



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 086-2024, 113-2024, 114-2024, 116-2024

Dr. Norman Vankoughnett
Dr. Abdullah Patel
Dr. Kristopher Milne
Dr. Christine Miller
(Willows Dental)

May 24, 2024

Summary:

Dr. Abdullah Patel (Patel), Dr. Christine Miller (Miller), and Dr. Kristopher Milne (Milne) proactively reported a privacy breach to the Commissioner. They asserted that Dr. Norman Vankoughnett (Vankoughnett) and an associate copied their entire patient database for their new dental practice. The Commissioner undertook an investigation. He found that privacy breaches occurred when Vankoughnett and his associate copied Patel, Miller and Milne's patient records without authority under HIPA. He also found that Patel, Miller, and Milne failed to protect their patients' personal health information pursuant to section 16 of *The Health Information Protection Act*. The Commissioner made a number of recommendations, including: that Vankoughnett destroy the patient records of Patel, Miller and Milne that he (Vankoughnett) and his associate have in their possession within 10 days of issuance of this Investigation Report and provide proof of the destruction to my office within 30 days and that Patel, Miller, Milne notify their patients that their personal health information has been a part of a privacy breach within 30 days of issuance of this Investigation Report.

I BACKGROUND

[1] Willows Dental is a general dentistry clinic that was operated by four dental professional corporations:

- Dr. Abdullah Patel Dental Prof. Corp.
- Dr. N. Vankoughnett Dental Prof. Corp.

- Dr. Christine Miller Dental Prof. Corp.
- Dr. Kristopher Milne Dental Prof. Corp.

[2] The following is information my office found based on a search of Information Services Corporation's Corporate Registry:

- Dr. Abdullah Patel (Patel) is a shareholder of Dr. Abdullah Patel Dental Prof. Corp.
- Dr. Norman Vankoughnett (Vankoughnett) is a shareholder of Dr. N. Vankoughnett Dental Prof. Corp.
- Dr. Christine Miller (Miller) is a shareholder of Dr. Christine Miller Dental Prof. Corp.
- Dr. Kristopher Milne (Milne) is a shareholder of Dr. Kristopher Milne Dental Prof. Corp.

[3] Each of Patel, Vankoughnett, Miller, and Milne carried on the practice of dentistry. Each of them conducted their practices as sole proprietors but had a cost sharing agreement. Within the cost sharing agreement, Patel, Vankoughnett, Miller, and Milne were referred to as "Participants".

[4] Dr. Eric Tuttosi (Tuttosi) worked as an associate of Vankoughnett at Willows Dental.

[5] Effective January 15, 2024, Vankoughnett departed Willows Dental and was no longer a Participant of the cost sharing agreement.

[6] On March 22, 2024, Patel, Miller, and Milne contacted my office to report concerns they had regarding Vankoughnett and Tuttosi copying not only their own patient records for their new dental practice but the entire patient database of Willows Dental. That is, they copied the records of patients of Patel, Miller, and Milne.

[7] On April 19, 2024, my office notified Patel, Miller, Milne, and Vankoughnett that my office would be undertaking an investigation into the matter.

[8] On May 17, 2024, my office received a submission from Vankoughnett and Tuttosi.

[9] On May 19, 2024, my office received a submission from Patel, Miller, and Milne.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] *The Health Information Protection Act* (HIPA) is engaged when three elements are present: 1) a trustee, 2) personal health information, and 3) the trustee has custody or control over the personal health information.

1) *Trustee*

[11] Subsection 2(1)(t) of HIPA defines “trustee” as follows:

2(1) 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] Patel, Miller, Milne and Vankoughnett are licensed pursuant to *The Dental Disciplines Act*. As such, I find that each of them qualifies as a trustee pursuant to subsection 2(1)(t)(xii)(A) of HIPA.

2) *Personal health information*

[13] Subsections 2(1)(m)(i), (ii) and (iv) of HIPA define “personal health information” as follows:

2(1) 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;

...

(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;

[14] Patient records at a dentistry practice qualify as personal health information as defined by subsections 2(1)(m)(i), (ii), and (iv) of HIPA.

3) Custody or control of the personal health information

[15] “Custody” is the physical possession of a record by a trustee with a measure of control. “Control” means having authority over a record.

[16] I note that article 4.8 of the cost sharing agreement provided that the records of patients of each Participant belongs to that Participant. In other words, each Participant should have custody or control over their own patients’ records. The agreement provides as follows:

4.8 Patient Records

The Participants acknowledge and agree that the records of all patients (including charts and files) of a Participant are the property of that Participant and, except in respect of the purchase and sale of Participant Goodwill pursuant to sections 7.2, 7.3 or 7.4 herein, shall remain the property of that Participant in the event of the withdrawal of that Participant from the Professional Association pursuant to sections 7.1 or 7.5 herein. The Participants agree that they will not, at any time during the term of this Agreement or afterwards, divulge to any person, firm or partnership any name or names of any of the patients of the other Participants and the Associates. Notwithstanding the foregoing, a Participant shall have access to all relevant patient records of the Participant for the purposes of defending any claim or allegation of negligence, malpractice or other wrongdoing by a patient or former patient attended upon by the

Participant at the Business Premises and such right shall survive the withdrawal of the Participant from the Professional Association.

