



REVIEW REPORT 022-2024

Victory Medical Associates (Dr. Akin Peluola)

April 18, 2024

Summary: The Applicant submitted an access to information request to Victory Medical Associates for all records related to them. The owner of the clinic, Dr. Akin Peluola (Dr. Peluola) authorized the release of the records to the Applicant. However, Dr. Peluola's office required that the Applicant appear in person to sign and receive the records. The Applicant appealed to the Commissioner. The Commissioner found that Dr. Peluola's procedure to release records via registered mail or by providing records in-person to be reasonable. The Commissioner recommended that Dr. Peluola attempt to send the records to the Applicant via registered mail. If the record are returned, he recommended that Dr. Peluola require the Applicant to present in-person to pick up the records. If the Applicant refuses to cooperate, then Dr. Peluola does not need to take further action.

I BACKGROUND

[1] On August 24, 2023, the Applicant emailed a letter to Victory Medical Associates. The letter contained an access to information request as well as a privacy complaint. This Report is regarding the access to information request. The Applicant had made the following access to information request:

I request all records relating to me. I prefer digital delivery.

Attached is my ID.

[2] The Applicant attached a photocopy of their Saskatchewan photo identification card.

- [3] On August 29, 2023, Victory Medical Association posed the following question to the Applicant:

Could you kindly let me know which physician this letter is directed to.

- [4] On the same day, the Applicant responded to Victory Medical Associates by saying “All.”

- [5] On September 26, 2023, after having not received a response to their access request, the Applicant contacted my office.

- [6] Through my office’s efforts to resolve matters informally, Victory Medical Associates issued a response to the Applicant’s access request on January 24, 2024. Victory Medical Associates responded:

I have been authorized by Dr. Akin Peluola to release your records from your file, but they will not be sent digitally, and you will need to come into the clinic to receive them.

- [7] On January 31, 2024, the Applicant responded to Victory Medical Associates by asking Victory Medical Associates to mail the records to them. The Applicant said:

Dr. Peluola is not the only physician at your clinic that has records relating to me.

I won’t go to your office to pick up records or for any other reason. Mail them to:

[Applicant’s mailing address]

- [8] On February 1, 2024, Victory Medical Associates responded by indicating they would not mail the records to the Applicant. It said:

Dr. Peluola is the only physician with a file open for you. If you are referring to a physician you saw previously who no longer practices at this clinic, you will have to contact their new office to access your records.

I will need you to come to the clinic as you will have to sign to receive a copy of your records. I will not be mailing your health records. I am sorry for the inconvenience. Alternatively, your family doctor can fax a signed request for your records and I can send them to that office once I have received that request.

[9] On February 3, 2024, the Applicant indicated they were dissatisfied with Victory Medical Associate's response to the access request.

[10] On February 8, 2024, my office sought clarification from the Applicant with which issue they were dissatisfied: 1) Victory Medical Associate's requirement that the Applicant present in person and sign for the records, or 2) Victory Medical Associate's requirement that the Applicant indicate the names of the physicians at the clinic whose records they are requesting.

[11] On the same day, the Applicant said:

...I don't accept any requirement they put on the receipt of records.

[12] On March 14, 2024, my office notified both the Applicant and Dr. Akin Peluola (Dr. Peluola) that my office would be undertaking a review of Dr. Peluola's requirement that the Applicant appear in person and sign for their records.

II RECORDS AT ISSUE

[13] My office is reviewing Dr. Peluola's requirement that the Applicant appear in person and sign for their records. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[14] In order for *The Health Information Protection Act* (HIPA) to be engaged, three elements must be present: 1) a trustee, 2) personal health information, and 3) the trustee must have custody or control over the personal health information. Below is my analysis to determine if these three elements are present.

[15] First, Dr. Peluola’s office provided my office a copy of its 2023 and 2024 business licenses for Victory Medical Associates along with its business license renewal form. Dr. Peluola is identified as the “primary owner” on the renewal form. Therefore, I find that Dr. Peluola qualifies as a trustee pursuant to subsection 2(1)(t)(xii) and (xv) of HIPA, which provides:

2(1) 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;

(xv) any other prescribed person, body or class of persons or bodies;

[16] Subsection 4(b) of *The Health Information Protection Regulations* provides:

4 For the purposes of subclause 2(1)(t)(xv) of the Act, the following are prescribed as trustees:

...

(b) every person who owns or operates a privately-owned facility in or from which health services are provided by a health professional;

[17] Given that the Applicant was a patient of Dr. Peluola at Victory Medical Associates in the past, I am satisfied that health services are provided by Dr. Peluola at Victory Medical Associates.

[18] Second, at issue is how the Applicant will receive their patient records from Dr. Peluola. I find that patient records qualify as “personal health information” as defined by subsection 2(1)(m) of HIPA:

2(1) 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;

...

