



INVESTIGATION REPORT 107-2015

Spruce Manor Special Care Home

August 21, 2015

Summary: Spruce Manor Special Care Home proactively reported a privacy breach to the Office of the Information and Privacy Commissioner (IPC) when it found plastic cards containing personal health information in a recycling bin. The IPC found that Spruce Manor Special Care Home lacked comprehensive written policies and procedures to prevent a similar incident from occurring in the future. The IPC recommended that Spruce Manor Special Care Home develop comprehensive written policies and procedures on records management and provide training to its staff once these policies and procedures have been developed.

I BACKGROUND

[1] On May 22, 2015, the Administrator at Spruce Manor Special Care Home placed plastic cards containing personal health information of residents into a recycling bin. On May 25, 2015, Board members found the plastic cards in the recycling bin.

[2] On May 26, 2015, the Vice Chair of the Board for Spruce Manor Special Care Home contacted my office to report that plastic cards containing personal health information of residents were found in a recycling bin. Soon after, a Board member cleared the plastic cards out the recycling bin.

[3] My office received two internal investigation reports – one from the Administrator of Spruce Manor Special Care Home, and another from the Board. Conflict appeared to exist between the Administrator and the Board. My office's goal is not to resolve this

conflict but to have measures implemented so that a similar incident does not occur in the future.

II DISCUSSION OF THE ISSUES

1. Does *The Health Information Protection Act (HIPA)* apply?

[4] In order for HIPA to apply, there must be three elements present. First, there must be personal health information. Second, there must be a trustee. Third, the trustee must have custody or control over the personal health information.

[5] First, since it was health cards and addressograph cards that were in the recycling bin, I find that there was personal health information as defined by subsection 2(q) of HIPA.

[6] Second, Spruce Manor Special Care Home qualifies as a trustee pursuant to subsection 2(t)(ii) of HIPA.

[7] Third, the health cards and addressograph cards belonged to individuals who were residents of Spruce Manor Special Care Home. Therefore, I find that Spruce Manor Special Care Home had custody or control over the personal health information.

[8] Based on the above, I find that HIPA applies.

2. Did Spruce Manor Special Care Home meet its requirements under section 16 and subsection 17(2)(b) of HIPA?

[9] Section 16 of HIPA requires trustees to establish policies and procedures to maintain administrative, technical and physical safeguards. Failing to do so increases the risk that personal health information will be exposed to those who have no legitimate need-to-know and can diminish patient confidence in the trustee.

[10] 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.

[11] Subsection 17(2)(b) of HIPA provides:

17(2) A trustee must ensure that:

- ...
- (b) personal health information is destroyed in a manner that protects the privacy of the subject individual.

[12] At issue on this file is that intact plastic cards containing personal health information were placed in a recycling bin. I find that this is an unacceptable method of protecting personal health information and destroying personal health information in a way that protects the privacy of the subject individual.

[13] Below is a review of the materials provided to me by both the Administrator and the Board to determine if it has appropriate safeguards in place to prevent a similar incident from occurring.

i. Agreement with a chicken farm for the destruction of records

[14] Spruce Manor Special Care Home had an agreement dated May 14, 2012 with a chicken farm to destroy personal health information. The agreement read as follows:

May 14, 2012

RE: SHREDDING OF CONFIDENTIAL DOCUMENTS

I, [name of chicken farm owner/operator], on the behalf of [name of chicken farm], hereby agree to accept full responsibility to the maintain the security and confidentiality of all documents received from Spruce Manor Special Care Home, from the moment they are received and throughout the process of being transported,

and/or stored in my/our care, and to ensure that all the documents are shredded in a timely manner and in such a manner that they are irretrievable.

[signature of chicken farm owner/operator]

[name of chicken farm owner/operator]

Owner/Operator

[name of chicken farm]

Spruce Manor Special Care hereby entrusts [name of chicken farm] with the care and destruction of all sensitive documents that is designated for shredding. Spruce Manor Special Care Home retains full responsibility for all documents within its care up to the point that they are securely received by the owners and/or staff of [name of chicken farm].