[17] Therefore, Patel, Miller, Milne, Vankoughnett had custody and/or control over their own patient records pursuant to article 4.8 of the cost sharing agreement.

[18] In the case of Tuttosi, he was an associate of Vankoughnett. Article 1.1(c) of the cost sharing agreement defined “associate” as follows:

In this Agreement the following terms shall have the following meanings ascribed to them:

...
(c) “**Associate**” means a dentist who carries on the practice of dentistry at the Business Premises as an employee or independent contractor of the Professional Association and is not a Participant hereunder;

[19] Subsection 2(1) of *The Health Information Protection Regulations, 2023* (HIPA Regulations) defines “employee” as follows:

2(1) In these regulations:

...
“**employee**” means:

(a) an individual:

(i) who is employed by a trustee, including an individual retained under a contract to perform services for the trustee; and

(ii) who has access to personal health information;

...

[20] So, where Tuttosi provided dental service to a patient at Willows Dental, then Vankoughnett was the trustee with custody and/or control over the patient’s personal health information pursuant to article 4.8 of the cost sharing agreement.

[21] Since all three elements are present, HIPA is engaged. Therefore, I find that I have jurisdiction to conduct this investigation.

[22] I should note that effective August 1, 2023, the HIPA Regulations were amended. Subsection 4(b) of the HIPA Regulations expanded the definition of “trustee” to include every person who owns or operates a privately-owned facility in or from which health services are provided by a health professional. Based on details provided to my office, which will be discussed in this Investigation Report, Vankoughnett copied the patient database in June 2023. If the copying had occurred after August 1, 2023, then I would have found that the professional corporations of each Participant to qualify as a trustee pursuant to subsection 2(1)(t)(xv) of HIPA and subsection 4(b) of HIPA Regulations.

2. Have privacy breaches occurred?

[23] A privacy breach occurs when personal health information is collected, used, and/or disclosed without authority under HIPA. A privacy breach also occurs when the trustee has not adequately safeguarded personal health information in their custody or control.

a. Did Dr. Vankoughnett have authority under HIPA to collect the personal health information of patients that belonged to Patel, Miller, and Milne?

[24] In his submission, Vankoughnett explained that he and Tuttosi contracted with a company called Curve Dental for their new dental practice. He explained Curve Dental assisted him and Tuttosi in copying the patient data from Willow Dental’s database. Included in the submission was a copy of an email from Curve Dental (dated July 7, 2023) that explained it must copy “everything” from a database:

Thank you for joining me on a call to discuss the conversion. We understand you want to only pull patients for the final conversion that are assigned to Dr Eric Tuttosi and Norman Vankoughnett. **The first time we pull data from a database we have no choice but to pull everything and then we sort it out and through converting to our tables we can filter out many things.** That is why we do the prelim database first. This should not be a problem at all to isolate only the two providers’ patients.

[Emphasis added]

[25] Similarly, in an email dated October 28, 2023 (timestamped 8:14) forwarded by Curve Dental to legal counsel for Patel, Miller, and Milne, Curve Dental confirmed it “converted

everything in the data [sic] as we were not told any specific instructions in the initial preliminary conversation”. According to a document by Curve Dental entitled “Data Conversation: Preliminary,” Curve Dental determined there was a patient count of 20,930 from Willows Dental’s patient database that was copied.

[26] Subsection 2(1)(b) of HIPA defines the term “collection” as follows:

2(1) In this Act:

...

(b) “**collect**” means to gather, obtain access to, acquire, receive or obtain personal health information from any source by any means;

[27] Therefore, when Vankoughnett and Tuttosi copied Willows Dental’s patient database with guidance from Curve Dental, Vankoughnett was effectively “collecting” the personal health information of patients that belonged to Patel, Miller, and Milne.

[28] In order to determine that a privacy breach occurred, I must determine if there was authority under HIPA for Vankoughnett to have collected Patel, Miller, and Milnes’ patients’ personal health information.

[29] Subsections 24(1) and (2) of HIPA set out the purposes in which personal health information may be collected. Primary purpose is referred to in subsection 24(1) of HIPA as follows:

24(1) A trustee shall ensure that **the primary purpose** for collecting personal health information **is for the purposes of a program, activity or service of the trustee** that can reasonably be expected to **benefit the subject individual**.

(2) A trustee may collect personal health information for a secondary purpose if the secondary purpose is consistent with any of the purposes for which personal health information may be disclosed pursuant to section 27, 28 or 29.

[Emphasis added]

[30] Subsection 2(1)(o) of HIPA defines “primary purpose” as follows:

2(1) In this Act:

...

(o) “**primary purpose**” means the purpose for which personal health information was originally collected, and includes any purpose that is consistent with that purpose;

[31] Subsection 24(1) of HIPA contains three key elements:

- 1) the collection must be for a program, activity, or service of the trustee;
- 2) that program, activity, or service must be one that can reasonably be expected to benefit the patient; and
- 3) the program, activity, or service to the patient must be the primary purpose of the collection activity.

(See [Investigation Report H-2010-001](#) at paragraph [96] and [Investigation Report 014-2023, 015-2023](#) at paragraph [30]).

