



March 6, 2007

The Honourable P. Myron Kowalsky
Speaker of the Legislative Assembly
Rm 129 Legislative Building
2405 Legislative Drive
REGINA SK S4S 0B3

Dear Mr. Speaker:

Re: Bill 20, *The Gunshot and Stab Wounds Mandatory Reporting Act*

I have had the opportunity to review the video from the March 2, 2007 meeting of the Standing Committee on Intergovernmental Affairs and Infrastructure Committee (the Committee).

I understand that the Committee has concluded its discussions with respect to Bill 20, *The Gunshot and Stab Wounds Mandatory Reporting Act*. From the discussion at the Committee meeting on March 2, 2007, I note considerable interest in section 27(4)(a) of *The Health Information Protection Act* (HIPA) and specifically the way our office interprets that provision. I understand that the Committee has heard from some witnesses that section 27(4)(a) already permits the kinds of disclosure contemplated by Bill 20.

I thought it may be useful for the Assembly to have my advice on this question in its further deliberations with respect to Bill 20.

I am requesting that this be tabled in the Legislative Assembly pursuant to section 52 of HIPA, which provides as follows:

52 The commissioner may:

(a) offer comment on the implications for personal health information of proposed legislative schemes or programs of trustees;

...

(c) in appropriate circumstances, comment on the collection of personal health information in a manner other than directly from the individual to whom it relates;

...

(e) comment on the implications for protection of personal health information of any aspect of the collection, storage, use or transfer of personal health information.

Further authority for tabling this letter can be found in section 33 of *The Freedom of Information and Protection of Privacy Act* which provides as follows:

33 The commissioner may:

(a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;

...

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this Part.

As I noted in my presentation to the Committee on February 5, 2007, my view is that section 27(4)(a) does not permit much of the sharing of personal health information contemplated by Bill 20.

Subsequent to the Committee hearing on February 5, 2007, I contacted the Justice Minister to explain in detail why our office takes a different view than the Minister of what HIPA requires.

I now share that same advice with the Assembly.

I indicated to the Committee that our oversight office does not interpret section 27(4)(a) so broadly that it would permit the disclosures contemplated by Bill 20. I emphasized to the Committee that section 27(4)(a) is qualified by the phrase "on reasonable grounds". Although we have not issued a formal report that addresses section 27(4)(a), its scope or its application, we have provided guidance on many occasions to health information trustees about this provision and the way we interpret the same.

We are guided in our interpretation of this provision by:

- the preamble in HIPA;

- the principle of patient autonomy that has been well established at common law;
- the Supreme Court of Canada's interpretation of the *Charter of Rights and Freedoms*, particularly sections 8, 7 and 1;
- *Pan-Canadian Personal Health Information Privacy and Confidentiality Framework*;
- privacy best practices as developed over time by practitioners and privacy oversight bodies both within Canada and internationally; and
- ethical codes and standards of health professionals.

All privacy laws have an exception that permits non-consented disclosure in cases where the disclosure will avoid a danger to the health or safety of any person. The wording may vary from one law to another but the intention is common. There has been considerable interpretation of these kinds of provisions.¹

We start from the assumption that consent should be obtained before there is a use or disclosure of personal health information for a secondary purpose. A secondary use or disclosure is a use or disclosure that is not directly related to the diagnosis, treatment or care of the patient. This principle is reflected in the Canadian Medical Association Privacy Code and other instruments. Section 27(4) contains a list of non-consented disclosures, most of which are in the discretion of the particular trustee. These disclosures would be an exception to that principle. In interpreting Section 27(4) disclosures, our approach therefore is not to take a liberal or expansive view but rather interpret that provision narrowly consistent with the authorities noted above. We would require some evidence of those factors considered by the trustee in making this determination. There would need to be a reasonable linkage between the disclosure and realization of the danger.

The fact that someone presents at a Saskatchewan hospital with a puncture wound in circumstances where there are no reasonable grounds to believe that this person's health or safety is at further risk or that another person's health or safety is at risk by reason of some future event would not support a disclosure under that provision.

Contrary to the suggestion of the Minister of Justice on March 2, 2007, I have never asserted that section 27(4)(a) must be limited to protect only a health care worker or an acute care patient. In my brief single opportunity to speak with the Committee on February 5, 2007, I simply used examples that tend to be common applications of this disclosure provision.

In conclusion, it certainly appears that many matters that will likely be caught by Bill 20 would not be permitted under section 27(4)(a).

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¹ Alberta IPC Orders 96-003, 96-004 and British Columbia IPC Order PO6-02, [48].

For a review of our concerns with the harm that may ensue from Bill 20, I refer Members to:

- a) my original letter to the Assembly of November 20, 2007
- b) my speaking notes from the Committee appearance of February 5, 2007
- c) reference materials for Bill 20

Each of these three resources is available at our website, www.oipc.sk.ca, under the *What's New* tab.

I hope that this will clarify our approach to section 27(4)(a) of HIPA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Gary Dickson', is written over a light gray rectangular background.

R. Gary Dickson, Q.C.
Saskatchewan Information and Privacy Commissioner