[signature of former Administrator]

[former Administrator's name]

Administrator

Spruce Manor Special Care Home

[15] The above agreement between Spruce Manor Special Care Home and the chicken farm is unacceptable for the following reasons:

1. The agreement does not define key terms and lacks specificity:
 - a. It does not specify how the chicken farm is to “maintain the security and confidentiality” of the personal health information it has received,
 - b. It does not specify how the personal health information is to be shredded. Some types of shredding leaves information readable, such as merely shredding paper into strips. There are other types of shredding, such as micro-fine shredding, that pulverizes paper so information is no longer readable nor can the pieces be put back together. The agreement does not dictate how the chicken farm is to shred personal health information,
 - c. It does not define what “timely manner” means. Without dictating the time frame as to when personal health information is destroyed, personal health information can be destroyed immediately, years, or never after the chicken farm received it,
2. Contracting out HIPA responsibilities:
 - a. Section 16 of HIPA obligates Spruce Manor Special Care Home to ensure personal health information is protected from harm. Subsection 17(2)(b) of HIPA requires that Spruce Manor Special Care Home ensure personal health information is destroyed in a manner that protects the privacy of subject individuals. By stating that Spruce Manor Special Care Home has full responsibility only until it passes the records to the chicken farm,

Spruce Manor Special Care Home is attempting to forego its responsibilities under section 16 and subsection 17(2)(a) of HIPA. However, regardless of what is stated in the agreement, Spruce Manor Special Care Home is still responsible for the personal health information even when the personal health information is in the possession of the chicken farm.

3. Using a chicken farm to destroy records instead of a company that is certified by the National Association of Information Destruction (NAID).

[16] The Administrator asserted that she never relied on the above agreement to destroy records. The Chairperson of the Board advised me that he spoke with the former administrator stating he did not have any problems or concerns with the use of the chicken farm. Nevertheless, the Chairperson advised my office he has terminated the contract between Spruce Manor Special Care Home and the chicken farm and that the Board will be looking into hiring a shredding company.

ii. Lack of written policies and procedures

[17] In her internal investigation report, the Administrator said she removed files “to free up storage space”. I asked the Administrator how the files were organized and tracked so that she would know when it was time for certain records to be disposed of. Specifically, I asked how long Spruce Manor Special Care Home would retain records before it moved records to an off-site storage or disposed of the records. In response, the Administrator said there were no formal processes in place. She said the files were kept in two locked areas but that the files were not organized to reflect the status of residents – deceased, transferred or active.

[18] However, the Chairperson of the Board advised my office in a letter received August 14, 2015, that records of deceased individuals were stored in the secure room. They were stored in boxes labelled with the deceased person’s name and the year of death. He also advised me that active files and transfer files were stored in the Administrator’s office and that he is aware that resident files need to be kept for 8 years.

- [19] Neither the Administrator nor the Chairperson of the board provided my office with a copy of written policies and procedures specific to records management. Lacking written policies and procedures that sets out a formalized filing system which includes retention schedules and destruction procedures, it is impossible to track and know precisely what records were placed in the recycling bin. Therefore, it is also impossible to know if any records were removed from the time the plastic cards were placed in the recycling bin and the time the Board members discovered the plastic cards.
- [20] The Chairperson of the Board asserted in his letter received by my office on August 14, 2015 that the employee handbook has information regarding “information confidentiality between staff and the public” and that he plans for the new administrator to reinforce this with staff. Confidentiality is important but it is not the same as records management. Therefore, I urge Spruce Manor Special Care home to develop comprehensive written policies and procedures on records management.
- [21] Without written policies and procedures on records management, I find that the circumstances exist for a similar incident to occur again in the future.