[32] In his submission, Vankoughnett explained that the reason why he copied the entire database was because he needed to conduct an audit pursuant to article 6.3 of the cost sharing agreement. He explained:

... I explained to Dr. Milne that I required all patient billing information, so that I could verify Fixed Costs, Variable Costs, and contributions to Willows Dental. This was all pursuant to the Agreement section 6.3. Accordingly, Dr. Milne provided me with the password so that I could gather the data required, so that it could be processed by Curve Dental and then accessed by myself for further review. I had understood based on that conversation that Dr. Milne both understood and agreed with our intentions.

Accordingly, with a view to completing the financial audit sought, we copied patients' data with guidance from Curve Dental. I was informed by Curve Dental that this process is akin to a data “snapshot”, where data is copied in a raw format, which is not usable until it is rendered into a usable format which can be read by Curve Dental's software. At all times we understood this to be the standard practice of Curve Dental, and I did not understand this initial/preliminary data snapshot to be controversial in itself. I did understand that the Complainants did not want us to transfer their patient records to Curve Dental for use at our new clinic; this is understandable of course as there is no reason for our new clinic to have the Complainants' patient medical records. This is, I believe, a separate issue from that of my ability to review our billing records to complete an internal financial audit, which, I had understood could be appropriately completed by myself under the terms of the Agreement.

[33] Article 6.3 of the cost sharing agreement provides:

6.3 Financial Reporting and Access to Records

Each Participant shall have access to:

- (a) a copy of the statement of Fixed Costs and Variable Costs and contributions by each Participant to the Professional Association;
- (b) information to verify each Participant's Billings, Professional Association Billings and any other information or documents necessary for determining each Participant's share of Fixed Costs and Variable Costs; and
- (c) access to the Business Premises during normal business hours to examine the books of account, records and documents relating to the Fixed Costs and Variable Costs of the Professional Association.

[34] Vankoughnett's collection of Patel, Miller, and Milnes' patients' personal health information to complete a financial audit is **not** a program, activity, or service that can reasonably be expected to benefit patients, which is the second key element of subsection 24(1) of HIPA. As such, I find that Vankoughnett's collection of patient data by copying Willows Dental's entire patient database was not authorized by subsection 24(1) of HIPA.

[35] In my office's [Investigation Report H-2005-002](#) at page 22, "secondary purpose" is defined as "personal health information that is used or disclosed for a purpose other than the diagnosis, treatment or care of a particular patient.

[36] Regarding collection of personal health information for a "secondary purpose" pursuant to subsection 24(2) of HIPA, the secondary purpose must be consistent with any of the purposes for which personal health information may be disclosed pursuant to sections 27, 28 or 29 of HIPA. Vankoughnett indicated that he required a copy of the patient database for the purposes of conducting a financial audit. Based on a review of sections 27, 28 and 29 of HIPA, I find that there is no provision that would authorize Vankoughnett to have collected the personal health information of patients of other trustees for such a purpose. Further, Vankoughnett has not identified authority pursuant to section 27, 28 or 29 of HIPA would have authorized the disclosure of the personal health information to him. Finally, none of the prescribed circumstances in the HIPA Regulations would have authorized the

collection. Therefore, I find that Vankoughnett’s collection of patient data by copying Willows Dental’s entire patient database was not authorized by subsection 24(2) of HIPA.

[37] I should also note that Vankoughnett provided my office with a copy of a letter dated December 20, 2023 by the College of Dental Surgeons of Saskatchewan (CDSS). The letter indicated that the Professional Conduct Committee (PCC) conducted an investigation into a concern or a complaint. CDSS had said:

Following the review and investigation, the PCC has determined that “no further action is warranted on the facts of the case”, pursuant to the DDA, sec 29(3)(b), as there is no evidence that Drs. Vankoughnett or Tuttosi have violated their role as trustees with respect to *The Health Information Protection Act*.

[38] Regardless of CDSS’ finding, I find that there was a privacy breach when Vankoughnett copied Patel, Miller, and Milnes’ patient records from Willows Dental’s patient database without authority under HIPA. In their submission, Patel, Miller, and Milne estimated there were approximately 13,000 patients who would be affected by this privacy breach.

[39] In my office’s email dated April 19, 2024, my office asked Vankoughnett if he retained a copy of the entire database and if he has taken steps to destroy the patient records that did not belong to him or Tuttosi. In his submission, Vankoughnett indicated that Curve Dental converted the raw data of “outstanding patient billings” and provided him with an “accounts receivable listing summary for all outstanding patient billings at Willows Dental.” He explained that, “this was completed for our intended billing audit.” Vankoughnett did not confirm with my office that he had taken steps to destroy a copy of patient records that did not belong to him or Tuttosi. This would include any raw data or data that was converted into a readable format by Curve Dental.

[40] Subsection 52(b)(ii) of HIPA provides as follows:

52 The commissioner may:

...

(b) after hearing a trustee, recommend that the trustee:

...

(ii) destroy collections of personal health information collected in contravention of this Act;

[41] Therefore, pursuant to subsection 52(b)(ii) of HIPA, I recommend that Vankoughnett destroy the patient records of Patel, Miller, and Milne that he (Vankoughnett) and Tuttosi have in their possession within 10 days and provide my office and Patel, Miller, and Milne proof that he has done so within 30 days of issuance of this Investigation Report.

