



INVESTIGATION REPORT 291-2018

Saskatchewan Health Authority

August 7, 2019

Summary: Dr. Pamela Meiers received a transcribed report that should have been sent to Dr. Suzanne Meiers instead. This privacy breach was a result of a transcription error. The Information and Privacy Commissioner (IPC) made a number of recommendations including that SHA and 3sHealth continue its efforts in error-proofing the dictation and transcription process and that they develop a strategy to minimize the mixing up of physician's names in dictated and transcribed reports.

I BACKGROUND

[1] On December 12, 2018, Dr. Suzanne Meiers (Dr. S. Meiers) reported to my office that another physician, Dr. Pamela Meiers (Dr. P. Meiers), received a transcribed consult report containing the personal health information of Dr. S. Meier's patient. The report was meant for Dr. S. Meiers and not Dr. P. Meiers.

[2] Through a shared services agreement, 3sHealth provides transcription services on behalf of the Saskatchewan Health Authority (SHA). Therefore, the transcribed report was sent by the SHA in error to Dr. S. Meiers.

[3] On December 19, 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?*

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

[5] First, subsection 2(m) of HIPA defines “personal health information” as follows:

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] I find that the transcribed report contains personal health information.

[7] Second, the term “trustee” is defined by subsection 2(t)(ii) of HIPA as follows:

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] Based on the above definition, I find that the SHA qualifies as a trustee.

[9] Third, in my office’s Investigation Reports 151-2017, 208-2017, 233-2017, 235-2017 and 152-2017, 219-2017, I found that 3sHealth is an information service provider for the SHA. Therefore, I find that the SHA has custody or control over the personal health information in the transcribed report.

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

2. Did a privacy breach occur?

[11] A privacy breach occurs when personal health information is collected, used, and/or disclosed in a way that is not authorized by HIPA.

[12] The term “disclosure” means the sharing of personal health information with a separate entity that is not a division or a branch of the trustee organization. Before disclosing personal health information, a trustee should ensure it has authority to do so under HIPA.

[13] In this case, 3sHealth on behalf of SHA, disclosed personal health information to Dr. P. Meiers due to an error. This would be an unauthorized disclosure under HIPA. Therefore, I find that a privacy breach has occurred.

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

[14] 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.

[15] Below is an analysis of each step.

Contain the breach

[16] 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.

[17] In this case, Dr. P. Meiers' office received the report and forwarded it to Dr. S. Meiers. Dr. P. Meiers' office still has a copy of the report in its computer system. In this case, Dr. S. Meiers recovered the records that was meant for her patient from Dr. P. Meiers. I find that this privacy breach has been contained. However, I recommend that Dr. P. Meiers' office make notation in its computer system that the report was sent to Dr. P. Meiers in error. Further, I recommend that Dr. P. Meiers limit the retention of the report or destroy the report.

Notify the affected individuals

[18] 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. A 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 the Office of the Information and Privacy Commissioner,
- The contact information of the Office of the Information and Privacy Commissioner, and
- Where appropriate, recognition of the impacts of the breach on affected individuals and an apology.

[19] While it is best practice to notify affected individuals in writing, based on the circumstances of this case, the SHA made a decision to notify the affected individual by telephone on December 19, 2018. The SHA explained the circumstances to my office and I find that the SHA has notified the affected individual.

Investigate the privacy breach

- [20] Investigating the privacy breach to identify the root cause is key to understanding what happened and to preventing similar privacy breaches from occurring in the future.
- [21] In its investigation report, the SHA determined that the medical transcriptionist, when transcribing the dictated report on the computer, had committed a key-stroke error and removed the name of the attending physician from the “attending physician” field. Then, in the carbon copy field, the transcriptionist added the last name of the physician but erroneously selected Dr. Pamela Meiers instead of Dr. Suzanne Meiers. The SHA determined that it is likely the transcriptionist was able to recall the last name of the physician but not the first. Therefore, the transcriptionist took a guess at who the correct physician was but committed an error.
- [22] Then, the consult report was moved to the “Hold Queue” within the Quality Assurance (QA) area because the “Date of Service” field was empty, not to confirm who the attending physician was. Therefore, QA resolved the missing Date of Service issue, but did not confirm who the attending physician was.
- [23] I find that the SHA has investigated this privacy breach.

Prevent future privacy breaches

- [24] Preventing future breaches means to implement measures to prevent similar breaches from occurring.
- [25] The SHA and 3sHealth followed up with the medical transcriptionist who committed the errors. The SHA also indicated that the medical transcriptionist is no longer a part of the 3sHealth Transcription Account Team.
- [26] Other mechanisms in place to minimize or prevent similar privacy breaches includes the “Five-Point Checklist”. Medical transcriptionists are to look through this checklist prior to uploading their reports. This checklist is as follows:

Top 5 Patient Care Report

Accuracy Checklist

- Right Patient
- Right Visit
- "?" Removed by ensuring accurate Family Physician
- Date of Service entered
- All cc's have been added

Ensure top five items are accurate before uploading any and all reports

- [27] Further, an auto-alert has been added to the system used by medical transcriptionists to signal to them to check the recipients before uploading the report.
- [28] Finally, medical transcriptionists are provided with support. For example, medical transcriptionists are able to flag blank areas or areas of concern for QA to investigate and/or resolve. Transcriptionists receive daily QA feedback for any of the reports they transcribed within the previous 24 hours. Another example is the weekly huddle where transcriptionists are able to safely raise concerns or ask questions.
- [29] The SHA indicated a Continuous Service Improvement Working Group began on December 6, 2018 to address errors that lead to privacy breaches such as the one discussed in this investigation report and other patient safety issues within patient care reports.
- [30] I find that the SHA and 3sHealth have made reasonable efforts to minimize or prevent similar privacy breaches in the future.
- [31] I should also note that in my office's Investigation Reports 151-2017, 208-2017, 233-2017, 235-2017 and 152-2017, 219-2017, my office had recommended that the SHA provide annual privacy training to transcriptionists and the SHA agreed.

[32] Based on the above, the SHA and 3sHealth are making efforts to reduce errors by transcriptionists. I recommend that the SHA and 3sHealth continue its efforts in error-proofing the dictation and transcription process.

[33] Also, at paragraphs [38] to [41] in my office's Investigation Report 137-2019, my office explains how the mixing up of physician names occurs often. I recommend that SHA and 3sHealth develop a strategy to minimize the mixing up of physician names in dictated and transcribed reports. This can include requiring dictating physicians to spell, and not pronounce, physicians names. Or this can include providing transcriptionists and QA with a list of commonly mixed up names on a monthly basis so their attention is heightened to double-check these commonly mixed up names prior to sending out reports. Finally, QA should be investigating and following up with dictating physicians who are not following the Dictation Manual – this includes errors such as not dictating the first name, last name, and/or specialty of the physician who is to receive the report. It may also be helpful if the Dictation Manual is updated so that dictating physicians must also include the location of the receiving physician.

Write an investigation report

[34] Documenting the trustee's investigation into breaches is a method to ensure that the trustee follows through with plans to prevent similar breaches in the future.

[35] The SHA provided my office with its internal investigation report into the breach, how it responded to the breach, and the steps it will take to prevent similar privacy breaches in the future.

III FINDINGS

[36] I find that HIPA is engaged.

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

[38] I find that this privacy breach has been contained.

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

[40] I find that the SHA has investigated this privacy breach.

[41] I find that the SHA and 3sHealth have made reasonable efforts to minimize or prevent similar privacy breaches in the future.

IV RECOMMENDATIONS

[42] I recommend that Dr. P. Meiers' office make notation in its computer system that the report was sent to Dr. P. Meiers in error.

[43] I recommend that Dr. P. Meiers limit the retention of the report or destroy the report.

[44] I recommend that the SHA and 3sHealth continue its efforts in error-proofing the dictation and transcription process.

[45] I recommend that SHA and 3sHealth develop a strategy to minimize the mixing up of physician names in dictated and transcribed reports, as described at paragraph [33].

Dated at Regina, in the Province of Saskatchewan, this 7th day of August, 2019.

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