iii. Inadequacy of measures taken by Board

- [22] According to the Board’s internal investigation report, the Board had changed the locks on the storage room where records were held, and has given keys to only three employees after it found the personal health information in the recycling bin. It also posted a sign-in sheet where employees are to record their names (two employees are required to sign-in at once), the time, and the reason for entering the records room. Finally, it set up video surveillance for the records room.
- [23] In its letter received by my office on August 14, 2015, the Chairperson of the Board advised my office that the Administrator had asserted that the shredder available to her was insufficient for shredding. However, he found the shredder to be sufficient after shredding approximately 40 sheets of paper and some plastic cards without any trouble. Office shredders to shred small amounts of papers on the day-to-day basis are helpful and

useful. However, I encourage the Board to hire a shredding company that is certified by NAID when destroying large amount of records and plastic cards.

[24] Overall, I find that the Board's actions do not address the issue of proper records destruction. The Board's actions may be included in an overall strategy to safeguard records but its actions would not provide guidance to current or future staff as to how records are to be destroyed in a manner that protects the privacy of subject individuals.

[25] Based on the three reasons above, I find that Spruce Manor Special Care Home does not have appropriate safeguards for the proper destruction of records, and therefore has not met its obligations under section 16 and subsection 17(2) of HIPA.

[26] To address deficiencies listed above, I make the following recommendations.

[27] I recommend that Spruce Manor Special Care Home no longer use chicken farm to destroy records in spite of the former administrator asserting he had no problems/concerns with the use of the chicken farm. I find using a chicken farm to destroy records unacceptable. I suggest that Spruce Manor Special Care Home hire a shredding company that is certified by NAID.

[28] I recommend that Spruce Manor Special Care Home develop comprehensive written policies and procedures on records management. These policies and procedures should take into account all the personal health information it collects, uses, and discloses. Further, they should set out retention schedules based on their own organizational needs, applicable laws, and industry standards. For example, section 16 of the Ministry of Health's *Program Guidelines for Special Care Homes* provides the following instructions regarding record retention:

Retention of resident care records shall comply with federal and provincial regulations and accepted standards of practice. At a minimum retention of resident records shall:

- a) Be kept for a minimum of six (6) years after the date of discharge for all adults and for children until the child reaches 18 years of age, plus two (2) years;

- b) Where concerns related to the particular resident have been identified, all records relevant to the case should be maintained until it is clear that the concerns have been resolved;
- c) When in doubt about whether a particular document or record should be destroyed, the facility solicitor should be consulted.

[29] Therefore, Spruce Manor Special Care Home should develop retention schedules taking into account the above guidelines. The Ministry of Health's Program Guidelines for Special Care Homes can be found on the Ministry of Health's website at <http://www.saskatchewan.ca/live/health-and-healthy-living/manage-your-health-needs/care-at-home-and-outside-the-hospital/special-care-homes>.

[30] I recommend that Spruce Manor Special Care Homes develop written policies and procedures that address the proper destruction of records. The destruction of records is often an labour-intensive exercise involving determining which records whose retention periods have expired, and documenting which records are being prepared for destruction. Further, Spruce Manor Special Care Home should require contracted record destruction companies to issue a certificate of destruction when records have been destroyed.

[31] Finally, I recommend that Spruce Manor Special Care Home provide training to its staff once the written policies and procedures have been developed so that staff is aware of their responsibilities and roles regarding proper records management.

III FINDINGS

[32] I find that HIPA applies.

[33] I find that Spruce Manor Special Care Home Care Home has not met its obligations under section 16 and subsection 17(2) of HIPA.

IV RECOMMENDATIONS

[34] I recommend that Spruce Manor Special Care Home hire a shredding company that is certified by NAID for the destruction of records and plastic cards.

[35] I recommend that Spruce Manor Special Care Home develop comprehensive written policies and procedures on records management within six months of receiving this Investigation Report.

[36] I recommend that Spruce Manor Special Care Home provide training to its staff once comprehensive written policies and procedures on records management are developed so that they know their roles and responsibilities regarding records management.

Dated at Regina, in the Province of Saskatchewan, this 21st day of August, 2015.

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