[42] While article 6.3 of the cost sharing agreement provided that Participants would have access to certain information for certain purposes, the Participants' access to personal health information should still be conducted in a way that is in accordance with HIPA. That is, each dentist (as a trustee) must still collect, use, and/or disclose personal health information in accordance with HIPA. A cost sharing agreement does not give any trustee a free pass to help themselves to patients' personal health information for their own purposes without any regard for the requirements of HIPA. In his submission, Vankoughnett indicated it filed a notice to arbitrate pursuant to *The Arbitration Act, 1992*. One of the remedies he is seeking is to have "unfettered access" to the patient database. I would like to remind Vankoughnett, Patel, Miller, and Milne that they must abide by HIPA and ensure they are collecting, using, and/or disclosing personal health information in accordance with HIPA.

[43] Later on in this Investigation Report, I will discuss information management service providers (IMSP) as defined by subsection 2(1)(j) of HIPA. I also discuss how trustees must have agreements with their IMSPs that comply with subsection 18(2) of HIPA and section 7 of the HIPA Regulations. However, I recommend that Vankoughnett ensure that his agreement with Curve Dental is in compliance with subsection 18(2) of HIPA and section 7 of the HIPA Regulations.

b. Did Patel, Miller, and Milne have proper safeguards in place to prevent unauthorized disclosure of their patients' records?

[44] Since Patel, Miller, and Milne reported this matter to my office, it would seem as though they never intended to disclose any of their patients' personal health information to Vankoughnett and Tuttosi. Therefore, I must determine if they had proper safeguards in place to prevent unauthorized access to or disclosure of their patients' personal health information. Section 16 of HIPA provides:

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

(a) protect the integrity, accuracy and confidentiality of the information;

(b) protect against any reasonably anticipated:

(i) threat or hazard to the security or integrity of the information;

(ii) loss of the information; or

(iii) unauthorized access to or use, disclosure or modification of the information; and

(c) otherwise ensure compliance with this Act by its employees.

[Emphasis added]

[45] In their submission, Patel, Miller, and Milne cited article 4.8 of the cost sharing agreement (quoted earlier) that each Participant has custody or control over their own patients' records. Such an agreement is an example of an administrative safeguard. In addition to administrative safeguards, trustees should also ensure there are physical and technical safeguards to protect personal health information in their custody and/or control.

[46] On June 22, 2023, before Vankoughnett had copied Willows Dentals' patient database, Vankoughnett and Milne exchanged text messages at approximately 3:19 p.m.:

Vankoughnett: Hey Kris. Curve will be doing a data pull tomorrow. Just giving you a heads up.

Milne: What data are they pulling specifically?

Vankoughnett: Patient database

Milne: Which patients? None of mine, I hope.

Vankoughnett: It will be the full data base [sic] as far as I can tell. I will need access to that for our records

Vankoughnett: As you will retain access at willows [sic]

Milne: Maxident will split the database so we have none of your patient records and you have none of ours. We have no intention of keeping your patients in our database as those are your records and your records only.

Vankoughnett: That's my intentions [sic] also. When the data conversion is done we will delete all your records when the new space is rocking. I do need access to the whole database while I'm still hanging with willows though.... Same as you three do.

Vankoughnett: Between you and I because I've had billing records altered on at least 6 patients that [sic] I know about over the years there will be a request made for an audit and I do need access to the database for that

[47] Then, in an email on the same day (June 22, 2024), at 8:03 p.m., Milne sent an email to Vankoughnett and carbon copied Patel and Miller. The email said:

Dear Norm,

The database that is at Willows Dental is for use at Willows Dental only and only by employees of Willows Dental.

Abe, Christine, and Kris do not give you or any 3rd party, including Curve Dental, consent to access the Willows Dental database at any time to access or copy any of our patient records. You are free to access the database for yours and Eric's patients only.

As far as any billing inquiries, you have access to your patients' complete records, and you have no authority to take any of our patient information. Our patient records belong to us. Once you and Eric have a date to leave Willows Dental, Maxident will split the database and all records will either leave or stay with the corresponding custodian.

Any other information that is needed can be accessed by the appropriate body when required, with our consent, if deemed necessary by our lawyers.

This serves as an official notification that you have absolutely no authority to copy any of our patient records. We are all entrusted to maintain the integrity of our records and we hold our patients' confidential information entrusted to us with the highest regard. Should any of our patients' records be copied without our consent, we will be reaching out to the relevant governing bodies to intervene.

Sincerely,

Abe, Christine, and Kris

- [48] In their submission, Patel, Miller, and Milne explained that Milne provided Vankoughnett with the password even though Vankoughnett already knew the password:

Prior to the potential breach of Dr. Vankoughnett downloading the entire database, the Complainants told him they did not consent to him downloading their patient data, but they would consent to him access the database to pull his own patient records. Dr. Milne gave Dr. Vankoughnett the password to access the database for this purpose. However, Dr. Vankoughnett already knew the password and, pursuant to the Cost-Share Agreement to which he was a party, had the authority to access the database.

- [49] Further, Patel, Miller, and Milne described their concern of how their IT person could change “the password” and lock all of them out of the system:

Only [Name of IT person], Willows Dental’s IT person could change the password or lock people out of the database. Mr. [Name of IT person] was good friends with Dr. Vankoughnett and the Complainants were concerned that if they changed the password or took any other action to prevent Dr. Vankoughnett’s access to the database, he would get Mr. [Name of IT person] to lock the Complainants out of the database system entirely. Mr. [Name of IT person] no longer provides IT services to Willows Dental.

