Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 023-2025

Saskatchewan Health Authority

April 17, 2025

Summary: The Applicant submitted a request for amendment to her personal health information to the Saskatchewan Health Authority (SHA). The SHA responded by indicating it would make a notation to the record pursuant to subsection 40(3) of *The Health Information Protection Act* (HIPA). The Applicant requested a review by the A/Commissioner. The A/Commissioner found that the information that the Applicant seeks to be amended is a registered nurse's professional opinion or observation. It is the registered nurse's understanding of what he was told rather than what the Applicant claims he was told at the time the record was created. The A/Commissioner found that the SHA met its duty pursuant to subsection 40(3) of HIPA by making a notation to the record at issue. The A/Commissioner recommended that the SHA provide a copy of the notation that has been placed on the Applicant's record to the Applicant within 30 days of the issuance of this Report.

I BACKGROUND

[1] On August 28, 2024, the Saskatchewan Health Authority (SHA) received a request for an amendment to personal health information from the Applicant. The Applicant sought an amendment to her personal health information that appears on progress notes. The Applicant described the requested amendment as follows:

> NO. [Name of Applicant] was raped and had no say in any of the events. HE [sic] did not want to have vaginal sex as he said she was likely riddled with STD's, so he had anal sex with her that hurt so much she passed out and he threw her down the basement stairs while passed out because of pain.

> [Name of nurse] wrote: "Psychotic Features: Denies. However, presents with paranoid and delusional thoughts. She is insistent that bad actors will access her information and make fun of her.

[2] In a letter dated September 9, 2024 to the Applicant, the SHA denied the Applicant's request for an amendment. The SHA said:

> This letter is to inform you that your request to have your personal health information has been denied because:
>
> > The information is related to clinical observations, professional assessment or opinion, or and information regarding prognosis or diagnosis unless deemed incorrect by the originating health care provider.
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> A notation has been placed in your record that you requested an amendment but it was denied. You are being provided notice of this decision as per section 40(3) of *The Health Information Protection Act*.

[3] On January 31, 2025, the Applicant requested a review by my office.

[4] On February 19, 2025, my office notified the Applicant and the SHA that my office would be undertaking a review.

[5] On the same day, the Applicant provided my office with her submission.

[6] On March 12, 2025, the SHA provided my office with the record at issue, which is four pages long. It contained progress notes recorded by a registered nurse at the SHA. On page 2 of the record at issue, the registered nurse had recorded the Applicant's recounting of a rape that happened to her as, "I did not want vaginal sex so he made masturbate with a handle of an axe."

[7] On March 24, 2025, my office sought clarification from the Applicant about what she wanted to have amended. Specifically, my office asked if the Applicant sought to have the sentence "I did not want vaginal sex so he made me masturbate with a handle of an axe" amended to the following:

> [Name of Applicant] was raped and had no say in any of the events. He did not want to have vaginal sex as he said she was likely riddled with STD's, so he had anal sex with her that hurt so much she passed out and he threw her down the basement stairs while passed out because of pain.

[8] On the same day, the Applicant confirmed that my office's understanding was correct.

[9] On March 25, 2025, my office clarified with the SHA what personal health information the Applicant sought to amend in the record at issue.

[10] On April 8, 2025 the SHA provided its submission to my office. The SHA did not state that my office could share it with the Applicant.

II RECORD AT ISSUE

[11] The record at issue are progress notes about the Applicant that were recorded by a registered nurse at the SHA.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

[13] First, the information within the record at issue qualifies as personal health information as defined by subsection 2(1)(m)(i) and (iv) of HIPA:

> **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;
>
> ...
> (iv) information that is collected:
>
> (A) in the course of providing health services to the individual;

[14] Second, the SHA qualifies as a "trustee" pursuant to subsection 2(1)(t)(ii) of HIPA:

> **2**(1) 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;

[15] Third, the personal health information in the record at issue was recorded by a registered nurse at the SHA. "Custody" is the physical possession of a record by a trustee with a measure of control. "Control" means having authority over a record (see Investigation Report 086-2024, 113-2024, 114-2024, 116-2024 at paragraph [15]). Based on this, I find that the personal health information is in the custody or control of the SHA.

[16] Since all three elements are present, HIPA is engaged in this matter. Therefore, I find that I have jurisdiction to conduct this review.

2. Did the SHA meet its obligations under section 40 of HIPA?

[17] Subsection 40(1)(a) of HIPA provides that an individual is entitled to request an amendment of personal health information where they believe that there is an error or omission. Subsection 40(1)(b) of HIPA requires a trustee to make a notation on the record if the requested amendment is not made. Subsections 40(1), (2) and (3) of HIPA provides:

> **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
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> (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.
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> (3) Within 30 days after a request for amendment is received, the trustee shall advise the individual in writing that:
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> (a) the amendment has been made; or
>
> (b) a notation pursuant to clause (1)(b) has been made.

[18] In Review Report 070-2014 at paragraph [10], my office said the following criteria must be considered by the trustee:

i. The information at issue must be personal health information;

ii. The information must be inexact, incomplete or ambiguous; and

iii. The correction cannot be a substitution of opinion.

[19] My office uses a similar criteria when conducting reviews of decisions by a government institution' or a local authority when there is a request for correction to personal information under *The Freedom of Information and Protection of Privacy Act* (FOIP) or *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) (see Review Report 157-2024 at paragraph [15]). The criteria my office uses has evolved since Review Report 070-2014 was issued. Therefore, I have adapted the criteria noted in the previous paragraph to the following:

i. Is the information at issue personal health information?

ii. Is there an error or omission?

iii. Is the amendment a substitution of opinion?

[20] Below is an analysis of the criteria:

i. Is the information at issue personal health information?

[21] Earlier, I found that the information in the record at issue qualifies as personal health information as defined by subsection 2(1)(m)(i) and (iv) of HIPA.

ii. Is there an error or omission?

[22] Subsection 40(1) of HIPA uses the terms "error" and "omission". An "error" is a mistake or something wrong or incorrect. An "omission" means that something is missing, left out or overlooked (see Review Report 070-2014 at paragraph [14]).

[23] As described in the background of this Report, the Applicant sought an amendment to how the registered nurse had recorded the Applicant's recounting of a rape that had happened to her.

[24] In its submission, the SHA explained that the Applicant (the patient) described incidents to the registered nurse (the "provider" in the quote below) and that the documentation is the registered nurse's "clinical observations, professional assessment or opinion at the time of care":

> The SHA's understanding of the Applicant's Amendment Request #15, subject to this review was the same as the IPC's initial understanding of the request as above. The Applicant had indicated as such on the form submitted originally. The language the Applicant has now clarified wanting amendment to was reviewed as part of another one of her requests for amendment (Amendment Request #14). That request for amendment was related to the Applicant's concern that the documentation on her record was not capturing two separate incidents described by the Applicant to the health care provider. The information in the record at issue pertaining to Amendment Request 14 was reviewed previously by the Manager as well as the originating health care provider. The Manager found that the charting did reflect two separate incidents described to the provider by the patient and the language was reviewed by the originating health care provider.
>
> The clarified request would not change the decision of the health care provider, the request would be denied as the clarified amendment seeks to change the same type of information in the record at issue and this was previously reviewed with Amendment Request 14. **The provider found the documentation to be consistent with their clinical observations, professional assessment or opinion at the time of care and**

> **the provider has not found the documentation to be incorrect.** In accordance with 40(1)(b), the SHA has made a notation on the record of the requested amendment by uploading the completed Amendment Form for Health Care Provider – Notation Summary (Amendment Request 14) to MHAIS.
>
> [Emphasis added]

[25] In her email dated January 31, 2025 to my office, the Applicant explained that how the registered nurse had recorded the recounting of the story "I did not want vaginal sex so he made masturbate with a handle of an axe" suggests that the rapist had complied with the Applicant's request to not have vaginal sex. The Applicant said:

> This sentence indicates that my rapist complied with my request not to have vaginal sex. However, I didn't ask anything at this point as I had attempted to fight him off and I realized he was stronger than me and realized I had no say into anything. My rapist was in control.

[26] Therefore, the Applicant requesting for the sentence to be amended to the following is to reflect the Applicant's assertion that she did not have any control in the matter:

> [Name of Applicant] was raped and had no say in any of the events. He did not want to have vaginal sex as he said she was likely riddled with STD's, so he had anal sex with her that hurt so much she passed out and he threw her down the basement stairs while passed out because of pain.

[27] In her email dated February 19, 2025 to my office, the Applicant said, "It is my rape story. So besides myself there is no other person who could know what exactly happened." I take the Applicant's point. The Applicant, not the registered nurse, knows what happened. However, what was articulated at the time the record was created cannot be independently verified.

[28] Before I make a finding, I need to consider whether the amendment is a substitution of opinion.

iii. Is the amendment a substitution of opinion?

[29] At page 275 of the *Guide to LA FOIP*, Chapter 6: "The Protection of Privacy", updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], my office provides the following definitions:

- "Opinions" are views or judgements not necessarily based on fact or knowledge.
- "Professional" means of or relating to or belonging to a profession.
- "Observation" means a comment based on something one has seen, heard, or noticed, and the action or process of closely observing or monitoring.

[30] In my office's Review Report 125-2017, I had referenced Order H2005-006 by the Alberta Office of the Information and Privacy Commissioner (AB IPC). In that Order, the AB IPC described a situation where an individual sought an amendment to a physician's notes.

[31] The AB IPC explained that in order for the information to be the physician's professional opinion or observation, the information must be the impressions, perceptions, views and understandings of the author:

> [para 60] For the most part the information in the Physician Notes consists of Dr. O's recording of what he saw, heard or noticed during the Applicant's visits to his office and consists of views or assessments based on grounds short of proof. The information that Dr. O derived from the sessions with the Applicant is not verifiable information. **That information speaks to Dr. O's understanding of what he was told rather than to the truth of what he was told.** These notations are intended to be the author's views, not the Applicant's views, of what the Applicant said.
> …
> [para 64] Dr. O's evidence is that the information at issue is what he saw, heard or noticed about his patient. Most of the information at issue is subjective in nature and is not capable of concrete proof, as there is no way of factually ascertaining whether the events, feelings or thoughts described by the Applicant actually occurred or of verifying precisely what the Applicant said to Dr. O during the patient visits. **In any event, professional opinion or observation does not go to the truth of its contents, but rather to the impressions, perceptions, views and understandings of the author.**
>
> [para 65] I accept the position of Dr. O that most of the information at issue is either a professional opinion or an observation or, alternatively, is a mixture of professional opinion or observation. **I accept the Affidavit evidence of Dr. O that the information recorded is an accurate reflection of his understanding and views at the time the record was created. Right or wrong, these are Dr. O's professional opinions or observations, which are not necessarily the same as the Applicant's views**.

[Emphasis added]

[32] Therefore, in this case, I find that the information that the Applicant seeks to be amended is the registered nurse's professional opinion or observation at the time the record was created. That is, it is the registered nurse's understanding of what he was told rather than what the Applicant asserts she said at the time. Professional opinions or observations are only the impressions, perceptions, views and understandings of the registered nurse.

[33] Earlier, at paragraph [24] of this Report, the SHA indicated that it verified with the registered nurse that the documentation in the records at issue was indeed the registered nurses' "clinical observations, professional assessment or opinion at the time of care". In other words, it was the registered nurses' impressions, perceptions, views and understandings of what the Applicant had said. I find that the amendment request is a substitution of opinion.

[34] Professional opinions or observations are not normally subject to correction unless an error can be independently verified (*Guide to LA FOIP*, Ch. 6, p. 275). At paragraph [30] of Review Report 125-2017, I explained that there are compelling policy reasons for not requiring trustees to correct or amend their professional opinions and observations:

> [30] **This kind of information, then, falls into the category of professional observation which is not normally subject to correction, unless an error can be independently verified**. The Commissioners noted that there are compelling policy reasons for not requiring trustees to correct or amend opinions and observations. The integrity of a health services provider's records is important, not only for the patient's rights, but also for the health care system. **If a patient, or anyone else, could compel a doctor to change or correct any of his or her observations, then it would undermine or even make nonsense of the diagnosis. This has consequences not only for the utility of any treatment recommended or provided by the doctor, but also for the later assessment of possible errors or omissions in treatment, by hospitals or professional regulatory bodies.** (See also, AB IPC's Order H-2005-006 at para 87)
>
> [Emphasis added]

[35] Therefore, even though I understand the Applicant's point that she (and not the registered nurse) knows what exactly happened, the information in the records at issue that the

Applicant seeks to have amended is the registered nurses' professional opinion and observation and cannot otherwise be independently verified. It does not necessarily reflect the truth, but it reflects the registered nurses' understanding of what he was told by the Applicant at that time.

[36] As quoted earlier, subsection 40(3) of HIPA only requires trustees to respond to an amendment request by either correcting the record at issue or making a notation pursuant to subsection 40(1)(b) of HIPA. In this case, I find the SHA has met its duty pursuant to subsection 40(3) of HIPA by making a notation to the Applicant's amendment request to the record at issue. I recommend that the SHA provide a copy of the record with a copy of the notation to the Applicant within 30 days of the issuance of this Report.

IV FINDINGS

[37] I find that I have jurisdiction to conduct this review.

[38] I find that the information in the record at issue qualifies as personal health information as defined by subsection 2(1)(m)(i) and (iv) of HIPA.

[39] I find that the information that the Applicant seeks to be amended is the registered nurse's professional opinion or observation. That is, it is the registered nurse's understanding of what he was told rather than the truth of what he was told.

[40] I find that the amendment request is a substitution of opinion.

[41] I find the SHA has met its duty pursuant to subsection 40(3) of HIPA by making a notation to the Applicant's amendment request to the record at issue.

V RECOMMENDATION

[42] I recommend that the SHA provide a copy of the record with a copy of the notation to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 17th day of April, 2025.

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