



INVESTIGATION REPORT 041-2018, 203-2018

Saskatchewan Health Authority

February 25, 2019

Summary:

A medical imaging report meant for Dr. P. Meiers was sent erroneously to Dr. S. Meiers. Then, a lab report meant for Dr. S. Meiers was sent erroneously to Dr. P. Meiers. The Information and Privacy Commissioner (IPC) found that the Saskatchewan Health Authority responded to the privacy breaches appropriately. Since the IPC has investigated several similar privacy breaches resulting from physicians having the same last name in the past, the IPC recommended that SHA program its electronic systems to reject the processing of requisition forms unless employees enter at least two or more pieces of information into its electronic systems to search for physicians.

I BACKGROUND

[1] On March 9, 2018, Dr. Suzanne Meiers (Dr. S. Meiers) reported to my office that she received a medical imaging report in error from St. Paul's Hospital in Saskatoon. The report was meant for Dr. Pamela Meiers (Dr. P. Meiers).

[2] Then, on September 27, 2018, Dr. S. Meiers reported to my office that Davidson Health Centre sent a lab report to Dr. P. Meiers even though the lab report was meant for Dr. S. Meiers.

[3] My office undertook investigations into both incidents.

II DISCUSSION OF THE ISSUES

1. Is *The Health Information Protection Act (HIPA)* engaged and do I have jurisdiction to investigate this matter?

[4] HIPA is engaged when three elements are present: 1) personal health information, 2) a trustee, and 3) the personal health information is in the custody or control of the trustee.

[5] First, personal health information is defined by subsection 2(m) of HIPA, which provides:

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;

[6] Based on a review of the medical imaging report and the lab report, I find that there is personal health information.

[7] Second, “trustee” is defined by subsection 2(t)(ii) of HIPA, which provides:

2 In this Act:

...

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

...

(ii) the provincial health authority or a health care organization;

[8] St. Paul's Hospital and the Davidson Health Centre are a part of the Saskatchewan Health Authority (SHA). The SHA is the provincial health authority. I find that the SHA qualifies as a trustee as defined by subsection 2(t)(ii) of HIPA.

[9] Third, the medical imaging report and the lab report originated from the SHA. Therefore, I find that SHA has custody or control over them.

[10] Based on the above, I find that HIPA is engaged. Therefore, I have jurisdiction to investigate.

2. Were there unauthorized disclosures of personal health information?

[11] Disclosure is the sharing of personal health information with a separate entity that is not a division or branch of the trustee organization. Trustees must only disclose personal health information in accordance with section 27 of HIPA, which provides:

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[12] In the first case, the SHA disclosed personal health information to Dr. S. Meiers when the medical imaging report was meant for Dr. P. Meiers. In the second case, the SHA disclosed personal health information to Dr. P. Meiers when the lab report was meant for Dr. S. Meiers. I find that unauthorized disclosures occurred.

3. Did the SHA respond to these privacy breaches appropriately?

[13] My office suggests that trustees undertake the following five steps when responding to a privacy breach:

- Contain the breach,
- Notify affected individual(s),
- Investigate the privacy breach,
- Prevent future privacy breaches, and

- Write an investigation report.

[14] Below is an analysis of each step.

Contain the breach

[15] Upon learning that a privacy breach has occurred, trustees should immediately take steps to contain the breach. To contain a privacy breach is to ensure that the personal health information is no longer at risk. This may include recovering the record(s), revoking access to personal health information, and/or stopping the unauthorized practice.

[16] In the first case, Dr. S. Meiers redirected the medical imaging report to Dr. P. Meiers. In the second case, Dr. P. Meiers redirected the lab report to Dr. S. Meiers.

[17] I find that the privacy breaches have been contained.

Notify affected individuals

[18] It is important that trustees notify affected individuals when a privacy breach has occurred. Not only do the affected individuals have a right to know, they need to know, in order to protect themselves from any potential harm that may result from the privacy breach. Unless there is a compelling reason not to, trustees should always notify affected individuals. An effective notification should include:

- A description of what happened;
- A detailed description of the personal health information that was involved;
- A description of possible types of harm that may come to them as a result of the privacy breach;
- Steps that the individuals can take to mitigate harm;
- Steps the organization is taking to prevent similar privacy breaches in the future;
- The contact information of an individual within the organization who can answer questions and provide further information;
- A notice that individuals have a right to complain to the Office of the Information and Privacy Commissioner; and
- Recognition of the impacts of the breach on affected individuals and an apology.

[19] In both cases, the SHA notified the affected individual by letter. I am satisfied with the steps taken by the SHA.

Investigate the breach

[20] Trustees should investigate privacy breaches with the goal of identifying the root causes. Understanding the root causes enables trustees to develop and implement plans to prevent similar privacy breaches in the future.

[21] In the first case, the ordering physician recorded “Dr. Meiers” on the medical imaging requisition as the attending physician. In other words, the ordering physician did not specify the first initial or the first name of the attending physician, which is Dr. P. Meiers. Then, without the first initial or the first name of the attending physician, an employee at Medical Imaging Services at the SHA selected Dr. S. Meiers as the ordering physician. As a result, the medical imaging report was sent to Dr. S. Meiers instead of Dr. P. Meiers.

[22] In the second case, the ordering physician handwrote a lab requisition indicating that “Dr. Meiers,S” should be copied on the lab report. In its investigation report, the SHA identified that the legibility of the handwriting on the lab requisition and the same last name of the two physicians were two significant contributing factors to the privacy breach. The SHA indicated that the physician name was legible only to staff familiar with the physician’s handwriting. It said that the lab technician who processed the lab requisition was not familiar with the ordering physician’s handwriting.