- [50] Based on the above text message exchange and email, the patient records were not segregated by a trustee at the time Curve Dental copied the entire patient database. There were no technical safeguards within the database to have prevented Vankoughnett from accessing the other trustees’ patients’ records, or from preventing any dentist at Willows Dental from accessing the records of patients of other dentists. A password is an ineffective safeguard if the person you are trying to prevent from having access already has the password. Further, the fact that the trustees were seemingly sharing a single password suggests how frail or absent the security of the computer system was (and perhaps still is).

- [51] I find that a root cause of the privacy breach is the lack of technical safeguards used to protect patients’ personal health information. The fact that Vankoughnett was able to copy all the patient database suggests that Patel, Miller, and Milne failed to fulfill their duty to protect their own patients’ personal health information pursuant to section 16 of HIPA.

[52] In their submission, Patel, Miller, and Milne said, “policies have been implemented to separate individual dentists’ patient records and limit access to the dentists who are the specific trustees of those patients”. I recommend that Patel, Miller, and Milne implement technical safeguards to separate patient records by trustee. This may include segregating patient records by trustees or implementing access controls to the database so that trustees can only access their own patient records. Each trustee (and each employee) should have their own username and strong password to access the system so that the system can track each users’ activities on the system. The Office of the Privacy Commissioner of Canada (OPC) provides [guidelines on creating strong passwords](#). No user of the database should ever be required to share their password with another. Further, Patel, Miller and Milne should be conducting regular system audits to ensure all including its employees are accessing patients’ personal health information on a need-to-know basis (pursuant to section 23 of HIPA).

3. Have Patel, Miller, and Milne properly responded to the privacy breaches?

[53] In circumstances where I have found that a privacy breach (or breaches) has occurred, my office’s investigation will focus on whether the trustee (or trustees) have properly responded to the privacy breaches.

[54] As set out in section 5-4 of my office’s [Rules of Procedure](#) and my office’s [Privacy Breach Guidelines for Health Trustees](#), my office determines whether the trustee (or trustees) properly responded to the privacy breach by analyzing the trustee’s efforts to:

- Contain the breach (as soon as possible);
- Notify affected individuals (as soon as possible);
- Investigate the privacy breach; and
- Prevent future breaches.

[55] Since Patel, Miller, and Milne reported this matter to my office, I will consider if they appropriately addressed each of the above steps.

Contain the breach (as soon as possible)

[56] Upon learning that a privacy breach has occurred, steps should be taken to immediately contain the breach. Depending on the nature of the breach, this can include:

- Stopping the unauthorized practice;
- Recovering the records;
- Shutting down the system that has been breached;
- Revoking access privileges; and
- Correcting weaknesses in physical security.

(Privacy Breach Guidelines for Health Trustees, p. 3)

[57] In their submission to my office, Patel, Miller, and Milne indicated they took the following steps to contain the breach:

- Reported the matter to my office, Saskatchewan Ministry of Health, and the CDSS.
- Sought legal counsel and contacted Curve Dental to find out what information Vankoughnett and Tuttosi possessed.
- When they confirmed Vankoughnett and Tuttosi had copied the entire patient database, Patel, Miller, and Milne sent a cease-and-desist email to Curve Dental demanding that data not belonging to Vankoughnett and Tuttosi be destroyed.
- Took measures to lock Vankoughnett from further access to the patient database.

[58] Based on the above, I find that Patel, Miller, and Milne have taken reasonable steps to contain this privacy breach.

[59] However, in their submission, Patel, Miller, and Milne indicated a concern that Vankoughnett and Tuttosi still have a copy of the entire patient database. They provided my office with a copy of an email dated February 2, 2024 from Curve Dental, which indicates there is a possibility Vankoughnett and Tuttosi still have a copy of the data:

We provided them access to their specific data on November 17.

They do not have access to any of the full set of data from Curve. We deleted what we didn't put on their system. **They may have a copy of the data within their office - they provided the data to us.**

[Emphasis added]

[60] Earlier, I addressed this concern with my recommendation to Vankoughnett and Tuttosi to destroy the patient records of Patel, Miller, and Milne. Therefore, I will not discuss the matter further here.

Notify affected individuals (as soon as possible)

[61] It is best practice to inform affected individuals when their personal health information has been a part of a privacy breach (*Privacy Breach Guidelines for Health Trustees*, p. 3).

[62] In their submission, Patel, Miller, and Milne indicated they had not notified patients that their personal health information was breached. Referring to themselves as the Complainants, below is a quote from Patel, Miller, and Milnes' submission explaining their reasons for not notifying affected individuals yet:

- The Complainants are uncertain whether the taking of the data that can be converted to personal health information is in fact a breach of privacy. The Complainants received communications to the CDSS indicating that it was not, and received further correspondence from the OIPC that did not indicate any urgency with respect to Dr. Vankoughnett's conduct.
- There is no statutory requirement under HIPA to notify individuals of a breach or suspected breach. While the Complainants acknowledge that the OIPC "Privacy Breach Guidelines for Trustees," page 3 notes that "it is best practice to inform affected individuals and the IPC of breaches." As such, although it is "best practice" to notify affected individuals if there is a breach, here there was no confirmed breach and it was unclear whether notification was prudent under the circumstances, and certainly not without first obtaining guidance from the OIPC.
- Although Dr. Vankoughnett's conduct was not authorized, the Complainants believe there is little risk of harm to patients by Dr. Vankoughnett and as a result there were no pressing patient safety or security issues that needed addressing.

