



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## INVESTIGATION REPORT 214-2017

**Dr. Hakan Pehlivan**

**October 6, 2017**

**Summary:**

The Commissioner investigated whether Dr. Hakan Pehlivan had fulfilled his continuing duties of a trustee described in section 22 of *The Health Information Protection Act* (HIPA). He found that the plans that Dr. Pehlivan had to contract with an information management service provider (IMSP) to store and process personal health information in his custody or under his control was not authorized by section 22 of HIPA. He also found that Dr. Pehlivan abandoned patient records because he did not follow through on these plans when his medical licence was revoked and he left the country. He recommended that the Minister of Health arrange a transfer of the personal health information in question to another trustee or an IMSP that is a designated archive.

### **I BACKGROUND**

[1] My office was alerted to the fact that patients were having difficulties accessing their personal health information in the custody and under the control of Dr. Hakan Pehlivan after he closed his practise and left the country. These individuals had been notified that he had contracted with an information service provider (IMSP) entitled Record Storage & Retrieval Services Inc. (RSRS) to secure storage and management of digital patient records. However, my office was informed that RSRS had not received the personal health information from Dr. Pehlivan's other IMSP, QHR Technologies Inc. (QHR) which provided electronic medical record services to Dr. Pehlivan.

- [2] On August 28, 2017, my office notified Dr. Pehlivan that I would be undertaking an investigation. My office asked Dr. Pehlivan for information related to the safeguards of the personal health information in question.
- [3] Dr. Pehlivan did not respond to this request.
- [4] During the course of my investigation, I discovered that St. Joseph's Hospital (St. Joseph's) in Estevan took seven bankers boxes of personal health information from the office space that Dr. Pehlivan was renting from St. Joseph's Hospital Foundation (the foundation) and is keeping them secure. The foundation has confirmed that no other papers or electronic equipment remains in the space.

## **II DISCUSSION OF THE ISSUES**

### **1. Does HIPA apply in these circumstances?**

- [5] HIPA applies in full when three elements are present. The first element is personal health information, the second element is a trustee, and the third element is if the personal health information is in the custody or control of the trustee.
- [6] Subsection 2(m) of HIPA defines personal health information as follows:

2 In this Act:

...

(m) "personal health information" means, with respect to an individual, whether living or deceased:

- (i) information with respect to the physical or mental health of the individual;
- (ii) information with respect to any health service provided to the individual;
- (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
- (iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual; or

(v) registration information;

[7] QHR has indicated that it has medical records for 3193 patients of Dr. Pehlivan. This information would qualify as personal health information pursuant to subsection 2(m)(i), (ii) and (iv)(A) and (B) of HIPA because it was collected while Dr. Pehlivan was providing health services to the individuals.

[8] Subsection 2(t) of HIPA defines a trustee. The relevant provisions are as follows:

2 In this Act:

(t) “trustee” means any of the following that have custody or control of personal health information:

...

(xii) a person, other than an employee of a trustee, who is:

(A) a health professional licensed or registered pursuant to an Act for which the minister is responsible; or

[9] Dr. Pehlivan qualified as a trustee pursuant to subsection 2(t)(xii)(A) of HIPA. The College of Physicians and Surgeons of Saskatchewan confirmed he was licensed pursuant to *The Medical Profession Act, 1981* from July 2009 to August 31, 2017 (with a small gap). However, the licence was revoked on August 31, 2017.

[10] QHR indicated that it has provided electronic medical record services to Dr. Pehlivan for one year. It is our understanding that Dr. Pehlivan was involved in a group practise which he left a year ago; however, QHR has confirmed that, with respect to the personal health information in question, its agreement is with Dr. Pehlivan and no other trustee. The agreement was signed on August 30, 2016. The personal health information in question was in the custody or control of Dr. Pehlivan while he was a trustee.

**2. Has Dr. Pehlivan fulfilled the continuing duties of a trustee?**

[11] Section 22 of HIPA describes the duties that a trustee has after he or she ceases to be a trustee. It provides:

22(1) Where a trustee ceases to be a trustee with respect to any records containing personal health information, the duties imposed by this Act on a trustee with respect to personal health information in the custody or control of the trustee continue to apply to the former trustee until the former trustee transfers custody and control of the personal health information to another trustee or to an information management service provider that is a designated archive.