(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;

[19] Finally, QHR Technologies Inc. is a healthcare technology company which provides electronic medical record (EMR) products. The license and services agreement between Dr. Peluola and QHR Technologies Inc. provides that Dr. Peluola has custody or control over the “Client Information” (or patient personal health information) that is stored on the electronic medical record (EMR) at Victory Medical Associates.

[20] All three elements are present in order for HIPA to be present. I find that I have jurisdiction to conduct this review.

2. Is Dr. Peluola’s requirement that the Applicant appear in person and sign to receive records reasonable?

[21] As described in the background, the Applicant indicated they preferred “digital delivery” of their records. However, Victory Medical Associates required the Applicant to appear in person to receive the records. Then, the Applicant requested that Victoria Medical Associates mail the records. Victory Medical Associates refused to do so.

[22] Subsection 36(1)(a) of HIPA provides:

36(1) Within 30 days after receiving a written request for access, a trustee must respond to the request in one of the following ways:

(a) by making the personal health information available for examination and providing a copy, if requested, to the applicant;

[23] Victory Medical Associates, or Dr. Peluola, is willing to provide a copy of the records to the Applicant. Therefore, the issue isn't whether Dr. Peluola is complying with subsection 36(1)(a) of HIPA. Rather, the question is if it is reasonable that Dr. Peluola requires the Applicant to appear in person and sign for the records.

[24] Section 16 of HIPA imposes the duty upon trustees to protect personal health information in their custody or control. Specifically, subsection 16(1)(b)(iii) of HIPA requires trustees to take steps to protect personal health information from unauthorized disclosure:

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

(a) protect the integrity, accuracy and confidentiality of the information;

(b) protect against any reasonably anticipated:

(i) threat or hazard to the security or integrity of the information;

(ii) loss of the information; or

(iii) unauthorized access to or use, disclosure or modification of the information; and

(c) otherwise ensure compliance with this Act by its employees.

[Emphasis added]

[25] Dr. Peluola explained that, in the past, his office had sent records to the Applicant via registered mail. However, the Applicant did not sign for or receive the registered mail. Therefore, due to the sensitivity of the information in the records, his office wanted to hand the records to the Applicant directly:

The applicant was a former patient of a family physician who has since left this practice. During that time, he requested a copy of his records which were sent by registered mail. If personal copies of medical records are requested by a patient to be sent in the mail,

they are sent by registered mail, requiring the patient to sign for them. The applicant never picked them up and they were returned to the clinic “return to sender”. **As medical records are sensitive and there were issues in the past, my reasoning in asking the applicant to sign for his records was to eliminate the third party and hand them directly to the patient.**

It is preferred that records be transferred from a medical clinic to another official body, such as another medical clinic, or an insurance company or lawyer’s office. **If a patient requests a copy of records for themselves, they must sign for them, either by having them sent by registered mail, or signing for them at the clinic. In the case that they go missing, there is proof that they were in the possession of the patient at the time of loss and therefore it was the responsibility of the patient to safeguard their personal information.**

[Emphasis added]

[26] Dr. Peluola and his staff may have had issues with sending the records to the Applicant in the past. However, I can only review what Dr. Peluola and his staff have done to satisfy their obligations pursuant to subsection 36(1)(a) of HIPA and section 16 of HIPA in the processing of the current access to information request.

[27] As quoted earlier, section 16 of HIPA requires trustees to have safeguards to protect against any reasonably anticipated loss of personal information or the unauthorized disclosure of personal health information. Dr. Peluola’s procedure to releasing records involves either sending the records via registered mail or by providing the records in-person. I find that Dr. Peluola’s procedure is reasonable pursuant to section 16 of HIPA.

[28] In this case, I recommend that Dr. Peluola attempt to send the records to the Applicant via registered mail. If the records are returned, then I recommend that Dr. Peluola require the Applicant to present in-person to pick up the records. If the Applicant refuses to cooperate, then Dr. Peluola and his office does not need to take any further action.

[29] I also recommend that Dr. Peluola and his staff retain a copy of the tracking of the delivery attempts. This will be helpful in the future should the Applicant complain to my office regarding not receiving records in response to access requests.

IV FINDINGS

[30] I find that I have jurisdiction to conduct this review.

[31] I find that Dr. Peluola's procedure to releasing records via registered mail or by providing records in-person to be reasonable.

V RECOMMENDATIONS

[32] I recommend that Dr. Peluola attempt to send the records to the Applicant via registered mail. If the records are returned, then I recommend that Dr. Peluola require the Applicant to present in-person to pick up the records. If the Applicant refuses to cooperate, then Dr. Peluola and his office does not need to take further action.

[33] I recommend that Dr. Peluola and his staff retain a copy of the tracking of the delivery attempts. This will be helpful in the future should the Applicant complain to my office regarding not receiving records in response to access requests.

Dated at Regina, in the Province of Saskatchewan, this 18th day of April, 2024.

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