

March 7, 2022

Ms. Valerie Jepson
Adjudicator
Information and Privacy Commissioner of Ontario
Tribunal Services Department
2 Bloor Street East, Suite 1400
Toronto, Ontario M4W 1A8

Email: Chris.Anzenberger@ipc.on.ca

Dear Ms. Jepson:

Re: Notice of Inquiry, Appeal PA21-00122, Ministry of Health, File A-2020-00100 / RK

In response to the Notice of Inquiry received by the Ontario Pharmacists Association (OPA) on February 16, 2022, OPA is providing representations with respect to the request made under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for information from the Narcotics Monitoring System (NMS) database.

It is our understanding that the request was for a full historical record of filled prescriptions going back to the database's inception in 2012 which includes the names and addresses of prescribers and dispensers of narcotics. In response to the request, the Ministry issued a decision to grant access in part to the information requested, with the following fields severed under clauses 14(1)(e), (i) and (l) (Law Enforcement) as well as section 20 (Danger to Safety) of FIPPA:

- Prescriber's name
- Prescriber's registration number

- Prescriber's address
- Pharmacy ID
- Pharmacy postal code
- Pharmacist name
- Pharmacist ID

On January 25, 2022, OPA provided a letter in support of the Ministry's decision to apply the severances noted above. As an important member of the healthcare team, a patient's pharmacist, through their pharmacy, provides professional services to support the patient's health and the appropriate use of their medications, informed by private and confidential discussion. It is the opinion of OPA that release of the pharmacist and pharmacy information could endanger the safety of individuals as well as the security of the building in which controlled substances are stored. Furthermore, release of this information may reveal trade secrets with respect to the pharmacy business and operations. Further explanation to address Issues A, B, C, and E of the Notice of Inquiry from the perspective of the pharmacy profession are provided below.

Issue A: Do the affected parties' representations contain confidential information that the ministry does not want me to share with other parties to this appeal?

OPA recognizes and understands that the representations provided within this letter may be shared with other parties to the appeal.

Issue B: Do the discretionary exemptions at sections 14(1)(e), 14(1)(i), and 14(1)(l) related to law enforcement activities apply to the record?

Section 14(1)(e): endanger life or physical safety of a law enforcement officer or any other person

Section 14(1)(i): endanger security of a building, vehicle, system or procedure

Section 14(1)(l): facilitate commission of an unlawful act or hamper the control of crime

Although OPA respects the right of individuals to access information, OPA is of the opinion that access to the pharmacy ID, pharmacy postal code, pharmacist name, and pharmacist ID related to monitored drugs dispensed in Ontario could pose a safety risk to pharmacies and their staff. The NMS was developed in 2012 to collect dispensing data from pharmacies in relation to all monitored drugs regardless of how the prescription is reimbursed. The list of medications considered to be monitored drugs encompasses any controlled substance under the federal *Controlled Drugs and Substances Act* (CDSA) which includes narcotics, controlled drugs, benzodiazepines, and barbiturates. As controlled substances have a higher potential for diversion and misuse, it is expected that pharmacists take all reasonable and necessary steps to ensure the security of controlled substances in their possession (i.e., at the pharmacy location). Public access to pharmacy-specific information associated with claims for monitored substances may provide information on which pharmacies dispense a larger volume of narcotic or controlled substance prescriptions and thus are more likely to have higher on-hand inventory of

these drugs. This information could then be utilized to target pharmacies and therefore increase the risk of robberies at these pharmacy locations.

Similarly, information regarding pharmacies may be discerned from the provision of pharmacist-specific information as all pharmacist registrants of the Ontario College of Pharmacists are required to report their places of practice to the College according to College By-Laws, which are then made publicly available through the College's website.ⁱ As a result, an individual may be able to match the claims information related to the dispensing pharmacist back to an associated pharmacy to then target specific pharmacies for robberies.

