

HIPA & Health Regulatory Bodies – Making it Work #2



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Background

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- Last OIPC presentation to NIRO – Feb. 10, 2009
- EHRI and EMR developments
- Patient First Review *For Patients' Sake*
- Health Quality Council 2010-2011 Annual Report
- Canadian Medical Association *Health Care Transformation in Canada* (2010)
- 2 and 1/2 years of additional HIPA experience
- New OIPC resources and investigation reports

OIPC Resources

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- *Privacy Considerations: Faxing Personal Information and Personal Health Information (2009)*
- *Advisory for SK Physicians and Patients Regarding Out-Sourcing Storage of Patient Records (2010)*
- *Glossary of Common Terms (HIPA) (revised 2011)*
- *Privacy Breach Guidelines (revised 2011)*
- *Best Practices: Mobile Device Security (revised 2011)*

OIPC Resources

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- *Advisory for SK Health Trustees for Record Disposition (2011)*
- Annual Reports
 - 2009-2010, pp. 18-27
 - 2010-2011, pp. 17-26

OIPC Investigations

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- *Report on Systemic Issues with Faxing PHI (2010)*
- Investigation Report H-2010-001 (L & M Pharmacy Inc., Sunrise Regional Health Authority & Saskatchewan Health)
- Investigation Report H-2011-001 (Dr. Ooi, Albert Park Medical Clinic et al)

Report on Systemic Issues with Faxing PHI

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- Analysis of 31 different trustees' performance (11 physician offices, 9 pharmacies and 8 RHAs)
- Was there a privacy breach?
- Who was responsible for the privacy breach?
- Did the trustees respond appropriately to the breach and have appropriate s. 16 policies and procedures?
- Average score was only 13.7 out of 38 points
- No physician score higher than 20
- No pharmacy score higher than 25

Systemic Issues with Faxing (cont'd)

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- *“Most trustees have not adequately investigated the breach. More importantly, their current fax policies and procedures do not address the issues that caused these breaches, and therefore, are not likely to prevent a recurrence in the future.”* (OIPC news release Dec. 6, 2010)

The scoring grid for 31 trustees

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		RHAs	Physician Offices	Pharmacies	Other	Total
Score Range	5 or less	0	3	2	0	5
	6 to 10	0	3	2	2	7
	11 to 15	0	4	1	0	5
	16 to 20	3	1	2	0	6
	21 to 25	4	0	2	1	7
	26 to 30	0	0	0	0	0
	31 to 35	1	0	0	0	1
	36 to 38	0	0	0	0	0
	Total	8	11	9	3	31

Investigation Report H-2010-001

- First EHRI investigation (involved the Pharmaceutical Information Program (PIP))
- Unauthorized viewing by pharmacist for personal purposes
- Viewing of 3 persons' drug profiles on nine occasions
- These were not patients of the pharmacist
- He logged into PIP using the hospital access code when he was in fact using a laptop computer at his residence and these persons were not hospital patients.
- Pharmacy had no clear policies and procedures for HIPA compliance
- Pharmacy had no HIPA training program for pharmacy staff
- Pharmacy Approver approved Users without ascertaining HIPA compliance
- Responsible trustee was L & M Pharmacy Inc.
- Viewing of PIP patient profiles was a “collection” of PHI
- 7 recommendations for L & M
- 7 recommendations for Ministry of Health

Investigation Report H-2010-001 (2)

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- 3 recommendations for College of Pharmacists
- 3 recommendations for Sunrise RHA
- **Postscript:**
 - Biggest threat is carelessness of trustees and curiosity of trustee staff
 - Motivation of snooper is irrelevant if snooping is deliberate
 - Audit capability not sufficient – need for ongoing proactive audit campaign – closer to point of service
 - Multiple investigations requires better coordination

Investigation Report H-2011-001

- 180, 169 pieces of PHI tossed into a dumpster
- All of this PHI was the responsibility of the physician who owned the medical clinic
- The PHI had been moved to four different storage areas over a four year period but never adequately protected
- The trustee failed to meet the requirements for safe storage & destruction of PHI
- The trustee failed to make appropriate arrangements with IMSPs for storage & destruction of PHI
- Particular focus on sections 9, 16, 17 and 18 of HIPA

Investigation Report H-2011-001 (2)

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- Approximately 120 boxes of patient files unaccounted for despite 4 month investigation
- Analysis of sections 9, 16, 17, 18 of HIPA informed by CPSS Privacy Toolkit, COACH standards, National Association for Information Destruction (NAID), Alberta and Ontario OIPC Orders and resources
- Detailed checklist for outsourcing to Information Management Services Provider (IMSP)
- Detailed checklist for outsourcing storage/destruction of patient records

Investigation Report H-2011-001 (3)

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- **Recommendations:**
 - Provide notification to 2,682 patients where full files involved
 - Provide notification by newspaper to other patients
 - Undertake training, development of tools, resources, policies and programs
 - Mandatory HIPA training program
 - Comprehensive HIPA training/reference manual
 - Minister of Justice to consider prosecution under s. 64 HIPA

Questions ??

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