



REVIEW REPORT 246-2019

Saskatchewan Health Authority

May 12, 2020

Summary:

The Applicant's parent submitted a request for amendment of personal health information to the Saskatchewan Health Authority (SHA) alleging co-mingling of personal health information with another individual sharing the same first and last name as the Applicant. The SHA advised that a review of the Applicant's medical record found no evidence of co-mingling of personal health information. The parent requested my office undertake a review. My office's review of the record did not find any instances where the registration information recorded on the records contained another person's information. The Commissioner recommended the SHA place a notation on the file and recommended the SHA develop and implement a policy for the processing of amendment of personal health information requests.

I BACKGROUND

[1] In a letter to the Saskatchewan Health Authority (SHA) dated January 30, 2019, the Applicant's parent, designated by the Applicant to exercise their rights under *The Health Information Protection Act* (HIPA) (the parent), brought forward concerns to the Patient Advocate Office that there were errors in the Applicant's personal health information.

[2] A letter from the SHA dated March 9, 2019, which the SHA later clarified that date was an error that should have read March 22, 2019, stated:

Thank you for your letter dated January 30, 2019... The letter outlined your concerns regarding alleged errors in your medical health record with the Regina General Hospital (RGH)...

The concern that the Saskatchewan Health Authority can address was based on [Applicant's name] admission to the RGH [unit number] from March 16 – April 21, 2016 inclusive. The Privacy, and HIMS representatives reiterated our conversation that you and your mother believe the information for this admission contains many errors (subsequently the Regina General Hospital HIMS was provided a package of amendments addressing these errors that are now filed in your chart) and there was co-mingling of information on the chart with another patient with the same name. You also shared your opinion the chart still has errors...

A review was conducted regarding the potential co-mingling of your personal health information where we compared admissions and information filed on each record. After the assessment was completed with [name of SHA HIMS employee] and [name of SHA Access and Privacy Officer], it was determined your chart and the chart of the individual with the same first and surname should be reviewed by the Department Head of Psychiatry, [name of doctor].

After [their] thorough review, [name of doctor] confirmed the initial findings; there is no information on either record that supports your allegation that the health information of an individual with the same name was being confused with you, and there is no evidence to support the suggestion of any co-mingled personal health information on your record.

We appreciate you understand that we cannot disclose any particulars of the other individual's medical health record except to stated what is contained within that chart has no-relevant to any episode of care you have received at the Regina General Hospital.

[3] In a letter date March 28, 2019, the parent responded to the SHA indicating they wished to appeal SHA's response as they still had concerns about the alleged errors. In this letter, the parent also referenced HIPA stating: "As per HIPA protocol [name of Applicant] has a right to a factual file that properly reflects [their] actual Medical History."

[4] On May 3, 2019, the SHA responded as follows:

We have further investigated the various claims addressed in your appeal letter and our conclusion remains the same. There is no co-mingling of information on your health record. [Name of doctor] conducted a Medical Quality Improvement Review as the Department Head of Psychiatry...

In accordance to The Health Information Protect Act (HIPA) [sic] Part V Access of Individual to Personal Health Information sec [sic] 40(1) & (2) amendments were made to [name of Applicant]'s health record and those amendments were place on [their] health record September 23, 2016.

- [5] On June 5, 2019, the parent contacted my office to request a review of the matter.
- [6] On July 17, 2019, my office notified the SHA, the Applicant and the parent of our intentions to undertake a review of this matter.

II RECORDS AT ISSUE

- [7] While the parent provided my office with documentation outlining a number of concerns alleging errors in the Applicant's personal health information, this file is strictly about the alleged co-mingling of personal health information of *another* individual with the same first and last name of the Applicant.
- [8] The parent alleges co-mingling of personal health information with another individual that bears the same first and last name as the Applicant. However, the parent was not clear as to exactly what personal health information they believed was co-mingled. In the supporting documentation provided to my office, there are copies of two pieces of correspondence from an outpatient clinic that the Applicant attended following their in-patient stay that the header is stamped with the other individual's registration information. In one of these letters, the physician states, "I went through [their] chart a few days after I admitted [them] **and apart from one incident where there was an error on the Community Treatment Order**, I am not aware of any other incorrect information in the patient file." [emphasis added]
- [9] My office has also initiated a privacy breach investigation with the SHA to consider these instances of disclosure of another individual's registration information to the Applicant.
- [10] This review of the amendment of personal health information is only regarding the records the SHA has for Applicant' in-patient stay at Regina General Hospital during the timeframe specified.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[11] The SHA qualifies as a “trustee” as defined by subsection 2(t)(ii) of HIPA. Therefore, I have jurisdiction to review this matter.

2. Has the SHA responded appropriately to the Applicant’s request for amendment?

[12] The parent has alleged co-mingling of personal health information with another individual. The parent’s correspondence did not appear to specify what portions of the records they were requesting an amendment regarding. However, they did provide supporting documentation showing that the registration information of the other individual appeared on records for the Applicant’s outpatient visits to an SHA clinic. Therefore, my review will consider if there are any instances of further co-mingling on the records at issue.

[13] Personal health information includes registration information, as defined at subsection 2(m) of HIPA:

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;

[14] Section 40 of HIPA provides the following regarding the right of amendment of personal health information:

40(1) An individual who is given access to a record that contains personal health information with respect to himself or herself is entitled:

(a) to request amendment of the personal health information contained in the record if the person believes that there is an error or omission in it; or

(b) if an amendment is requested but not made, to require that a notation to that effect be made in the record.

(2) A request for amendment must be in writing.

(3) Within 30 days after a request for amendment is received, the trustee shall advise the individual in writing that:

(a) the amendment has been made; or

(b) a notation pursuant to clause (1)(b) has been made.

(4) Subject to subsection (6), where a trustee makes an amendment or adds a notation pursuant to clause (1)(b), the trustee must, where practicable, give notice of the amendment or notation to any other trustee or person to whom the personal health information has been disclosed by the trustee within the period of one year immediately before the amendment was requested.

(5) A trustee that receives a notice pursuant to subsection (4) must make the amendment or add the notation to any record in the custody or control of the trustee that contains personal health information respecting the individual who requested the amendment.

(6) A trustee is not required to notify other trustees where:

(a) an amendment or a notation cannot reasonably be expected to have an impact on the ongoing provision of health services to the individual; or

(b) the personal health information was disclosed to the other trustees for any of the purposes or in any of the circumstances set out in subsection 27(2).

(7) An amendment required to be made pursuant to this section must not destroy or obliterate existing information in the record being amended, other than registration information.

[15] In its submission, the SHA stated that both the Access and Privacy Officer and the Health Information Management Services (HIMS) Manager reviewed the Applicant's records. Their review found that, "all documents are stamped with the correct addressograph which contains the correction Health Card Number, Medical Record Number and Date of Birth within each chart..." Following this review, the SHA decided to have the Department Head of Psychiatry conduct a clinical review of the Applicant's chart and the other individual's chart to ensure that there was no evidence of co-mingling of personal information beyond what was administratively apparent. This clinical review found that there was no evidence to support the Applicant's allegations of co-mingling of information.

[16] My office also received a copy of the Applicant's record, for the time period specified, and based on a review of the face of the record did not find any instances where the registration information recorded on the records contained another person's information.

[17] I find that the SHA took appropriate steps in the consideration of the Applicant's amendment of personal health information request.

[18] It is unclear, however, if the SHA has placed a notation on the Applicant's medical records that this amendment was requested, but not made, pursuant to subsection 40(3)(b) of HIPA. If a notation has not already been placed on the file, I recommend the SHA place one on the file. However, as the amendment requested relates to allegations that the personal health information of another individual was co-mingled, the SHA should ensure that it is not recording personal health information of the other individual on the Applicant's file.

3. Does the SHA have appropriate policies and procedures in place for processing requests for amendments to personal health information?

[19] Subsection 9(3) of HIPA provides:

9(3) A trustee must establish policies and procedures to promote knowledge and awareness of the rights extended to individuals by this Act, including the right to request access to their personal health information and to request amendment of that personal health information.

[20] On March 4, 2020, my office emailed the SHA's Access and Privacy Officer to gain clarification on what policies, procedures and practices the SHA had in place for requests for amendment to personal health information:

It appears the request for amendment and response to their request involved the Patient Advocate Office, and the appeal to the initial response was provided by Quality and Safety.

a. Does the SHA have a policy or procedure for how it handles requests for amendment to personal health information? If so, please provide a copy.

b. Do requests for amendment made to the Patient Advocate Office include consultations or review with the Access and Privacy Officer?

c. If there are multiple processes in place to request amendments, are patients made aware of their ability to request amendments of their personal health information to the Access and Privacy Officer under HIPA?

d. Based on the copies of communication I have received, it does not appear that the SHA advised the Applicant of their right to request a review by the IPC [Information and Privacy Commissioner] if they were dissatisfied with the response to their request for amendment. What is the SHA's standard practice when responding to requests for amendment?

[21] On March 16, 2020, my office followed up with the SHA requesting to know if any policies or procedures existed for the amendment of personal health information, and if any existed for copies to be provided to my office. SHA's Access and Privacy Officer responded stating, "we don't have a written policy in place but an understanding of process."

[22] From my discussions with the SHA's Access and Privacy Officer, it is my understanding that individuals have a number of avenues that can be accessed to request an amendment of personal health information. While the SHA has indicated it has an 'understanding of process' it is not clear what that process all entails

[23] This review does not include the consideration of the Applicant's original amendment request from 2016. However, the correspondence with the SHA for the co-mingling concerns in 2019 includes a request that the 2016 amendments be "reassessed and [the] file errors properly addressed." Along with addressing the co-mingling concerns, the SHA also

commented on how the 2016 amendments had been addressed. As the SHA has indicated there are not any written policies in place, reviewing how these requests were processed using the SHA's 'understanding of process' can assist in understanding if the process in place is effective.

[24] Based on my office's communications with the SHA's Access and Privacy Officer, it is my understanding that 2016 amendments were processed through *The Mental Health Services Act*. However, in the copy of the Applicant's medical record provided to my office by the SHA, there is a *HIPAA Request for Amendment* form that was completed by the Applicant dated April 29, 2016. There does not appear to be a copy of a written response pursuant to HIPAA on the file. The SHA indicated that a written response to the HIPAA amendment request was not provided as requests for changes to a mental health order have a different process and the matter was resolved by including a copy of the amendment concerns on the Applicant's medical record. It is unclear if there were any additional avenues presented to the Applicant in the event this resolution was found not to be satisfactory.

[25] When the parent submitted the 2019 amendment request, the SHA stated that the request initially was handled by the Patient Advocate Office to address patient safety concerns to assess the allegations of co-mingling of personal health information before it could determine if an amendment could be requested. It is unclear why the SHA was not able to assess if an amendment was required as well as a parallel process.

[26] The parent's initial correspondence with the SHA was January 30, 2019. The SHA's response was provided to the Applicant and the parent March 22, 2019, which stated, "I understand your family also contacted [name of SHA employee], Regina Area Privacy Officer and Regina General Hospital Health Information Management Services with similar concerns."

[27] While the SHA acknowledged in its response that the Applicant and parent had been in contact with the SHA's Access and Privacy Officer and that the review of the co-mingling concerns had also been reviewed with the Access and Privacy Officer, there still did not appear to be a reference to HIPAA. The first reference to HIPAA appears to be in the parent's

March 28, 2019 response to the SHA, reiterating their concerns and inquiring about the Applicant's right to ensure their file was accurate pursuant to HIPA.

[28] On May 3, 2019, the SHA responded to the Applicant reiterating their position that no co-mingling of personal health information had occurred and stating that pursuant to subsections 40(1) and 40(2) of HIPA a copy of the requested amendments were placed on their medical record on September 23, 2016. It is unclear when a copy of the amendments were placed on the file pursuant to HIPA, as it is my understanding the SHA did not consider the request pursuant to HIPA in 2016.

[29] Additionally, it does not appear that the SHA provided a response, pursuant to HIPA, to the Applicant's 2019 request for their 2016 amendment request to be 'reassessed.' If the Applicant feels that SHA has not appropriately addressed their amendment requests, outside of the co-mingling of personal health information that is being considered in this review, they have the ability to submit their request for amendment pursuant to HIPA to the SHA.

[30] While the SHA has claimed it has an 'understanding of practice' for processing amendment requests, it appears the SHA offers different avenues to individuals in certain cases to request amendments to personal health information. Regardless of what avenue the SHA is processing a request for amendment of personal health information, it should ensure the process incorporates rights under HIPA. Without a written policy for the handling of requests for amendment of personal health information, the SHA does not appear to have what it needs in place to ensure it is meeting its obligations under HIPA.

[31] I recommend the SHA develop and implement a policy for the processing of amendment of personal health information requests that incorporates all avenues it utilizes including providing for rights under HIPA.

IV FINDING

[32] I find that the SHA took appropriate steps in the consideration of the Applicant's request for amendment of personal health information.

V RECOMMENDATIONS

[33] If not already done, I recommend the SHA place a notation on the Applicant's medical records that this amendment was requested, but not made, pursuant to subsection 40(3)(b) of HIPA, ensuring the notation does not include the personal health information of the other individual on the Applicant's file.

[34] I recommend the SHA develop and implement a policy for the processing of amendment of personal health information requests that incorporates all avenues it utilizes including providing for rights under HIPA.

Dated at Regina, in the Province of Saskatchewan, this 12th day of May, 2020.

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