Pharmacy robberies are an increasing problem not only in Ontario but also nationwide. A retrospective analysis by Fan et. al. of Health Canada data on reported losses or thefts of five opioids (codeine, fentanyl, hydromorphone, morphine and oxycodone) from January 2012 to September 2017 found that Ontario had the largest pharmacy losses amongst all Canadian provinces and territories with an increasing trend in armed robberies over the study period.ⁱⁱ In addition, of the 64,963 reports of loss for the specified opioids in Canada, losses in community pharmacies accounted for 76.8% of total losses with the dominant reasons for loss being armed robbery of community pharmacies (31.1%) and break and entry (28.1%).ⁱⁱ More recently, on January 25, 2022, Waterloo Regional Police issued a warning to pharmacies after seven pharmacies experienced robberies in the region since

the beginning of the year, which brought the year-to-date total number of robberies to 24 compared to 12 during the same period last year.ⁱⁱⁱ Similarly, Durham Regional Police issued a statement on February 17, 2022 regarding investigations into three pharmacy robberies that all occurred on Wednesday, February 16 in Oshawa, Whitby and Ajax.^{iv} These reports are clear indication that pharmacy robberies are a current problem and the risk associated with the provision of pharmacy- and/or pharmacist-specific information related to NMS claims potentially facilitating an increase in occurrence of pharmacy robberies is of concern to OPA. Furthermore, the provision of this information may also compromise the safety and security measures required under federal CDSA regulations, which includes the *Narcotic Control Regulations* (NCR), the *Benzodiazepines and Other Targeted Substances Regulations* and the *Food and Drug Regulations*, to minimize the potential diversion of controlled substances from pharmacy locations. With the growing opioid crisis in Canada as well as concerns with substance abuse, it is critical that any decisions made with respect to this request for information do not contribute to or facilitate diversion, misuse, and abuse of controlled substances.

Armed robberies can also put staff who are working at the pharmacy at risk of physical injuries and/or death. For example, a pharmacy robbery in Ajax resulted in the assault of an employee who needed to be treated at a local hospital for a head and facial injury.^{iv} Moreover, although pharmacies are required to have policies and procedures for their staff on how to handle robberies and break-ins, these events are still traumatic for the

involved victims and can lead to short- and long-term emotional and psychological effects.

A study of 136 pharmacy workers in Italy found that the onset of Post-Traumatic Stress Disorder (PTSD) was associated with exposure to a robbery in a significant proportion of victims, and the risks for severe and long-lasting impairment of work ability, emotional well-being and quality of life were increased.^v The prevention of pharmacy robberies is key to protecting the safety of pharmacy staff and any members of the public who may also be at the pharmacy at the time of an incident.

OPA is not supportive of actions that could increase the risk of pharmacy robberies. In considering the potential consequences associated with disclosing pharmacy- and/or pharmacist-specific information related to the NMS, it is the belief of OPA that the discretionary exemptions at sections 14(1)(e), 14(1)(i), and 14(1)(l) related to law enforcement activities apply to the record.

Issue C: Does the discretionary exemption at section 20 regarding a threat to safety or health apply to the record?

Section 20 is meant to protect individuals from serious threats to their health or safety resulting from disclosure of a record. As described above, disclosure of NMS dispensing records which include the pharmacy ID, pharmacy postal code, pharmacist name, and pharmacist ID related to monitored drugs dispensed in Ontario could increase the risk of pharmacy robberies, which in turn could seriously threaten the safety and/or health of

pharmacy staff as well as members of the public who may be at the pharmacy during the time of the incident.

Pharmacies can be perceived as soft targets for robberies because they contain a large quantity of narcotics and have low levels of formalized security.^{vi} As such, despite security measures imposed by pharmacies to prevent robberies such as but not limited to installing alarm systems, video surveillance, narcotic safes and securing doors and windows, pharmacy robberies continue to rise in Ontario.ⁱⁱ The disclosure of pharmacy- and/or pharmacist-specific information related to NMS claims could contribute to this rising trend by providing information on which pharmacies may have larger on-hand quantities of controlled substances based on historical dispensing data. This places a target on these pharmacies and may endanger the staff, patients, and other patrons of the pharmacy as they may suffer immediate, short- and long-term physical injury and/or emotional/psychological distress as a result of the robbery.

Issue E: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 20 exemption?

In considering compelling public interest, OPA understands that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their

governments or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices. OPA is not aware of compelling public interest as it relates to the provision of the pharmacy- and/or pharmacist-specific information related to NMS claims that would outweigh the purpose of the section 20 exemption.

