Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 305-2017

Regina Physician Group

March 28, 2018

Summary: A staff member at the Albert & Parliament Primary Health Care Centre, which is owned by the Regina Physician Group (RPG), filled in a patient's electronic chart incorrectly. As a result, the patient's lab results were sent to the incorrect physician. The physician reported the privacy breach to the Information and Privacy Commissioner (IPC). The IPC recommended that RPG notify the affected individual within 30 days of receiving this report and to provide him with a copy. Further, he recommended that RPG implement procedures so that staff use information only for the purpose for which it was collected, unless the separate purpose is authorized by section 26 of *The Health Information Protection Act* (HIPA). He also recommended that RPG implement procedures so that staff members take steps to ensure the accuracy and completeness of the personal health information they collect, pursuant to section 19 of HIPA.

I BACKGROUND

[1] In September 2017, Dr. Suzanne Meiers (Dr. S. Meiers) reported to my office that she received the lab results of an individual who was not her patient.

[2] To identify how and why the lab results were sent to Dr. S. Meiers, my office first notified the former Regina Qu'Appelle Regional Health Authority (RQRHA), which was amalgamated on December 4th, 2017, into the Saskatchewan Health Authority (SHA), that it was undertaking an investigation. After learning more about this matter, my office notified the Regina Physician Group (RPG) that it was undertaking an investigation into the matter.

RQRHA/SHA

[3] RQRHA provided laboratory services. RQRHA noted that the lab results were sent to Dr. S. Meiers because the lab requisition had identified Dr. S. Meiers as a physician who should receive a copy of the lab results. In other words, it was not a RQRHA laboratory employee who made the error in forwarding the lab results to Dr. S. Meiers. The lab results were forwarded to Dr. S. Meiers pursuant to instructions on the lab requisition.

RPG

[4] My office identified the physician who had requested the lab test. It determined that the physician is associated with the Albert & Parliament Primary Health Care Centre, which is owned by the RPG. My office sought information from RPG regarding procedures for creating lab requisitions and the reasons behind why Dr. S. Meiers was identified as a physician who should have received a copy of the lab results.

[5] RPG reported to my office that an error occurred when the patient had requested that his chart be transferred from a clinic in Saskatoon to Albert & Parliament Primary Health Care Centre. The patient's mother had indicated on the form that she authorizes and instructs a "Dr. Courtney Meier" from the Saskatoon medical clinic to release the patient's chart to a physician at Albert & Parliament Primary Health Care Centre.

[6] Then, a staff member used the information in the form to fill out the patient's demographic information within the patient's electronic chart. Within the electronic chart, there is a field to record the patient's family doctor's name. The staff member, having observed "Dr. Courtney Meier" written on the form, mistakenly selected "Dr. S. Meiers" as the patient's family physician.

[7] As noted earlier, my office notified RQRHA of this particular privacy breach. However, in the course of this investigation, my office determined that RQRHA was not the trustee responsible for this particular privacy breach. Therefore, my office closed its file with the RQRHA.

II DISCUSSION OF THE ISSUES

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

[8] 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.

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

> 2 In this Act:
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> ...
>
> (m) "personal health information" means, with respect to an individual, whether living or deceased:
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> ...
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> (ii) information with respect to any health service provided to the individual;
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> ...
>
> (iv) information that is collected:
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> (A) in the course of providing health services to the individual;
>
> ...
>
> (v) registration information;

[10] I find that personal health information is present.

[11] Second, RPG as a business corporation, is not captured by the definition of "trustee" in subsection 2(t) of HIPA. However, according to the Information Services Corporation's Corporate Registry, the shareholders for RPG are three entities. These three entities are owned by doctors licensed pursuant to *The Medical Professions Act, 1981*. These doctors qualify as trustees pursuant to subsection 2(t)(xii) of HIPA, which provides as follows:

> 2 In this Act:
>
> ...
>
> (t) "trustee" means any of the following that have custody or control of personal health information:
>
> ...
>
> (xii) a person, other than an employee of a trustee, who is:
>
> (A) a health professional licensed or registered pursuant to an Act for which the minister is responsible;

[12] I find that the owners of RPG qualify as trustees as defined by subsection 2(t)(xii) of HIPA.

[13] Third, the lab requisition originated from a physician working for RPG. According to the lab requisition, the lab results were to be sent to the physician who requested the lab requisition (and a copy sent to Dr. S. Meiers). I find that RPG has custody or control over the personal health information.

[14] I find that HIPA is engaged.

2. Was there an unauthorized disclosure of personal information?

[15] 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. A trustee should only be disclosing personal health information in accordance with HIPA.

[16] In this case, RPG disclosed personal health information to Dr. S. Meiers due to an error. I find that an unauthorized disclosure occurred.

3. Did RPG respond to this privacy breach appropriately?

[17] 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.

[18] Below is an analysis of each step.

Contain the breach

[19] To contain the privacy breach is to ensure that the personal 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.

[20] In this case, the personal health information was contained when Dr. S. Meiers' sent the record to my office. In an email dated October 4, 2017 to my office, Dr. S. Meiers' office confirmed that the record has been deleted.

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

Notify the affected individual

[22] Notifying the affected individual of the privacy breach is important so that he or she 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.

[23] Based on a review of the materials provided to my office, I find that RPG has not notified the affected individual of this particular privacy breach.

[24] I recommend that RPG notify the affected individual about this privacy breach. The notification should include the elements listed at paragraph [22].

Investigate the privacy breach

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

[26] RPG investigated this privacy breach and determined that this privacy breach is a result of human error. The patient is a minor. His mother completed a form entitled "Transfer of Patient Records from Another Clinic or Medical to Our Clinic (Waiver)". On that form, the mother requested that Dr. C. Meier of City Centre Physicians in Saskatoon transfer her son's personal health information to Dr. E. Ajogbe of Albert & Parliament Primary Health Care (which is owned by RPG). The staff person faxed the form to the correct clinic. However, she used the information on the form to fill out the patient's demographic information in his electronic chart. She mistakenly selected "Dr. S. Meiers" as the patient's family physician. As a result, when Dr. E. Ajogbe filled out a lab requisition for the patient, the lab requisition identified Dr. S. Meiers should receive a copy of the lab results.

[27] Based on a review of the form filled out by the patient's mother, my office observed that the patient's mother did not identify Dr. C. Meier as the patient's family physician. She simply requested that Dr. C. Meier of City Centre Physicians in Saskatoon release the patient's personal health information to Dr. E. Ajogbe. Therefore, the information in this form should not have been used to fill in the "family physician" field in the patient's electronic chart. Section 19 of HIPA requires that trustees take reasonable steps to ensure that information is accurate and complete. It provides:

> 19 In collecting personal health information, a trustee must take reasonable steps to ensure that the information is accurate and complete.

[28] Therefore, while the information in the form could be a good starting point in trying to determine who the patient's family physician is, RPG should be taking steps to verify whether or not Dr. C. Meier is indeed the patient's family physician or not, in order to fulfil its duty pursuant to section 19 of HIPA.

[29] I find that the root cause of this privacy breach was a result of using information collected for one purpose (the transfer of patient records) for a different purpose (to fill in the

patient's demographic information in the patient's electronic chart). Further, this privacy breach was a result of misreading the form filled out by the patient's mother.

Prevent similar privacy breaches in the future

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

[31] RPG has done the following to prevent a similar privacy breach:

- Met with the staff person who acknowledged her mistake,
- Asked all staff to always review the forms prior to sending forms to third parties,
- Implemented memory aids in the workspace to assist staff in remembering to review forms prior to sending forms to third parties, and
- Will begin asking staff to review and re-sign privacy documents annually.

[32] I find that the above steps RPG is taking raises awareness among its staff about privacy that will likely minimize privacy breaches in the future. However, RPG has determined that the breach was a result of sending the form to the incorrect third party. This contrasts what I found earlier at paragraph [29], which is that this privacy breach was a result of using information for a purpose beyond the original specific purpose.

[33] I recommend that RPG implement procedures so that staff use information only for the purpose for which it was collected, unless the separate purpose is authorized by section 26 of HIPA. In other words, its staff should **not** be using information from a form about the transfer of patient files for the purposes of filling out demographic information into the electronic chart.

[34] I recommend that RPG implement procedures so that staff take steps to ensure the accuracy and completeness of the information they collect, pursuant to section 19 of HIPA.

Write an investigation report

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

[36] RPG provided my office with its internal investigation report into this privacy breach, how it has responded to this privacy breach and the steps it will take to prevent similar breaches in the future. I find that RPG has fulfilled this final step of responding to a privacy breach.

III FINDINGS

[37] I find that HIPA is engaged.

[38] I find that an unauthorized disclosure of personal health information has occurred.

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

[40] I find that RPG has not notified the affected individual of this particular privacy breach.

[41] I find that the root cause of this privacy breach was a result of using information collected for one purpose (the transfer of patient records) for a different purpose (to fill in the patient's demographic information in the patient's electronic chart).

[42] I find another cause of this privacy breach was a result of misreading the form filled out by the patient's mother.

[43] I find that RPG is taking steps to raise awareness among its staff about privacy and that these steps will likely minimize privacy breaches in the future.

IV RECOMMENDATIONS

[44] I recommend that RPG notify the affected individual about this privacy breach within 30 days of receiving this report and to provide my office with a copy. The notification should include the elements listed at paragraph [22].

[45] I recommend that RPG implement procedures so that staff members use information only for the purpose for which it was collected, unless the separate purpose is authorized by section 26 of HIPA, as described at paragraph [33].

[46] I recommend that RPG implement procedures so that staff members take steps to ensure the accuracy and completeness of the personal health information they collect, pursuant to section 19 of HIPA.

Dated at Regina, in the Province of Saskatchewan, this 28th day of March, 2018.

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