



INVESTIGATION REPORT 152-2017 and 219-2017

Saskatoon Regional Health Authority

November 22, 2017

Summary: Incidents of dictated reports being sent to the incorrect physician was reported to the Information and Privacy Commissioner (IPC). Saskatoon Regional Health Authority (SRHA) was responsible for two of the incidents. He recommended that SRHA and 3sHealth create a process where they are able to track when the first name of physicians is not dictated and spelled out in order to identify which physicians (including residents) may require additional dictation training. He also recommended that transcriptionists receive annual privacy training.

I BACKGROUND

[1] Regional health authorities, Saskatchewan Cancer Agency, and 3sHealth are working towards creating a provincial transcription service using Fluency for Transcription software. The software creates a voice profile for physicians (including residents) who dictate patient reports. Once a physician finishes dictating a report, the dictated report is sent to a transcriptionist at 3sHealth. The transcriptionist will then review the dictated reports and manually make corrections. As corrections are made, the software will learn and adjust the voice profile for each individual user. The goal is to increase the accuracy of the software's ability to convert dictated patient reports to text with minimal correction.

[2] Six incidents of dictated reports being sent to the incorrect physician was reported to my office by Dr. Suzanne Meiers. Two of the incidents pertain to the Saskatoon Regional Health Authority and the remaining four pertain to the Regina Qu'Appelle Regional

Health Authority (SRHA). This report is about the two incidents related to the SRHA. The RQRHA incidents are discussed in a separate report.

- [3] In incident #1, a resident dictated a report. Within the body of the report, the resident dictated that the patient would follow-up with Dr. Mueller instead of Dr. Meiers. The report was corrected to state that the patient will follow up with “Dr. Meiers.” Unfortunately, the first name of Dr. Meiers was not dictated. Then, on July 25, 2017, my office was notified by Dr. Suzanne Meiers of Regina that she received a report that was actually meant for Dr. Pamela Meiers of Saskatoon.
- [4] In incident #2, a resident (different from the one in incident #1) dictated a report for “Dr. Meiers”. The first name was not specified. Once the report was reviewed by the transcriptionist, the report was sent to Dr. Suzanne Meiers. On August 11, 2017, my office was notified by Dr. Suzanne Meiers that she received a report that was actually meant for Dr. Pamela Meiers.

II DISCUSSION OF THE ISSUES

1. *Is The Health Information Protection Act (HIPA) engaged?*

- [5] 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.
- [6] 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;

[7] The patient records in both incident #1 and #2 contains personal health information as defined by HIPA.

[8] 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) a regional health authority or a health care organization;

[9] I find that Saskatoon Regional Health Authority (SRHA) qualifies as a trustee as defined by subsection 2(t)(ii) of *The Health Information Protection Act* (HIPA). Specifically, individuals who dictate (such as residents) or transcribe the reports were providing a service on behalf of SRHA.

[10] Third, through a shared services agreement, 3sHealth provides transcription services on behalf of SRHA. 3sHealth is an information management service provider (IMSP) for SRHA. Subsection 2(j) of HIPA defines an IMSP as follows:

2 In this Act:

...

(j) “information management service provider” means a person who or body that processes, stores, archives or destroys records of a trustee containing personal health information or that provides information management or information technology services to a trustee with respect to records of the trustee containing personal health information, and includes a trustee that carries out any of those activities on behalf of another trustee, but does not include a trustee that carries out any of those activities on its own behalf;

[11] Subsection 18(1) of HIPA describes the role of an IMSP as follows:

18(1) A trustee may provide personal health information to an information management service provider:

(a) for the purpose of having the information management service provider process, store, archive or destroy the personal health information for the trustee;

(b) to enable the information management service provider to provide the trustee with information management or information technology services;

(c) for the purpose of having the information management service provider take custody and control of the personal health information pursuant to section 22 when the trustee ceases to be a trustee; or

(d) for the purpose of combining records containing personal health information.

[12] Any personal health information that 3sHealth, as an IMSP, handles on behalf of SRHA remains the responsibility of SRHA. At issue is how records were distributed from 3sHealth (IMSP) to a physician. Since 3sHealth is the IMSP for SRHA, then SRHA has custody or control over the records in both incidents.

[13] Based on the above, I find that HIPA is engaged.

2. Were there unauthorized disclosures of personal health information?

[14] 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.

[15] In both incidents, the patient records were meant for Dr. Pamela Meiers but were sent to Dr. Suzanne Meiers instead. I find these two incidents were disclosures that are not in accordance with section 27 of HIPA.

3. Did SRHA respond to these two incidents appropriately?

[16] My office recommends that trustees take the following five steps when responding to a privacy breach:

- Contain the breach,
- Notify affected individuals,
- Investigate the breach,
- Prevent future breaches, and
- Write a privacy breach report.

[17] I will consider each of these steps to determine if SRHA adequately responded to the privacy breach.

Contain the Breach

[18] The first step in responding to a privacy breach is containing the breach. This means to recover the personal health information or to stop the unauthorized practice when the trustee learns of the breach.

[19] In this case, Dr. Suzanne Meiers' office forwarded the mis-directed records to my office and then deleted the records from her EMR. I find that the breach has been contained.

Notify affected individuals

[20] Notifying affected individuals that their personal health information has been inappropriately disclosed is important for a number of reasons. Not only do individuals have a right to know, they need to know in order to protect themselves from any potential harm that may result from the inappropriate disclosure. Unless there is compelling reason not to, trustees should always notify affected individuals.

[21] For both incidents, SRHA notified the affected individuals of the privacy breaches.

