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June 30, 2021

Gyorgy Kiss
64 Route 13
Crapaud, PE C0A 1J0

Dear G. Kiss:

Re: *Alleged unauthorized disclosure of personal health information – social media post re: patient admitted to QEH due to Covid-19*

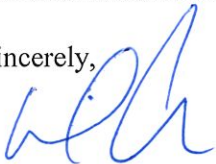
OIPC file reference: HIP-21-030
Health PEI file reference: 2021-36

Health PEI has completed its investigation and follow up into the above-noted matter. We are pleased to provide you with a copy of the investigation report (enclosed) for your review. We will be providing the Office of the Information and Privacy Commissioner with a copy of this report as well.

Health PEI takes the privacy of our patients, clients and residents very seriously. We have many safeguards in place to protect personal health information and any unauthorized disclosure of information about a patient would be in violation of our policies. On behalf of Health PEI, I sincerely apologize for the impact this incident has had on your privacy and want to assure you that we investigated the matter to the best of our ability. As you will see in the report, we have identified steps that we will be taking to reduce the risk of similar incidents occurring in the future.

If you have any questions on the report, please do not hesitate to contact Jeanne MacDougall, Manager of Health Privacy and Information Access, by phone at (902) 368-4942 or email (jnmacdougall@gov.pe.ca).

Sincerely,



Dr. Michael Gardam
Interim CEO, Health PEI

c. Jeanne MacDougall - Manager, Health Privacy and Information Access

Enclosure

PRIVACY BREACH/COMPLAINT INVESTIGATION REPORT

File Number: 2021-36

Date prepared: June 29, 2021

BRIEF DESCRIPTION OF COMPLAINT/BREACH:

- On April 19, 2021, Health PEI was made aware of a post on social media by a local blogger (“the blogger”), disclosing what was alleged to be personal health information (“PHI”) about a patient (“the patient”) who was hospitalized at the time of the post due to Covid-19. The name of the patient was not included in the post. The blogger claimed that the source of the information was an unnamed person who was told details about the patient by an unnamed nurse who provided direct care to the patient at the Queen Elizabeth Hospital.

CONTAINMENT AND INITIAL RESPONSE:

- Health PEI (“HPEI”) initiated an investigation into the incident immediately upon becoming aware of the post.
- A message was sent to the blogger by HPEI Communications, through the social media platform, requesting that the PHI be removed.
- HPEI Communications reported the post to the social media platform as inappropriate.

DISCLOSURE AND NOTIFICATION:

- Health PEI notified the Office of the Information and Privacy Commissioner of the incident on April 21, 2021, in compliance with mandatory reporting requirements outlined in section 36(1)(c) of the *Health Information Act* (“HIA”).
- Disclosure of the incident to the patient was completed by the Nurse Manager of the unit where the patient was admitted as soon as it was determined that the patient was well enough for the disclosure to occur (April 21, 2021), in compliance with mandatory disclosure requirements outlined in section 36(1)(c) of the HIA.
- The patient and their family member were provided with several updates by the Privacy Officer on the status of the investigation, including calls on April 27, May 26, June 2 and June 7, as well as email correspondence.
- The patient was provided with an audit report of all accesses to their electronic chart for the full duration of their admission on April 30, 2021.

INVESTIGATION:

Information involved in the incident

- The PHI included in the social media post consisted of information shared by the Chief Public Health Office (see below) with the addition of information about an underlying condition of the patient and their general health status at the time of the post. The nature of the underlying condition may have associated sensitivity and an increased expectation of confidentiality. The post also included an allegation that hospital staff were not using appropriate protective equipment while caring for the patient.
- The inclusion of the patient’s underlying condition in the post appears to be part of an argument the blogger was making to suggest that information shared by public health agencies about morbidity related to Covid-19 is exaggerated or inaccurate.
- No name, age or other demographic information about the patient was included in post. It was observed that

some of the comments made on the post accused the blogger of breaching the patient's privacy. In addition, several of the commenters on the post defended the blogger by stating that no one's privacy was breached because the post did not contain the patient's name.