(2) Where a former trustee fails to carry out the duties continued pursuant to subsection (1), the minister may appoint a person or body to act in place of the former trustee until custody and control of the personal health information is transferred to another trustee or to an information management service provider that is a designated archive.

(2.1) If a trustee fails to keep secure personal health information in the custody or control of the trustee, the minister may appoint a person or body to act in place of the trustee until custody or control of the personal health information is re-established, transferred to another trustee or transferred to an information management service provider that is a designated archive.

(3) Where a trustee dies, the duties imposed by this Act on a trustee with respect to personal health information in the custody or control of the trustee become the duties of the personal representative of the trustee and continue to apply to the personal representative until the personal representative transfers custody and control of the personal health information to another trustee or to an information management service provider that is a designated archive.

[12] Dr. Pehlivan's licence has been revoked by CPSS. He has also left the country. Therefore, he has ceased to be a trustee for the purpose of subsection 2(t) of HIPA and section 22 of HIPA is engaged.

[13] Pursuant to subsection 22(a), it is Dr. Pehlivan's duty to protect the personal health information as described in HIPA until he transfers custody of control of the personal health information. He has two options for the transfer of the personal health information. He could transfer custody and control to another trustee. Dr. Pehlivan did

not do so. His other option was to transfer custody and control of the personal health information to an IMSP that is a designated archive.

[14] IMSP is defined in subsection 2(j) as follows:

2 In this Act:

...

(j) **“information management service provider”** means a person who or body that processes, stores, archives or destroys records of a trustee containing personal health information or that provides information management or information technology services to a trustee with respect to records of the trustee containing personal health information, and includes a trustee that carries out any of those activities on behalf of another trustee, but does not include a trustee that carries out any of those activities on its own behalf;

[15] A designated archive is defined in subsection 2(e) of HIPA as follows:

2 In this Act:

...

(e) **“designated archive”** means an archive designated in the regulations for the purposes of section 22;

[16] Section 4 of *The Health Information Protection Regulations* (the Regulations) provide:

4(1) For the purposes of section 22 of the Act, the following are designated archives:

- (a) affiliates;
- (b) the Department of Health;
- (c) health professional bodies that regulate members of a health profession pursuant to an Act;
- (d) regional health authorities;
- (e) Saskatchewan Archives Board;
- (f) eHealth Saskatchewan;
- (g) University of Regina Archives;
- (h) University of Saskatchewan Archives.

(2) Nothing in this section requires a designated archive to accept personal health information from a trustee.

- [17] RSRS informed my office that it has a memorandum of understanding (MOU) with Dr. Pehlivan that it would process and store personal health information on behalf of the physician. As such, RSRS would store the personal health information for Dr. Pehlivan and provide access to individuals seeking their own personal health information.
- [18] The MOU between Dr. Pehlivan and RSRS describes the secure storage and management of personal health information. The services provided by RSRS enable it to qualify as an IMSP for the purposes of subsection 2(j) of HIPA. However in this case, because Dr. Pehlivan has ceased to be a trustee, the IMSP he chooses must also be a designated archive. RSRS is not listed in subsection 4(1) as a designated archive. As such, Dr. Pehlivan has not fulfilled his continuing duties described in subsection 22(1) of HIPA i.e. transferring custody and control of the personal health information to an IMSP that is also a designated archive.
- [19] To complicate matters, RSRS has indicated that it has not received the personal health information in the custody or control of Dr. Pehlivan. RSRS and Dr. Pehlivan had only signed the MOU. Records were not transferred and a final agreement has not been signed. However, patients have been notified that their records would be available at RSRS by means of a recorded message that plays when Dr. Pehlivan's former office telephone number is called. RSRS has reported that it has received approximately 141 inquiries of individuals looking for medical records.
- [20] At the same time, QHR is left holding the personal health information in question. The company was contracted by Dr. Pehlivan to provide a licence for electronic medical record software and support services related to the software, including storage of personal health information, to Dr. Pehlivan. It also qualifies as an IMSP pursuant to subsection 2(j) of HIPA. It is not a designated archive as defined by subsection 2(e) of HIPA. It reports that Dr. Pehlivan is in arrears with respect to fees owed to the IMSP. The agreement between QHR and Dr. Pehlivan indicates that the personal health information is the "property" of Dr. Pehlivan. Nothing in the agreement gives QHR the requisite

authority to transfer the records to RSRS as planned or provide individuals with access to their personal health information.

[21] RSRS and QHR both report that they are unable to contact Dr. Pehlivan.

