Office of the
Saskatchewan Information
and Privacy Commissioner

# INVESTIGATION REPORT 103-2020

## Saskatchewan Health Authority

**May 27, 2021**

**Summary:** Dr. Suzanne Meiers reported a privacy breach to the Commissioner when they received a consultation report that was meant for another physician, Dr. Pamela Meiers. The Commissioner made a number of findings, including how the Saskatchewan Health Authority (SHA) has made efforts to prevent a similar privacy breach from happening in the future by contacting the resident physician who made the error that resulted in the privacy breach. The Commissioner recommended that the SHA, along with 3sHealth, continue to monitor and document the incidents in which reports are sent to the incorrect physician and that the SHA follow up with the physicians who have made dictation errors so that they have the opportunity to improve and to hopefully not repeat their errors. If errors persist, the Commissioner recommended that the SHA report the matter to his office and to the College of Physicians and Surgeons of Saskatchewan. In the case of resident physicians, the Commissioner recommended that the SHA report the matter to the University of Saskatchewan's College of Medicine.

## I BACKGROUND

[1] On April 29, 2020, Dr. Suzanne Meiers (Dr. S. Meiers) reported to my office that a consultation report containing personal health information of a patient was sent to Dr. S. Meiers in error. The consultation report was meant to be sent to Dr. Pamela Meiers (Dr. P. Meiers). What occurred was a resident physician at St. Paul's Hospital in Saskatoon made an error in dictating a consultation report. Instead of dictating that the report should be carbon copied to Dr. P. Meiers, they dictated Dr. S. Meiers.

[2] On April 30, 2020, my office notified the Saskatchewan Health Authority (SHA) that it would be undertaking an investigation.

## II DISCUSSION OF THE ISSUES

### 1. Does HIPA apply to this matter and do I have jurisdiction?

[3] *The Health Information Protection Act* (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 consultation report, I find that personal health information as defined by subsection 2(m) of HIPA is present.

[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] The SHA qualifies as a "trustee" as defined by subsection 2(t)(ii) of HIPA.

[8] Third, the consultation report originated from St. Paul's hospital, which is a part of the SHA. I find that the SHA has custody or control over the personal health information contained within the consultation report.

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

**2. Was there an unauthorized disclosure of personal health information?**

[10] A privacy breach occurs when personal health information is collected, used, and/or disclosed without authority under HIPA. The term "disclosure" means the sharing of personal health information with a separate entity that is not a division nor a branch of the trustee organization. Before disclosing personal health information, a trustee should ensure it has authority to do so under HIPA.

[11] In this case, the consultation report was disclosed to the incorrect physician. I find that this would be an unauthorized disclosure of personal health information. I find that a privacy breach has occurred.

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

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

1. Contain the breach;
2. Notify the affected individual(s);
3. Investigate the privacy breach; and
4. Prevent future privacy breaches.

[13] I will analyze these steps below.

***Contain the breach***

[14] 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.

[15] In this case, Dr. S. Meiers' office forwarded the consultation to Dr. P. Meiers. Dr. S. Meiers' office confirmed with my office that it had deleted the consultation report from its system in an email dated April 30, 2020.

[16] I find that the breach has been contained.

***Notify the affected individual(s)***

[17] Notifying the affected individual(s) 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 information or personal health information that was involved;
- if known, 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 my office;
- the contact information of my office; and
- where appropriate, recognition of the impacts of the breach on affected individuals and an apology.

[18] In a letter dated May 27, 2020, the SHA notified the affected individual. Based on a review, the letter contains the elements listed above. I find that the SHA has effectively notified the affected individual.

***Investigate the privacy breach***

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

[20] In its investigation, the SHA retrieved a copy of the dictation. In the dictation, the resident physician dictated Dr. S. Meiers' name when they should have dictated Dr. P. Meiers' name. The SHA contacted the resident physician. The resident physician admitted that they had dictated the incorrect physician's name, which resulted in the consultation report being incorrectly sent to Dr. S. Meiers instead of Dr. P. Meiers.

[21] I find that the SHA has investigated the matter and determined the underlying cause.

***Prevent future privacy breaches***

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

[23] The SHA indicated that the resident physician is embarrassed by the mistake. As such, the SHA indicated that it was sure this error would not occur with this particular physician again. The SHA forwarded a letter by the resident physician where they acknowledged

that they erroneously carbon copied a patient dictation to the incorrect physician (Dr. S. Meiers).

[24] While the resident physician acknowledging their mistake provides me with some reassurance that this particular physician will be more careful going forward, I note this is a persistent issue that my office has reported on in past reports. I also note that these incidents are not isolated to Dr. S. Meiers and Dr. P. Meiers. Errors in sending reports to incorrect physicians due to other physicians with the same or similar sounding first and/or last names also occur. In Investigation Report 137-2018, my office received a spreadsheet from 3sHealth that documented 1414 incidents of reports being sent to the incorrect physician from the end of July 2017 to June 2019. I found that approximately 10% of the 1414 incidents were a result of physicians having the same or similar spelled or sounding first and/or last names. From paragraph [38] to [40] of that report, I said:

> [38] My office has issued six investigation reports on privacy breaches on similar privacy breaches reported to us by Dr. S. Meiers. These investigation reports are as follows:
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> - Investigation Report 041-2018, 203-2018,
> - Investigation Report 305-2017,
> - Investigation Report 152-2017, 219-2017,
> - Investigation Report 014-2018, 016-2018,
> - Investigation Report 151-2017, 208-2017, 233-2017, 235-2017, and
> - Investigation Report 083-2018, 084-2018.
>
> [39] These investigation reports have the common theme of Dr. S. Meiers and Dr. P. Meiers (and, in the case of Investigation Report 305-2017, Dr. C. Meier) be confused for one another. These privacy breaches are not isolated to Dr. S. Meiers, Dr. P. Meiers, and Dr. C. Meier Of the 1414 incidents listed on the spreadsheet my office received from 3sHealth, there were approximately 140 incidents (or approximately 10% of the incidents) where privacy breaches occurred because of physicians who have the same or similar spelled or sounding first and/or last names. Below are some examples of the approximately 140 incidents:
>
> - Dr. A. Harrington is often mistaken for Dr. M. Harington and vice-versa. They both have similarly spelled last names.
>
> - Dr. Marla Davidson has been mistaken for Dr. Marilyn Davidson and vice-versa as they have the same first initial and same last name,

- Dr. Alice Wong and Dr. Alex Wong have similar sounding first names and have been confused for one another,
- Dr. David Warden can be confused for Dr. David Ward and vice-versa,
- Dr. A. Shariff has been mistaken for Dr. M. Shareef,
- Dr. H. Moolla, Dr. M. Moolla, Dr. Z. Moolla can be mixed up with Dr. A. Moola, Dr. F. Moola, or Dr. A. Mulla, or Dr. S. Meuller,

[40] In one case, a physician's name was mistaken for the name of an organization and a privacy breach occurred as a result. The transcribed report was meant for Dr. Grace Ho but the transcribed was sent to Grace Hospice Care instead.

[25] In my past investigation reports, I have made a number of recommendations to address this issue, including the SHA following up with the U of S' College of Medicine to ensure that the resident physician understands and follows the SHA and 3sHealth's Dictation Manual if/when a resident physician makes a dictation error, and that the SHA and 3sHealth follow-up with physicians who have made dictation errors so they have an opportunity to improve and hopefully not repeat their errors. Further, I have recommended that the SHA take proactive measures to communicate to its physicians the importance of dictating in accordance with its Dictation Manual. The SHA has communicated to my office that it would comply with my office's recommendations.

[26] I also note that in my Investigation Report 137-2018, I had recommended that the SHA and 3sHealth develop a strategy to minimize the mixing up of physician names in dictated and transcribed reports. In response to that recommendation, the SHA indicated in a letter dated November 15, 2019 that instructions for dictation and transcription exists in the Dictation Manual. It also said it would be providing the Dictation Manual to all medical students and resident physicians when the "SHA Privacy Educations" occur with the University of Saskatchewan.

[27] I recommend that the SHA, along with 3sHealth, continue to monitor and document the incidents in which reports are sent to the incorrect physician. I recommend that the SHA follow-up with physicians who have made dictation errors so they have an opportunity to improve and hopefully not repeat their errors. If errors persist after follow-up, the SHA

should be reporting the matter to both my office and to the College of Physicians and Surgeons of Saskatchewan. In the case of a resident physician, the SHA should report the matter to the U of S College of Medicine.

## III FINDINGS

[28] I find that HIPA is engaged. Therefore, I have jurisdiction to investigation this matter.

[29] I find that a privacy breach has occurred.

[30] I find that the breach has been contained.

[31] I find that the SHA has effectively notified the affected individual.

[32] I find that the SHA has investigated the matter and determined the underlying cause.

[33] I find that the SHA has made efforts to prevent a similar privacy breach with this particular resident physician in the future.

## IV RECOMMENDATION

[34] I recommend that the SHA, along with 3sHealth, continue to monitor and document the incidents in which reports are sent to the incorrect physician. I recommend that the SHA follow up with physicians who have made dictation errors so they have an opportunity to improve and hopefully not repeat their errors. If errors persist after follow-up, the SHA should be reporting the matter to both my office and to the College of Physicians and Surgeons of Saskatchewan. In the case of a resident physician, the SHA should report the matter to the U of S College of Medicine.

Dated at Regina, in the Province of Saskatchewan, this 27th day of May, 2021.

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