the purpose for which that personal information had been collected. In other words, the legal proceeding did not arise from the same program or service that the personal information had been collected for. Therefore, that subsequent use was not authorized (upheld at *Calgary Board of Education v. Alberta (Office of the Information and Privacy Commissioner)*, 2014 ABQB 189).

[para 35] The interpretation of section 27(1)(a) that I have put forward cannot be taken as authority for a health care provider to undertake a general or wholesale review of any of an individual's health information in the EHR/Netcare for the purpose of finding something useful or relevant. Rather, this interpretation of section 27(1)(a) extends the authority to use the health information that was used by the health service provider when they provided the health service, in a later complaint or proceeding that arose from the provision of the health service, as well as the information directly relating to and emanating from the service. As stated by the Court of Appeal in *Gowrishankar*, "[t]he scope of the complaint will thus inform what conduct is reasonably permitted under the *HIA*" (at para. 89, cited above).

[para 36] For example, a physician might treat a complaint about a back injury. In doing so, that physician can access the patient's health information that the physician believes could be

relevant to the back pain (e.g. past imaging of the patient's spine, past diagnoses, etc.) in order to provide treatment. This use/access is authorized under section 27(1)(a). If the patient later brings a civil action against the physician for their treatment of the back injury, section 27(1)(a) also authorizes the physician to use/access that same information for the purpose of defending themselves in the civil proceeding (as well as information created by the physician in providing the treatment). This authority would not extend to using/accessing *other* health information located in the EHR/Netcare that didn't relate to the physician's treatment of the back injury. "Other health information" might include health information relating to subsequent treatment provided years later by a different health care provider. (This is not to say that "other" health information is entirely unavailable to a health care provider defending their care, as will be discussed below).

[para 37] Access logs may or may not always be specific enough to make the scope of the health care provider's initial access/use sufficiently apparent, in which case providers must be conscious of this limitation when accessing the EHR/Netcare in the event of a subsequent complaint or proceeding arising from a health service they provided.

[para 38] To be clear, this interpretation of section 27(1)(a) does not vitiate other authorities or processes for accessing and using health information in the context of a complaint, investigation, court proceeding, etc. As discussed earlier, section 27(1)(c) remains a standalone authority to access and use health information for some custodians conducting investigations and other proceedings set out in that provision.

[para 39] Courts and other bodies (such as the College) also have processes for parties to obtain and present relevant information. The discovery processes in civil proceedings exist to enable the physician (other affiliates/custodians) to obtain health information that might be relevant to the civil proceeding but which was not directly related to the physician's provision of health services. Sections 3(a) and (b) of the HIA specifically address the intersection between the common law rules in a legal proceeding and the HIA. These provisions state:

> *3 This Act*
>
> *(a) does not limit the information otherwise available by law to a party to legal proceedings,*
>
> *(b) does not affect the power of any court or tribunal in Canada to compel a witness to testify or compel the production of documents…*

[para 40] In Order H2004-005, Former Commissioner Work discussed the operation of section 3(a). He said (at para. 66):

> Section 3(a) of the Act expressly recognizes that information is otherwise available by law, and other procedures that enable parties to legal proceedings to obtain information outside the Act continue to exist. Although legislation is usually presumed to override the common law, this presumption is rebutted where the legislature clearly intends to preserve the common law. Read in its ordinary and grammatical sense, this section means that in the sphere of the "information otherwise available by law to a party to legal proceedings," the Act is not intended to change or alter the information available to parties to legal proceedings. In my view, the Act is

> intended to co-exist along with other laws such as the common law that previously governed the information available by law to a party to legal proceedings.

[para 41] Referring back to the example provided regarding a physician defending their treatment of a back injury, health information of the patient *other than* what the physician used/accessed when treating the injury and/or documentation directly related to and emanating from the treatment may be relevant in defending against the civil claim (such as information about a similar injury that occurred years later and was treated by another physician). There are other, well-established processes that govern how the defending physician can obtain and present such relevant information. My point here is only that section 27(1)(a) is not the authority to do so if the information was not accessed and used by the physician in providing the health service in the first place, or if the information did not emanate from the provision of the health service.

Application to the specific complaints

[para 42] In this case, the information before me suggests that the Complainant's health information used in responding to the complaint made by the Complainant to the College was the same information used to treat her and/or was directly related to or emanated from her treatment.

[para 43] The Complainant states that the Custodian accessed her health information from the EHR/Netcare that was created by other health service providers after the Custodian ceased treating the Complainant.

[para 44] The Complainant argues that *Gowrishankar* is distinguishable from the present case, because the Court in *Gowrishankar* specifically noted that there was nothing before it that suggested the information at issue in that case (i.e. the information accessed by the physicians as affiliates) was anything other than the health information essential for the physicians to respond to the complaint and essential for the investigation (at para. 87).