Investigate the breach

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

[23] As noted in the background, a provincial transcription service is being created by regional health authorities, Saskatchewan Cancer Agency, and 3sHealth. According to the Provincial Transcription Services Dictation Manual (PTS Dictation Manual), residents, students, and junior undergraduate rotating student intern (JURSI) should be dictating and spelling out the attending physician's first and last names and dictating the attending physician's specialty and user ID number (page 6, Saskatchewan Dictation Manual, version 2, June 2017, available at: <http://www.3shealth.ca/documents/PTS-DictationManual-Acute.pdf>).

[24] Further, according to the Provincial Transcription Services Style Guide (PTS Style Guide), transcriptionists are not responsible for determining which doctors to carbon copy reports. Page 31 of the PTS Style Guide says the following:

What do I do when the doctor does not say which doctors to CC: on the final report?

Transcribe the document and upload. Transcriptionists are not responsible for finding information not given to them.

[25] SRHA clarified the above by indicating that transcriptionists are instructed "when in doubt, leave it out".

[26] In Incident #1, the resident had initially dictated the incorrect doctor's last name ("Dr. Mueller" instead of "Dr. Meiers"). Therefore, the patient report was sent to Dr. Mueller. When Dr. Mueller returned the report to 3sHealth, she had included handwritten instruction on the report that a copy should be added for "Dr. P. Meiers". Unfortunately, "Dr. S. Meiers" was selected and a copy of the report was sent to Dr. Suzanne Meiers.

[27] In Incident #2, the resident dictated the report for "Dr. Meiers" and did not specify the first name. The transcriptionist sent the report to Dr. Suzanne Meiers.

- [28] In both incidents, the dictating residents did not follow the instructions in the PTS Dictation Manual by neglecting to specify the first name of the doctor nor did they spell out the first and last name of the attending physician. Then, the transcriptionists did not follow the PTS Style Guide when they had insufficient information to select the correct doctor to distribute the patient report.
- [29] SRHA indicated that it is not uncommon to have incidents similar to the two incidents discussed in this investigation report to occur. SRHA identified a number of challenges that could have contributed to these incidents, including:
- a. Human error,
 - b. Poor communication between patients and registration, patients and physicians, physicians and their offices,
 - c. Physicians with the same names can make it confusing as to which physician should be receiving a report,
 - d. Physicians not clearly dictating full first and last names,
 - e. Both physicians and transcriptionists not following procedures.
- [30] SRHA reassured my office that while errors occur, the percentage in which patient reports are distributed incorrectly is low.

Preventing future breaches

- [31] Preventing future breaches means to implement measures to prevent future breaches from occurring.
- [32] SRHA is continuously making efforts to improve this process. Its efforts so far includes discussing with the attending physician in both incidents to remind her residents she is supervising to include her first and last names when dictating reports. Also, SRHA's Privacy and Access Officers met with Practitioner Staff Affairs on October 5, 2017 to discuss dictating procedures – including ensuring full names are dictated and spelled out. SRHA's Practitioner Staff Affairs provides supports to physicians throughout the health region.

- [33] In terms of training, 3sHealth is the organization tasked with training physicians and transcriptionists regarding the provincial transcription services. In efforts to identify root causes, 3sHealth is tracking the incidents similar to the ones discussed in this report in order to identify and address root causes.
- [34] I note that transcriptionists can play a key role in identifying where errors may be occurring. In the course of this investigation, my office recommended that SRHA and 3sHealth create a process where transcriptionists track when the first name of physicians is not dictated. Tracking such instances may signal to the transcriptionist that he or she has insufficient information to select a doctor to whom they distribute the patient report. This tracking will also help 3sHealth identify which physicians (including residents) may require additional training or reminders to dictate and spell the first and last names of physicians to which the patient report should be distributed. Training and reminders must emphasize dictating and spelling the first and last names of physicians. This is to avoid errors due to names that are difficult to pronounce, atypical spellings of names, or silent letters in names. SRHA indicated to my office in a letter dated November 21, 2017 that it intended to comply with this recommendation.
- [35] Also in the course of this investigation, my office also recommended that SRHA and 3sHealth require that transcriptionists receive annual training on privacy that includes reminders that if they are unsure who the intended recipient of a report should be, they are **not** to guess. SRHA indicated to my office in a letter dated November 21, 2017 that it intended to comply with this recommendation.
- [36] SRHA also indicated to my office that as 3sHealth tracks incidents of when reports are being sent to the wrong physician, it reports these incidents to SRHA. SRHA notes that many errors occur because the patient has identified the wrong family physician to the registration clerk. When SRHA learns that the wrong family physician has been identified, SRHA removes the family physician from the patient's profile to prevent the same error from occurring again.

Write a privacy breach report

[37] Documenting privacy breaches and the trustee's investigations into the breaches is a method to ensure the trustee follows through plans to prevent similar breaches in the future.

[38] SRHA provided my office with its internal investigation report that described the breaches, how it responded to the breaches, and steps it will take to prevent similar privacy breaches in the future (as described in this report).

III FINDINGS

[39] I find that HIPA is engaged.

[40] I find that the disclosures in both incidents are unauthorized disclosures of personal health information.

[41] I find that the breaches have been contained.

[42] I find that the affected individuals have been notified by SRHA.

[43] I find that SRHA has investigated the breaches.

[44] I find that SRHA has taken steps to minimize or prevent similar privacy breaches in the future.

[45] I find that SRHA has written a privacy breach report on both incidents.

IV RECOMMENDATION

[46] I recommend that SRHA follow through with complying with my office's recommendations as described in paragraphs [34] and [35].

Dated at Regina, in the Province of Saskatchewan, this 22nd day of November, 2017.

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