Other Issues

OPA further notes that release of the pharmacy- and/or pharmacist-specific information related to NMS claims for controlled substances may reveal competitive knowledge associated with pharmacy business and operations. As the NMS contains all dispensing data from pharmacies in relation to monitored drugs regardless of how the prescription is reimbursed, public access to pharmacy-specific data may reveal confidential business information such as prescription count and market share which can be used to negatively impact some pharmacies. For example, in a community where only Pharmacy A dispenses opioid agonist therapy (OAT) (i.e., methadone and buprenorphine/naloxone), the release of pharmacy- and/or pharmacist-specific information as part of the NMS records may allow an individual to calculate the number of OAT prescriptions dispensed by Pharmacy A. This same individual may then determine if Pharmacy A is a profitable business based on prescription volume, and using this competitive knowledge, decide to open a new pharmacy (Pharmacy B) nearby Pharmacy A to capture market share which may negatively impact the business operations of Pharmacy A.

OPA suggests that refusal to provide the pharmacy- and/or pharmacist-specific information related to individual NMS claims may be in accordance with sections 17(1)(a) and 17(1)(c) of FIPPA which state that:

17(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to:

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

...

(c) result in undue loss or gain to any person, group, committee or financial institution or agency;

This business information should be considered as trade secrets since it has commercial value and is not publicly shared outside of the pharmacy business with competitors^{vii}.

Therefore, disclosing this information publicly may impact the viability and financial success of a specific pharmacy business.

Conclusion

OPA appreciates the opportunity to provide representations to the Information and Privacy Commissioner of Ontario regarding the appeal for information from the NMS database. The ability to request and access information through Ontario's freedom of information laws is an important right that helps to uphold accountability. However, based on the potential risks to pharmacies and their staff, OPA supports the Ministry's decision to apply the severances to the data fields: pharmacy ID, pharmacy postal code, pharmacist name, and pharmacist ID from the dispensing data provided from the Ministry's NMS. Should you have any further questions, please do not hesitate to contact me at your convenience at 416-441-0788 ext.4225 or via email at ang@opatoday.com.

Sincerely,



Angeline Ng
Vice President, Professional Affairs

cc: Justin Bates, Chief Executive Officer, Ontario Pharmacists Association
Tim Brady, Chair, Board of Director, Ontario Pharmacists Association

ⁱ Ontario College of Pharmacists. (2021, June 14). *Ontario College of Pharmacists By-Law No. 6*. Accessed February 28, 2022. <https://www.ocpinfo.com/wp-content/uploads/2020/03/ontario-college-of-pharmacists-by-law-no-6.pdf>

ⁱⁱ Fan, M., Tscheng, D., Hamilton, M., & Trbovich, P. (2020). Opioid losses in terms of dosage and value, January 2012 to September 2017: a retrospective analysis of Health Canada data. *CMAJ open*, 8(1), E113–E119. <https://doi.org/10.9778/cmajo.20190112>

ⁱⁱⁱ Waterloo Regional Police Service. (2022, January 25). *Waterloo Regional Police Issue Warning to Pharmacies after Several Robberies in Recent Weeks*. Accessed February 28, 2022.

<https://www.wrps.on.ca/en/news/waterloo-regional-police-issue-warning-to-pharmacies-after-several-robberies-in-recent-weeks.aspx>

^{iv} Durham Regional Police Service. (2022, February 22). *Police Investigating Three Pharmacy Robberies*. Accessed February 28, 2022. <https://www.drps.ca/news/police-investigating-three-pharmacy-robberies/>

^v Fichera, G. P., Sartori, S., & Costa, G. (2009). Disturbo post-traumatico da stress conseguente a rapina sul lavoro: studio pilota su 136 farmacisti [Post-traumatic stress disorder following robbery at the workplace: a pilot study on 136 pharmacy workers]. *La Medicina del lavoro*, 100(2), 97–108.

^{vi} Andresen, M.A., Mann, E., Hodgkinson, T., Thacker, S., & Nakagawa, B. (2019). An evaluation of bylaw and policy changes on pharmacy robberies in British Columbia. *Crime Science*, 8(1). <https://doi.org/10.1186/s40163-019-0096-x>

^{vii} Canadian Intellectual Property Office. (2021, March 19). *What is a trade secret?* Government of Canada. Accessed March 4, 2022. <https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr03987.html>