[22] Further, Dr. Pehlivan did not transfer paper records to a new trustee in a formal manner. St. Joseph's Hospital reports that it is storing seven Banker's boxes of medical records from Dr. Pehlivan's office for him. St. Joseph's indicated it had received an e-mail dated August 27, 2017 from Dr. Pehlivan to St. Joseph's Chief Executive Officer. In it, Dr. Pehlivan says he would appreciate it if St. Joseph's would "keep the patient records some where safe". The e-mail did not indicate for how long or what would happen if he did not return.

[23] St. Joseph's also qualifies as a trustee. Subsection 2(t)(ii) of HIPA provides:

2 In this Act:

...

(t) "**trustee**" means any of the following that have custody or control of personal health information:

...

(ii) a regional health authority or a health care organization;

[24] Subsection 2(h.1) of HIPA provides:

2 In this Act:

...

(h.1) "health care organization" means a health care organization as defined in *The Regional Health Services Act*;

[25] Subsection 2(h) of *The Regional Health Services Act* defines health care organization and affiliate as follows:

2 In this Act:

(a) "affiliate" means a person who, immediately before the coming into force of this section, is the operator of a hospital approved pursuant to *The Hospital Standards Act* or a not-for-profit special-care home licensed pursuant to *The Housing and Special-care Homes Act*, and includes any successor to that operator but does not include a regional health authority or a prescribed person;

...

(h) “health care organization” means:

(i) an affiliate; or

(ii) a prescribed person that receives funding from a regional health authority to provide health services;

[26] In addition, St. Joseph’s is listed as an affiliate in *The Regional Health Services Administration Regulations*.

[27] St. Joseph’s qualifies as a trustee pursuant to subsection 2(t)(ii) of HIPA because it qualifies as a health care organization pursuant to subsections 2(h.1) of HIPA and 2(h) of *The Regional Health Services Act*.

[28] St. Joseph’s also qualifies as a designated archive pursuant to subsection 4(1)(a) of the *Regulations*.

[29] I note again that Dr. Pehlivan’s medical licence was revoked on August 31, 2017. He sent the e-mail to St. Joseph’s four days before his licence was revoked. Even though St. Joseph’s qualifies as a trustee, there was not a written agreement or any formal understanding between Dr. Pehlivan and St. Joseph’s about custody or control of the personal health information. St. Joseph’s could have filled the role of an IMSP while Dr. Pehlivan was still a trustee. When Dr. Pehlivan ceased to be a trustee, he only had two options, either to transfer custody and control to a trustee or to an IMSP that was a designated archive. Neither happened in this case. As per the e-mail, St. Joseph’s took the personal health information to keep it secure. However, the personal health information was not formally transferred.

[30] I find that Dr. Pehlivan failed to carry out the duties described in subsection 22(1) of HIPA. I also find that he has abandoned both the personal health information held by QHR and the paper records now held by St. Joseph’s.



**3. What should occur to the personal health information in question?**

[31] Subsection 22(2) of HIPA indicates that when a former trustee fails to carry out the duties described in subsection 22(1), the minister may appoint a person or body to act in place of the former trustee until custody and control of the personal health information is transferred to another trustee or to an IMSP that is a designated archive.

[32] Minister is defined in subsection 2(k) of HIPA as follows:

**2** In this Act:

...

(k) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

[33] Schedule M to Order in Council 417/2017 signed on August 30, 2017 assigns responsibility for HIPA to the Minister of Health.

[34] It is clear that the Minister of Health can take action in this situation to appoint a person or body to act in place of a trustee until a trustee or a designated archive takes over custody or control of records. I recommend that it do so.

[35] I will provide a copy of this Investigation Report to the Ministry of Health, QHR, RSRS and St. Joseph's.

**III FINDINGS**

[36] I find that Dr. Pehlivan failed to carry out the duties described in subsection 22(1) of HIPA.

[37] I find that Dr. Pehlivan has abandoned the personal health information held by QHR and in paper form held by St. Joseph's.

[38] I find that the Minister of Health has the authority to arrange a transfer of the personal health information in question to another trustee or an IMSP that is a designated archive.

#### **IV RECOMMENDATION**

[39] I recommend that the Minister of Health arrange a transfer of the personal health information in question to another trustee or an IMSP that is a designated archive.

Dated at Regina, in the Province of Saskatchewan, this 6th day of October, 2017.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner