



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## INVESTIGATION REPORT 114-2015

### Sun Country Regional Health Authority

October 13, 2015

#### Summary:

The Complainant alleged that her privacy was breached by Sun Country Regional Health Authority (SCRHA) when a registered nurse shared her personal health information with a Home Care Nurse. The Complainant raised her privacy concerns with SCRHA. SCRHA responded to her by stating that she had given verbal consent to the sharing of personal health information. She was not satisfied with the response so she submitted a complaint to the Information and Privacy Commissioner (IPC). The IPC found that *The Health Information Protection Act* (HIPA) authorized the sharing of the personal health information without consent. However, the IPC recommended to SCRHA that it amend its policies, procedures, brochures, and pamphlets so that it is clear when SCRHA requires consent for the sharing of personal health information and when HIPA authorizes the sharing without consent.

#### I BACKGROUND

- [1] In October 2014, the Complainant attended a hospital of Sun Country Regional Health Authority (SCRHA) to receive treatment. During her visit to the hospital, she spoke to a doctor regarding options for treatment in the presence of a registered nurse (RN). This RN had performed mechanical debridement upon her wounds.
- [2] On December 2, 2014, she received a telephone call from a Home Care Manager. Through the telephone call, the Complainant learned that the RN who had performed mechanical debridement had shared with the Home Care Nurse the contents of her conversation with the doctor.

- [3] On December 9, 2014, the Complainant submitted a complaint to the SCRHA. She asserted that the RN shared her personal information without her consent.
- [4] In a letter dated January 6, 2015, SCRHA wrote to the Complainant indicating that a Home Care Nurse had obtained verbal consent from her on November 24, 2014 to speak with “the nurse whom performed the mechanical debriding under [name of doctor] supervision”. SCRHA concluded that there was no privacy breach. There were three reasons why it believed there was no privacy breach. First, it asserted it had “verbal permission” from the Complainant. Second, that the Home Care Manager, the Home Care Nurse, and the RN were “considered one care team”. Third, that the exchange of information was on a need-to-know basis.
- [5] The Complainant was not satisfied with SCRHA’s conclusion so she appealed to my office.

## **II DISCUSSION OF THE ISSUES**

### **1. Does *The Health Information Protection Act (HIPA)* apply?**

- [6] HIPA applies when three elements are present: 1) personal health information, 2) a trustee, and 3) the personal health information is the custody or control of the trustee.
- [7] I find that the contents of the discussion between the Complainant and the doctor qualifies as personal health information pursuant to subsections 2(m)(i), 2(m)(ii), 2(m)(iv) of HIPA. SCRHA qualifies as a trustee pursuant to subsection 2(t)(ii) of HIPA. Finally, SCRHA had custody or control over the personal health information.
- [8] I find that HIPA applies.

**2. Did SCRHA have authority to use the Complainant's personal health information?**

[9] At issue on this file is whether SCRHA had the authority to use the Complainant's personal health information. In other words, did HIPA authorize the sharing of the Complainant's personal health information with the Home Care Nurse?

[10] Subsection 2(u) of HIPA defines "use":

2(u) "use" includes reference to or manipulation of personal health information by the trustee that has custody or control of the information, but does not include disclosure to another person or trustee.

[11] Subsection 26(2) of HIPA provides as follows:

26(2) A trustee may use personal health information:

(a) for a purpose for which the information may be disclosed by the trustee pursuant to section 27, 28 or 29;

[12] I also note that subsection 27(2)(b) of HIPA provides:

27(2) A subject individual is deemed to consent to the disclosure of personal health information:

...

(b) for the purpose of arranging, assessing the need for, providing, continuing, or supporting the provision of, a service requested or required by the subject individual;

[13] The Home Care Nurse was assessing the need for continuing the provision of a service (Home Care) requested or required by the Complainant. I find that subsection 26(2) of HIPA and 27(2)(b) of HIPA authorizes SCRHA's use of the Complainant's personal health information.

[14] However, based on the Complainant's privacy concern, the Complainant had not anticipated the sharing of her personal health information between the RN and the Home Care Nurse. Subsection 9(1) of HIPA provides that an individual has the right to be informed about the anticipated uses and disclosures of the individual's personal health information. Further, subsection 9(2) of HIPA provides that trustees take reasonable steps to inform the individual of the anticipated use and disclosure of the information when the trustee is collecting the personal health information.

[15] In SCRHA's letter dated January 6, 2014 to the Complainant, SCRHA had told the Home Care Manager, the Home Care Nurse, and the RN were "considered one care team". If they were "one care team", then it could be assumed that the RN anticipated sharing the Complainant's personal health information with the Home Care Nurse but failed to do so.

[16] In its letter dated October 7, 2015 to my office, SCRHA clarified that neither the doctor nor the RN would have anticipated sharing the Complainant's personal health information with Home Care. It explained as follows:

The complainant was an actively registered client of Home Care services prior to the outpatient treatment. She was not a new Home Care referral. The doctor and/or RN may not have been privy to that information.

[17] I find that SCRHA's explanation of why neither the doctor nor the RN had anticipated sharing her personal health information with Home Care at the time of collection conceivable. If the Complainant had sought treatment from the doctor (and the RN) without a referral from Home Care, then the RN could not have anticipated sharing the Complainant's personal health information at the time of collection.

**a. Consent**

[18] At the beginning of this investigation by my office, SCRHA's position was that the verbal consent that the Home Care Nurse obtained from the Complainant was SCRHA's authority for the sharing of personal health information between the RN and the Home Care Nurse.

[19] Towards the end of the course of this investigation, SCRHA's position had changed and it asserted that it was relying on subsections 26(2)(a), 26(2)(c), and 27(2)(b) of HIPA for the sharing of the Complainant's personal health information between the RN And the Home Care Nurse. If a trustee is using an individual's personal health information pursuant to subsections 26(2)(a), 26(2)(c), and 27(2)(b) of HIPA, then that means it is not relying on consent for the sharing of personal health information. In fact, in its letter date October 7, 2015 to my office, SCRHA clarified that the Home Care Nurse's conversation

with the Complainant on November 24, 2015 was to inform the Complainant that she would be calling the RN for more information, and not to obtain consent. This contrasts with notes dated November 24, 2015 by the Home Care Nurse that she got “verbal permission” from the Complainant to speak with the RN.

[20] It is a very confusing situation when a trustee has the legal authority under HIPA to use an individual’s personal health information without consent, but then seeks the individual’s consent. Seeking the individual’s consent gives individuals the false sense of control over how their information can be used.

[21] To avoid confusing patients, I recommend that SCRHA develop policies and procedures that guide staff as to when it is appropriate to seek consent of individuals for the use and/or disclosure of their personal health information. Such policies and procedures should cover the requirements of consent pursuant to section 6 of HIPA.

[22] I also recommend that SCRHA develop policies and procedures that guide staff as to when they are able to use and/or disclose personal health information without the individual’s consent. In such circumstances, it could be helpful to notify and inform individuals of the purposes for the use and/or disclosure but staff should not seek consent. These policies and procedures should also cover general duties of the trustee found in sections 9, 10, 16, and 23 of HIPA.

### **3. Are SCRHA’s policies, procedures, brochures, and pamphlets adequate?**

[23] In my office’s Draft Investigation Report, my office recommended that SCRHA establish policies and procedures that will fulfill the requirements under sections 6 and 9 of HIPA. In its letter dated October 7, 2015 to my office, SCRHA advised my office that it will update its policy on the collection, use and disclosure of personal health information to reflect my office’s recommendation.

[24] Also in its letter dated October 7, 2015 to my office, SCRHA provided my office with copies of policies, procedures, brochures and pamphlets related to its Home Care Services and to its privacy practices. These resources are also available on SCRHA’s

website. SCRHA's resources emphasize obtaining the individual's permission, consent, or authorization prior to sharing personal health information. For example, SCRHA's privacy pamphlet states the following:

...

2. We will ask for your permission before disclosing information to anyone other than those who require it in order to provide care for you.

3. We do not allow others such as lawyers, insurance companies, etc. to access your medical information unless we have your authorization to do so, or we are required by law to provide such access. You will be asked for your consent if these or other groups request information.

4. You should however, be aware that there are certain situations where the law may require or authorize us to release information without your authorization. An example is the report of abuse of a child or certain communicable diseases.

[25] This emphasis on obtaining an individual's permission, consent, or authorization contrasts with SCRHA's position in this investigation that it did not require consent for the sharing of the Complainant's personal health information. In other words, SCRHA's resources contrast with SCRHA's practices.

[26] Therefore, in addition to the recommendations I make in paragraphs [22] and [23], I recommend that SCRHA update its brochures, pamphlets, and website so it is clear when it will use and disclose personal health information without consent.

### **III FINDINGS**

[27] I find that HIPA applies.

[28] I find that subsection 26(2) of HIPA and 27(2)(b) of HIPA authorizes SCRHA's use of the Complainant's personal health information.

### **V RECOMMENDATIONS**

[29] I recommend that SCRHA develop policies and procedures that guide staff as to when it is appropriate to seek consent of individuals for the use and/or disclosure of their personal

health information. Such policies and procedures should cover the requirements of consent pursuant to section 6 of HIPA.

[30] I also recommend that SCRHA develop policies and procedures that guide staff as to when they are able to use and/or disclose personal health information without the individual's consent. In such circumstances, it could be helpful to notify and inform individuals of the purposes for the use and/or disclosure but staff should be guided not to seek consent. These policies and procedures should also cover general duties of the trustee found in sections 9, 10, 16, and 23 of HIPA.

[31] I recommend that SCRHA update its brochures, pamphlets, and website so it is clear when SCRHA will collect, use, and/or disclose personal health information, for what purposes, and its authority to do so.

Dated at Regina, in the Province of Saskatchewan, this 13<sup>th</sup> day of October.

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