[63] Based on the above, I find that Patel, Miller, and Milne have not taken steps to notify affected individuals that their personal health information was a part of a privacy breach.

[64] I must address Patel, Miller, and Milnes' comments that correspondence with my office "did not indicate any urgency with respect to Dr. Vankoughnett's conduct" and that they were not going to notify affected individuals of the privacy breach "without first obtaining guidance from the OIPC". These comments appear to suggest that Patel, Miller, and Milne are blaming my office for not having yet provided notice to their patients of this privacy breach and they are refusing to own any responsibility for the privacy breach.

[65] I note that Patel did contact my office by email on June 22, 2023 and June 23, 2023. He indicated he believed Vankoughnett was planning to copy the entire database. Without a formal investigation underway, my office cannot provide any rulings but can only provide general non-binding advice. Further, my office cannot investigate something that has not happened. Therefore, my office provided an explanation of what could constitute a privacy breach under HIPA and suggested that Patel show the email exchange to Vankoughnett. My office said:

In this case, you are trying to prevent an action from being taken. I recommended previously that you share my email exchange with the colleague in question and if actions are taken that you believe are in violation of HIPA, you have the ability to report the incident to my office and if we have jurisdiction and grounds, we will undertake an own motion investigation.

[66] However, Patel, Miller, and Milne characterizing my office's correspondence as not indicating "any urgency with respect to Dr. Vankoughnett's conduct" is inaccurate. Patel, Miller, and Milne had the ability to prevent Vankoughnett from copying the database but failed to do so. As trustees, they must protect their patients' personal health information. However, they did not. Rather, it seemed as though they expected my office to stop Vankoughnett.

[67] My office is not in the business of picking sides in an acrimonious relationship. I recommend that Patel, Miller, and Milne prioritize patient privacy above any issues they have with Vankoughnett and Tuttosi. I also recommend that Patel, Miller, and Milne notify

affected individuals that their personal health information has been a part of a privacy breach within 30 days of issuance of this Investigation Report. Regarding guidance from my office, I suggest that Patel, Miller, and Milne refer to page 4 of my office's resource *Privacy Breach Guidelines for Health Trustees*.

Investigate the privacy breach

[68] When considering why a privacy breach occurred, a trustee should reflect on the root causes, or what led to the breach occurring. It is an important step in mitigating the risk of a future breach of a similar nature from occurring (*Privacy Breach Guidelines for Health Trustees*, p. 5).

[69] A root cause analysis should include a consideration of section 16 of HIPA (quoted earlier), which sets out the trustee's duty to protect personal health information. In their submission, Patel, Milne, and Miller identified its cost sharing agreement as a safeguard but was followed by Vankoughnett. They said:

The root cause of the privacy breach was Dr. Vankoughnett abusing his position as a trustee with the ability to access personal health information. Although he had access to Willows Dental's entire database, pursuant to the Cost-Share Agreement, he had custody only of his own patient records within the database. Dr. Vankoughnett deliberately breached his ethical, professional, and legal obligations by copying the entire database, rather than only the information of his own patients, similar to the OIPC's findings in *Saskatchewan Health Authority (Sun Country Regional Health Authority) (Re)*, 2018 CanLII 38417 (SK IPC), OIPC Investigation Report 284-2017 and *Saskatchewan Health Authority (Re)*, 2019 CanLII 84579 (SK IPC), OIPC Investigation Report 071-2019.

Dr. Vankoughnett has shown a disregard of his confidentiality requirements under the Cost-Share Agreement; his responsibilities as a trustee under HIPA; and his professional obligations with the CDSS.

...

Factors that contributed to this potential breach was an acrimonious relationship between Dr. Vankoughnett and the Complainants. The Complainants attempted to be professional and offered to split the patient database and allow Dr. Vankoughnett all of his patient data. This was communicated to Dr. Vankoughnett. However, Dr. Vankoughnett ignored this offer and took all of the patient data, contrary to the

Complainants' request to take only his own patient data and contrary to his obligation under the Cost-Share Agreement.

[70] Finally, Patel, Miller, and Milnes' concluded that the privacy breaches were a result of Vankoughnett's actions. They said:

Ultimately, this incident was not caused by inadvertence or a lack of understanding, but the deliberate action of a former cost-sharing participant activity without right or authority.

[71] As I said earlier, the purpose of a root cause analysis is to prevent similar privacy breaches in the future. Vankoughnett is no longer at Willows Dental. Therefore, focusing solely on Vankoughnett's actions is ineffective. Patel, Miller, and Milnes' should be analyzing the gaps in their safeguards to prevent a similar breach from occurring in the future.

[72] While I agree that the cost sharing agreement was a safeguard that was in place, I found earlier that a root cause of this privacy breach was the lack of technical safeguards to protect patients' personal health information.

Prevent future breaches

[73] The most important part of responding to a privacy breach is to implement measures to prevent future breaches from occurring (*Privacy Breach Guidelines for Health Trustees*, p. 6).

[74] In their submission, Patel, Miller, and Milne indicated they have taken the following actions:

- Updated Willows Dental's Privacy Policy.
- Updated its cost sharing agreement by adding an appendix that clarifies each participants' obligations.
- They provided a copy of its Privacy Policy to their IMSP, Maxident, and Maxident "is now developing their first IMSP agreement that is compliant with Saskatchewan privacy laws."

[75] I will comment on each of the above three actions. Then, I will discuss the technical safeguards that need to be implemented.

Willows Dental's updated Privacy Policy

[76] Willows Dental's updated Privacy Policy appears to conflate the requirements of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) with the requirements of HIPA. Conflating the requirements of PIPEDA and HIPA means that following the policy will likely result in non-compliance with HIPA or PIPEDA (or both Acts). For example, PIPEDA is a consent-based private sector privacy legislation that applies to personal information that is collected, used, or disclosed in the course of a commercial activity by private-sector organizations. In contrast, HIPA is not consent-based and applies to the collection, use, and/or disclosure of personal health information by trustees. Willows Dental's Privacy Policy does not make the distinction between PIPEDA or HIPA. Nor does it describe the circumstances in which PIPEDA applies or the circumstances in which HIPA applies.

[77] I find that Willows Dental's updated Privacy Policy to be inadequate.

[78] Since my office's focus is not on Willows Dental's updated Privacy Policy, I will not provide further comment on the Privacy Policy. However, I recommend that Patel, Miller, and Milne engage my office's [consultation](#) process regarding its Privacy Policy. Further, I recommend that Willows Dental contact the OPC for advice on developing a Privacy Policy regarding PIPEDA. The OPC, and not my office, provides oversight for PIPEDA.

Appendix to the cost sharing agreement

[79] Patel, Miller, and Milne provided my office with a copy of the Appendix to its cost sharing agreement. The Appendix to the cost sharing agreement provides:

1. Each Participant agrees to abide by HIPA.
2. Each Participant agrees to abide by the Cost Sharing Agreement in its entirety.

3. Each Participant agrees to abide by the Privacy Policy of Willows Dental.
4. Each Participant is the legal custodian and trustee of the personal health information of their own patients.
5. Ownership of Participant patients is determined by the default billing provider in the Maxident patient ledger.
6. Willows Dental is not the custodian or trustee of any patient personal health information.
7. Each of the Participants in the Professional Association are joint custodians and trustees of patient personal health information where the billing provider is an Associate of Willows Dental. When a Participant [sic] exits the Professional Association, they are no longer a custodian and trustee of Associate patient personal health information, and the responsibility falls upon the remaining Participants of the Professional Association.
8. Participants pledge not to access personal health information of patients not their own, without written or implied consent.
9. All Participants agree to review and update this document and the Privacy Policy of Willows Dental annually.
10. This document will be added as an appendix to the Cost Sharing Agreement.

[80] While I note that Article 1 of the cost sharing agreement defines terms such as “Participant”, “Associate”, and “Professional Association”, it is unclear what is meant by the term “custodian” or “legal custodian” in items 4 and 6 of the Appendix to the cost sharing agreement. I recommend that Patel, Miller, and Milne define the term “custodian” and/or “legal custodian” in its Appendix to the cost sharing agreement. They should ensure that the language used in the Appendix should reflect the language in HIPA.

[81] Further, item 7 of the Appendix provides that it’s the Participants (Patel, Miller, and Milne) are the trustees of an associate’s patients records. I recommend that a process is set up to determine who or how the Participants are to make decisions under HIPA regarding an associate’s patients records. This includes making decisions on the use, disclosure, retention, and destruction of the patients records. This will also include investigating any

privacy complaints by the patient or decisions regarding any formal access to information requests submitted by the patient for the record.

[82] Also, regarding item 8 of the Appendix, it says Participants pledge not to access personal health information of patients not their own, without written or implied consent. Any access needs to be governed by HIPA. Therefore, even if Participant A “consents” to Participant B accessing Patient X’s personal health information, Participant A must still have authority under HIPA to disclose Patient’s X’s personal health information to Participant B and Participant B must have authority under HIPA to collect Patient X’s personal health information. Without the authority under HIPA to collect, use, and/or disclose a patient’s personal health information will result in a breach of a patient’s privacy, even when a Participant “consents”. Participants cannot “consent” on behalf of patients. I recommend that Patel, Miller, and Milne clarify the wording of item 8 and ensure that patients’ personal health information is collected, used, and/or disclosed between Participants in accordance with HIPA.

[83] Finally, item 3 references Willows Dental’s updated Privacy Policy, which I have already found to be inadequate. I recommend that Patel, Miller, and Milne ensure its Privacy Policy is revised so that it provides guidance to themselves and to their employees in such a way that they manage personal information and personal health information in accordance with HIPA and PIPEDA.

Maxident developing an IMSP agreement

[84] As explained earlier, Maxident, is the IMSP for Patel, Miller, and Milne. Subsection 2(1)(j) of HIPA defines IMSP as follows:

2(1) 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;

[85] In their submission, Patel, Miller, and Milne said:

The Complainants have also contacted their IMSP, Maxident, regarding developing a Saskatchewan compliant IMSP agreement and provided it with Willows Dental's privacy agreement. Maxident is now developing their first IMSP agreement that is compliant with Saskatchewan privacy laws.

[86] Based on the wording, it appears that Patel, Miller, and Milne are taking a passive role in developing an agreement with their IMSP, Maxident. They have provided their "privacy agreement" to Maxident and is expecting Maxident to develop an agreement. However, subsection 18(2) of HIPA requires trustees to enter into an agreement with the IMSP before providing personal health information to the IMSP. In other words, the trustees must be taking an active role in developing the written agreement with their IMSP, not a passive one. That is, Patel, Miller, and Milne should be developing the agreement. Subsection 18(2) of HIPA provides:

18(2) Before providing personal health information to an information management service provider, a trustee must enter into a written agreement with the information management service provider that:

- (a) governs the access to and use, disclosure, storage, archiving, modification and destruction of the information;
- (b) provides for protection of the information; and
- (c) meets the requirements of the regulations.

[87] Section 7 of the HIPA Regulations provides:

7 For the purposes of subsection 18(2) of the Act, a written agreement that is entered into between a trustee and an information management service provider must include:

- (a) a description of the specific service the information management service provider will deliver;

(b) provisions setting out the obligations of the information management service provider respecting the security and safeguarding of the personal health information;

(c) provisions for the destruction of the personal health information, if applicable;

(d) a requirement that the information management service provider not use, disclose, obtain access to, process, store, archive, modify or destroy personal health information received from a trustee except for the purposes set out in subsection 18(1) of the Act;

(e) a requirement that the information management service provider comply with the terms of the agreement entered into with the trustee; and

(f) a requirement that the information management service provider notify the trustee at the first reasonable opportunity of any breach of the agreement.

[88] I recommend that Patel, Miller, and Milne develop an agreement with Maxident in accordance with the requirements of HIPA that sets out their expectations on how their IMSP is to manage their patients' personal health information.

Technical safeguards

[89] Earlier in this Investigation Report, I recommended that Patel, Miller, and Milne implement technical safeguards to separate patient records by trustee. I do not have to repeat those same recommendations here. However, implementing technical safeguards to protecting patients' personal health information is critical in addressing a root cause of the privacy breach in order to prevent a similar privacy breach in the future.

III FINDINGS

[90] I find that I have jurisdiction to conduct this investigation.

[91] I find that Vankoughnett's collection of patient data by copying Willows Dental's entire patient database was not authorized by subsection 24(1) of HIPA.

- [92] I find that Vankoughnett's collection of patient data by copying Willows Dental's entire patient database was not authorized by subsection 24(2) of HIPA.
- [93] I find that a privacy breach has occurred when Vankoughnett collected Patel, Miller, and Milnes' patient records from the Willows Dental's patient database without authority under HIPA.
- [94] I find that a root cause of the privacy breach is the lack of technical safeguards used to protect patients' personal health information.
- [95] I find that Patel, Miller, and Milne failed to fulfill their duty to protect their own patients' personal health information pursuant to section 16 of HIPA.
- [96] I find that Patel, Miller, and Milne have taken reasonable steps to contain this privacy breach.
- [97] I find that Patel, Miller, and Milne have not taken steps to notify affected individuals that their personal health information was part of a privacy breach.
- [98] I find that Willows Dental's updated Privacy Policy to be inadequate.

IV RECOMMENDATIONS

- [99] I recommend that Vankoughnett destroy the patient records of Patel, Miller, and Milne that he (Vankoughnett) and Tuttosi have in their possession within 10 days and provide my office and Patel, Miller, and Milne with proof that this has been done within 30 days of issuance of this Investigation Report.
- [100] I recommend that Vankoughnett ensure that his agreements with Curve Dental are in compliance with subsection 18(2) of HIPA and section 7 of the HIPA Regulations.

- [101] I recommend that Patel, Miller, and Milne implement technical safeguards to separate patient records by trustee as described at paragraph [52].
- [102] I recommend that Patel, Miller, and Milne prioritize patient privacy above any issues they have with Vankoughnett and Tuttosi.
- [103] I also recommend that Patel, Miller, and Milne notify affected individuals that their personal health information has been a part of a privacy breach within 30 days of issuance of this Investigation Report.
- [104] I recommend that Patel, Miller, and Milne engage my office's consultation process regarding its Privacy Policy.
- [105] I recommend that Willows Dental contact the OPC for advice on developing a Privacy Policy regarding PIPEDA.
- [106] I recommend that Patel, Miller, and Milne define the term "custodian" and/or "legal custodian" in its Appendix to the cost sharing agreement. They should ensure that the language used in the Appendix should reflect the language in HIPA.
- [107] I recommend that Patel, Miller, and Milne set up a process to determine how the Participants are to make decisions under HIPA regarding an associate's patients records pursuant to item 7 of the Appendix to the cost sharing agreement. This includes making decisions on the use, disclosure, retention, and destruction of the patients records. This will also include investigating any privacy complaints by the patient or decisions regarding any formal access to information requests submitted by the patient for the record.
- [108] I recommend that Patel, Miller, and Milne clarify the wording of item 8 and ensure that patients' personal health information is collected, used, and/or disclosed between participants in accordance with HIPA.

[109] I recommend that Patel, Miller, and Milne ensure its privacy policy is revised so that it provides guidance to themselves and to their employees in such a way that they manage personal information and personal health information in accordance with HIPA and PIPEDA.

[110] I recommend that Patel, Miller, and Milne develop an agreement with Maxident in accordance with the requirements of HIPA that sets out their expectations on how their IMSP is to manage their patients' personal health information.

Dated at Regina, in the Province of Saskatchewan, this 24th day of May, 2024.

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