Plan for prevention

[23] Once a trustee has identified the root cause of a privacy breach, then it should develop and implement a plan to prevent a similar privacy breach from occurring.

[24] In the first case, the SHA is enforcing the Work Standard that is in place that instructs employees not to guess who the correct physician is when the requisition form does not provide enough information for the employee to search and select the correct physician.

- [25] In the second case, the SHA has indicated that the Davidson Health Centre has now implemented an electronic medical record (EMR) system so requisitions can now be generated electronically. Therefore, illegible handwriting on a requisition form is no longer a factor.
- [26] I find that the above efforts may assist in minimizing similar privacy breaches. However, I must note that my office has already issued many investigation reports involving the SHA and personal health information being sent to the incorrect physicians. These investigation reports are as follows:

Investigation Report 014-2018, 016-2018 – Two privacy breaches occurred when employees searched for a physician by last name only in the Laboratory Information System (LIS). The search results had more than one physician with the same last name and the employees selected the incorrect physician. This resulted in the lab reports being sent to the incorrect physician. To prevent similar privacy breaches, the SHA committed to reinforcing a Work Standard that instructs employees on how to search for physicians in LIS. The Word Standard also instructs employees to not guess which is the correct physician in LIS if multiple physicians have the same name. The SHA also indicated that when LIS requires a system upgrade in the future, it will make LIS prompt the user to not only enter the last name but also an additional type of information.

Investigation Report 151-2017, 208-2017, 233-2017, 235-2017 – Transcribed reports containing personal health information were sent to the incorrect physician due to a number of reasons including 1) the dictating physician not dictating the first and last name of attending physician, 2) transcriptionists selecting the incorrect physician to receive the report, 3) transcriptionists not following the “if in doubt, leave it out” standard, and 4) quality assurance not enforcing the “if in doubt, leave it out” standard. My office recommended that SHA track incidents in which the dictating physician is not dictating the full name of the attending physician. This is so that the SHA can provide additional training or reminders to physicians to dictate the full names of attending physicians. Also, my office recommended that SHA provide annual privacy training to transcriptionists. The SHA accepted both recommendations.

Investigation Report 152-2017, 219-2017 – Transcribed reports containing personal health information were sent to the incorrect physician due to the dictating physician mispronouncing the last name of the attending physician, the dictating physician not dictating the first and last name of the attending physician, and transcriptionists guessing at who the correct physician is but ultimately selecting the incorrect physician to receive the report. My office made the same recommendations as it did in Investigation Report 151-2017, 208-2017, 233-2017, 235-2017 and the SHA accepted the recommendations.

Investigation Report 083-2018, 084-2018 (SHA – RQHR) – Two lab reports were sent to the incorrect physician. The first lab report was sent to the incorrect physician because an employee misinterpreted the physician’s signature on the requisition form. The second lab report was sent to the incorrect physician because the employee did not enter the physician’s name that was on the lab requisition into LIS. The field for the physician’s name in LIS was auto-filled with the incorrect physician’s name. To prevent similar privacy breaches, the SHA added a line so that physicians must print their names on the relevant requisition forms, it drafted a quality assurance Work Standard that outlines the responsibilities of administrative and supervisory personnel, and it rolled out mandatory privacy refresh course for all its employees.

[27] The SHA has developed and implemented plans in efforts to minimize or prevent similar privacy breaches, as described above. In spite of these efforts, these privacy breaches seem to be ongoing. The consequences of these incidents is not isolated to patients’ privacy being breached but that patients’ care may be delayed, interrupted, or stopped because the correct physician is not receiving the reports they require to provide care, treatment, or diagnosis.

[28] These privacy breaches have the common theme of two physicians with the same last name being confused for each other. I note there are many physicians in Saskatchewan with the same last name. Therefore, I imagine that personal health information is being misdirected in a much larger scale than just merely the privacy breaches being reported to my office.

[29] As noted above, the SHA has implemented various prevention plans in efforts to address these privacy breaches. However, I recommend that the SHA require employees to enter at least two types of information into a system when searching for a physician. Currently, employees are required to only enter one piece of information to search for the physicians. In many cases, employees are searching for physicians by last name only in a system. When they do that, the system displays all the physicians with that particular last name. Then, the employee must select the correct physician. This is the part of the process that appears where mistakes are happening. Employees are too frequently selecting the incorrect physician. Therefore, I recommend that SHA develop a process where employees must enter at least two more pieces of information to further narrow the search results as much as possible. Doing this could be programming systems to reject the processing of a requisition form unless two types of information are entered into the search fields. Two

types of information could be an identifying number of the physician and the last name. If the requisition form does not contain two types of information to identify a physician, then the employee has no choice but to return the requisition form to the ordering physician to insert additional information.

[30] In my Investigation Report 014-2018, 016-2018, I had made a similar recommendation. SHA responded to that recommendation by stating that it will update LIS in the future when LIS is due for a system update to prompt users to enter other information in addition to a physician's last name. I urge SHA to prioritize this change to LIS and to any other system.

IV FINDINGS

[31] I find that HIPA is engaged.

[32] I find that I have jurisdiction to investigate this matter.

[33] I find that unauthorized disclosures occurred.

[34] I find that the privacy breaches have been contained.

[35] I find that the affected individuals have been notified.

[36] I find that the SHA has made effort to investigate these privacy breaches.

[37] I find that SHA has made efforts to assist in minimizing similar privacy breaches.

V RECOMMENDATION

[38] I recommend that SHA program its electronic systems to reject the processing of requisition forms unless employees enter at least two more pieces of information into its electronic systems to search for physicians.

Dated at Regina, in the Province of Saskatchewan, this 25th day of February, 2019.

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