[para 45] The Complainant argues that in this case, the information accessed by the Custodian was not relevant to her complaint as the information was created by other health services providers after the Custodian ceased treating the Complainant. She argues that unlike the case in *Gowrishankar*, the Custodian did not require this information to "refresh his memory." She further argues:

> The Respondent did not stay within the parameters of the "limited purpose" of responding to the complaint to the College. He went far beyond that in printing off reports and consultations by other physicians created subsequent to the time period during which I was under his care.
>
> In our case, [the Custodian] did not only access the information that he created. He accessed - and printed - reports and consultations created more than 6 months ***subsequent to*** the time that I was under his care.
>
> *Gowrishankar* says that physicians can be expected to need to access ***previous*** medical history and diagnoses in order to answer a complaint by their governing body. The Respondent did not access medical information ***previous*** to the care I was complaining about, which occurred in July 2014. He accessed ***subsequent*** consultations with, and diagnoses made by, other physicians, that were not in existence during the period of time that my complaint to the CPSA related to (ie.,

> July/August 2014), nor was it in existence at any time that I was under the Respondent's [care], and that information had no relevance whatsoever to my complaint to the CPSA. …

[para 46] With his initial submission, the Custodian provided an affidavit sworn by the Custodian that addresses the reasons for the accesses identified by the Complainant as unauthorized.

[para 47] The Complainant states that she had been admitted to hospital in December 2014 and treated by Dr. V., who wrote a Discharge Report in December 2014. The Complainant knows that she briefly spoke to the Custodian during that hospital stay, although she did not know it was him at the time.

[para 48] The Custodian states that Dr. V had requested a consult from the Custodian. As a result, the Custodian "briefly attended with" the Complainant, and also met with Dr. V to explain the Complainant's history to him. The Custodian states that he added the Discharge Summary of Dr. V relating to this hospital visit to his chart for the Complainant.

[para 49] I understand that the Complainant had intended not to receive care from the Custodian after August 2014. I understand that the December 2014 visit was not her choice. I also understand that it was very brief. Nevertheless, the Custodian had been requested to make that visit (consultation) and he had done so in the course of providing health services to the Complainant (whether she asked for him to or not). The Discharge Summary, which I have reviewed, clearly refers to the Custodian and care provided by the Custodian to the Complainant as part of her clinical history. The documentation surrounding the Custodian's December 2014 visit with the Complainant was directly related to the visit, and was directly related to and emanated from the Custodian's care provided to the Complainant. Therefore, section 27(1)(a) authorized that use of health information.

[para 50] The Complainant states that she saw another doctor – Dr. G – on November 17, 2014. Dr. G wrote a report regarding that visit, dated January 10, 2015. The Custodian had a copy of that report although he was no longer treating the Complainant by the time of the visit with Dr. G or the report. The Custodian states that Dr. G's consultation referred to the Custodian's care of the Complainant, and was therefore relevant. I have a copy of this consultation report and it discusses a plan for follow up by the Custodian. The Custodian's plan for follow up is directly related to the Custodian's care provided to the Complainant. As such the use was authorized under section 27(1)(a).

[para 51] Neither the Complainant nor the Custodian have addressed the discharge summary prepared by M.A., raised in the Complainant's initial complaint. A copy of this document was provided by the Complainant with her initial complaint. In that document, M.A. specifically refers to care provided to the Complainant by the Custodian as part of the Complainant's clinical history. For the same reasons as above, I find that this is directly related to the Custodian's care provided to the Complainant and that the use was authorized under section 27(1)(a).

[para 52] The Complainant's initial complaint also referred to reports that were printed by M.G. and W.M. as evidenced by the Complainant's Netcare audit log. I have a copy of that log, provided by the Complainant, and have identified the relevant entries. However, nothing in those

entries indicate that these reports were printed on behalf of the Custodian, as alleged by the Complainant in her initial complaint. Having no other information about these entries in the EHR/Netcare audit log, or who M.G. or W.M. are, I can only conclude that the Complainant did not provide sufficient information to substantiate this part of her complaint.

[para 53] Regarding Dr. S, the Complainant states that Dr. S treated her from 2007 to 2011. She states that Dr. S provided the Custodian with a lengthy letter in March 2015, well after either physician was treating her. The Custodian states that he had had conversations with Dr. S about the Complainant at the time that the Custodian was providing care to the Complainant. These conversations related to that care, and the care previously provided by Dr. S. The Custodian states that in February 2015 he wrote to Dr. S to ask Dr. S to put in writing the conversations that had taken place at the time the Custodian was treating the Complainant.

[para 54] The Complainant interprets the Custodian's submission on this point to mean that the conversations between the Custodian and Dr. S took place in February 2015, which would have been well after either physician treated the Complainant. However, I understand the submission to mean that the conversations took place while the Complainant was seeing the Custodian. The Custodian requested that Dr. S put these conversations in writing in February 2015, so that he could submit that letter to the College. This being my understanding, it seems clear to me that the conversations between the Custodian and Dr. S directly related to the Custodian's care of the Complainant, and that the Custodian was gathering information relevant to his care of the Complainant. As such, the Custodian's use of the health information obtained from Dr. S in conversation was for the provision of a health service; the later use of the letter written by Dr. S documenting the conversations was directly related to the same care. Its use was authorized under section 27(1)(a) for the same reasons as above.

IV. ORDER

[para 55] I make this Order under section 80 of the Act.

[para 56] I find that the Custodian had authority to access and/or use the Complainant's health information.

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Amanda Swanek
Adjudicator