



## **INVESTIGATION REPORT 083-2018, 084-2018**

### **Saskatchewan Health Authority**

**June 29, 2018**

**Summary:** Two lab reports, containing the personal health information of a patient, were sent to the incorrect physician. The first lab report was misdirected as a result of to a misinterpretation of the physician's signature on the lab requisition. The second lab report was misdirected because the employee did not match the name of the physician on the lab requisition to the name of the physician in the Laboratory Information System (LIS). To minimize or prevent similar privacy breaches, the Saskatchewan Health Authority (SHA) added a line for a printed name and a line for a physician identification number on its forms. It is also drafting a work standard for quality assurance that will outline the responsibilities of administrative and supervisory personnel. Finally, it indicated that it is rolling out a mandatory privacy refresh course for SHA employees in 2018 and 2019.

### **I BACKGROUND**

- [1] On May 2, 2018, Dr. Suzanne Meiers (Dr. S. Meiers) reported to my office that she received two lab reports in error from the Pathology Department of the Saskatchewan Health Authority (SHA).
- [2] On May 3, 2018, my office notified the SHA that it would be undertaking an investigation.

## II DISCUSSION OF THE ISSUES

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

[3] 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.

[4] 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;

[5] Based on a review of the two lab reports, I find that there is personal health information.

[6] 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

[7] I find that the SHA qualifies as a trustee as defined by subsection 2(t)(ii) of HIPA.

[8] Third, since the lab reports originated from SHA's Pathology Department, I find that the SHA has custody or control over them.

[9] 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?**

[10] 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.

[11] In these two cases, SHA disclosed personal health information to Dr. S. Meiers in error twice. I find that unauthorized disclosures have occurred.

**3. Did the SHA respond to this privacy breach appropriately?**

[12] 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,
- Write an investigation report.

[13] Below is an analysis of each step.

**Contain the breach**

[14] To contain the 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.

[15] In these two cases, the personal health information was contained when Dr. S. Meiers and her office sent the two lab reports to my office. In an email dated May 2, 2018, Dr. S. Meiers' office confirmed that the record has been deleted from its system.

### **Notify affected individuals**

[16] Notifying affected individuals of the privacy breach is important so that they can determine how they have been impacted and take steps to protect themselves. An effective notification should include the following:

- 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 individual can take to mitigate harm,
- Steps the trustee organization is taking to prevent similar privacy breaches in the future,
- The contact information of an individual within the trustee organization who can answer questions and provide further information,
- A notice that the individual has a right to complain to the Office of the Information and Privacy Commissioner,
- Recognition of the impacts of the breach on affected individuals and an apology.

[17] The two lab reports were about the same patient. An example of a particular harm that may result from lab reports being sent to the incorrect physician is a delay to the patient in receiving care.

[18] The SHA indicated that the Manager, Regulatory Affairs, contacted the affected individual by telephone to explain the privacy breach and offered an apology. I find that the affected individual has been notified.

### **Investigate the privacy breach**

[19] Investigating the privacy breach to identify the root cause is key to understanding what happened and to prevent similar privacy breaches in the future.

[20] The SHA investigated the two cases, and found the following:

In the first case, the Accessionist reviewed the lab requisition, which featured the submitting physician's signature. In order to identify the physician to whom the lab report should be sent, accessionists use two tools: 1) a physician telephone directory to identify a physician's specialty, and 2) a sampling of physician signatures. Accessionists will review the specimen that was submitted to identify the specialty to narrow the possible physicians and then match the signature on the lab requisition against the sampling of physician signatures. In this case, the accessionist interpreted the physician's signature to belong to Dr. S. Meiers. Therefore, the accessionist selected Dr. S. Meiers as the physician in the Lab Information System (LIS). As a result, the lab report was sent to Dr. S. Meiers. SHA noted that interpreting physician signatures has been an ongoing concern and that the current process is fraught with error.

In the second case, the lab report was sent to Dr. S. Meiers due to human error. The lab requisition clearly identified another physician to whom the lab report should be sent. The lab requisition does not identify Dr. S. Meiers. However, Dr. S. Meiers received the lab report because she was selected as the physician in LIS to have received the lab report discussed in the previous paragraph. The accessionist neglected to ensure the doctor in LIS matched the physician identified on the lab requisition.

[21] In addition to the above, the SHA noted how the lab requisition forms do not require physicians to print their names and their numerical identifier. This contributed to the privacy breach in the first case. Also, SHA noted there is a lack of employee quality assurance, which contributed to the second case.

### **Prevent similar privacy breaches in the future**

[22] Preventing future privacy breaches means to implement measures to prevent similar breaches from occurring.

- [23] To address the issue of interpreting physician signatures, the SHA updated its non-gyn cytology requisition forms, flow cytometry requisition, its surgical pathology consultation form, and its cervical cytological (PAP) requisition form to include a line for a printed name and a line for a physician identification number.
- [24] To address the issue of the accessionist neglecting to match the physician's name on the requisition to the physician name in LIS, the SHA is drafting a work standard for quality assurance that will outline the responsibilities of administrative and supervisory personnel.
- [25] Finally, the SHA is rolling out mandatory privacy refresh courses for SHA employees in 2018 and 2019. In fact, in an email dated June 26, 2018, the SHA indicated to my office that it would begin mandatory training with 90 days.
- [26] I find that the above steps are all reasonable steps to take in an effort to minimize or prevent similar privacy breaches in the future.

### **Write an investigation report**

- [27] Documenting privacy breaches and the trustee's investigation into the breach is a method to ensure the trustee follows through with its plans to prevent similar breaches in the future.
- [28] The SHA provided my office with its internal investigation report as well as a copy of its updated forms. I find that the SHA has fulfilled this final step of responding to privacy breaches.
- [29] I note this is my fourth investigation report into privacy breaches reported to my office by Dr. S. Meiers. My first three investigation reports are as follows:
- Investigation Report 305-2017 (Regina Physician Group),
  - Investigation Report 151-2017, 208-2017, 233-2017, 235-2017 (Regina Qu'Appelle Regional Health Authority), and
  - Investigation Report 152-2017, 219-2017 (Saskatoon Regional Health Authority).
- [30] The above three investigation reports detail privacy breaches where Dr. S. Meiers received personal health information of patients that are not her patients. These privacy breaches have been a result of a variety of reasons, including dictation errors, transcription errors,

and data entry errors. If Dr. S. Meiers is receiving the personal health information of patients that are not her patients, I can imagine that other physicians are experiencing the same. I thank Dr. S. Meiers for reporting these privacy breaches to my office because this reporting provides my office and trustee organizations with the opportunity to improve procedures and to be better in protecting patient privacy. I note that the privacy officers at the SHA have responded positively to these privacy breaches, including implementing measures to minimize or prevent similar privacy breaches. I encourage Dr. S. Meiers and all other physicians in Saskatchewan, or health care workers, to continue to report these privacy breaches to the privacy officers of trustee organizations and to my office.

### **III FINDINGS**

[31] I find that HIPA is engaged and I have authority to investigate.

[32] I find that unauthorized disclosures occurred.

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

[34] I find that the SHA has taken reasonable measures to notify the affected individual of the privacy breach.

[35] I find that the SHA has investigated the privacy breaches and identified the root causes of the privacy breach.

[36] I find that the SHA has taken reasonable steps to minimize or prevent similar privacy breaches in the future.

### **IV RECOMMENDATION**

[37] I recommend that SHA follow through with its efforts described at paragraphs [22] to [25].

Dated at Regina, in the Province of Saskatchewan, this 29th day of June, 2018.

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