- The patient was the first adult hospitalized due to Covid-19, which was announced by the Chief Public Health Officer in a media briefing. The patient's gender and age bracket were included in the media coverage. In a small community like PEI, there exists a high risk of re-identification of the patient even without their name being included. Specifically, individuals in the community who know the patient and were aware that they were hospitalized due to Covid-19 would have been able to identify the unnamed patient in the post and would consequently become aware of their PHI. It is HPEI's conclusion that the information posted should be considered to be PHI even though the patient's name was not included.

Access to the patient's PHI in the Clinical Information System

- Audit reports of all access to the patient's chart in the Clinical Information System ("CIS") was a main focus of the investigation.
- The patient was in three units during their admission at the Queen Elizabeth Hospital: the Emergency Department, an inpatient unit and the intensive care unit. Separate audit reports were produced for the patient's time in each of the three units and sent to each unit Nurse Manager for review.
- This process identified one access to the patient's PHI that required follow up. All other access was determined to be appropriate based on the patient's health condition and the job duties of the staff who accessed their chart.
- A Nurse Manager flagged access by an employee ("the employee") who did not provide care to the patient and does not currently work in any of the units where the patient was admitted.
- The Nurse Manager to whom the employee reports was provided with the audit results and asked to investigate further. They confirmed that the employee formerly worked on one of the units where the patient was admitted. The Nurse Manager advised that they had told the employee on April 16th that there was a patient admitted with Covid-19 in the unit where the employee formerly worked and that there was a possibility that the employee may be asked to cover a shift, if required, in the former unit because the employee has received both doses of the Covid-19 vaccine. Ensuring only fully vaccinated staff work in units where a patient is admitted with Covid-19 is a component of the hospital's pandemic response planning.
- The Nurse Manager was not aware of the patient's identity at the time that this conversation occurred with the employee. The employee was not told the identity of the patient, was not directed to review the patient's chart and, ultimately, was never asked to work in the unit where they formerly worked.
- The employee still had access on the CIS to a patient list for the unit where they formerly worked. When the Nurse Manager met with the employee to discuss the access to the patient's chart, the employee admitted to identifying the patient through this patient list by locating the only patient with Covid-19 noted as the reason for visit, and admitted to accessing the chart in order to prepare in case they would be asked to work in the unit.
- In a follow up meeting, the employee was told that an investigation was in progress relating to this patient and a post on social media which included the patient's PHI. The employee denied disclosing anything about the patient to the blogger or anyone else.
- The HPEI *Privacy and Protection of Personal Health Information Policy* and the *Acceptable Use of Patient Records in the CIS Standard* establish that staff may only access a patient's PHI when they are actively involved in providing care to a patient or require the PHI for the purpose of their job duties.
- The patient was informed that some unauthorized access had been detected through the audit process and that there was no evidence to connect that access to the social media post. The patient requested to know the identity of the employee involved.

Social media post and source of PHI

- Some HPEI staff were aware of the blogger's social media presence prior to this incident. The blogger has a high number of followers and frequently posts their views about Government on social media. This is the first incident that HPEI is aware of that involved the posting of PHI about a patient by the blogger.
- The blogger did not acknowledge or respond to HPEI's request to take down the PHI. HPEI confirmed that

the post was still available on the social media platform on May 18, 2021.

- The social media platform responded to HPEI’s complaint about the post, indicating that the post had been reviewed and its content did not violate any of the social media platform’s policies.
- HPEI found no additional information available to assist in identifying the blogger’s source or a specific nurse who may have disclosed the patient’s PHI. The blogger’s list of friends on the social media post is locked down and could not be reviewed to cross-reference staff names.
- The PHI was posted by the blogger on April 17, 2021, the day after the patient was admitted to hospital. An audit report of all accesses to patient’s chart from time of their arrival at hospital until the social media post appeared (April 16 to 17, 2021) was produced to explore narrowing down the list of staff who would have had access to the patient’s PHI prior to the social media post. The report showed that chart had been accessed over that time period by 41 staff who have “nurse” in their title, including nurse managers, registered nurses, infection prevention and control nurses, public health nurses and licensed practical nurses.
- Although this number of staff accessing a chart in a 48-hour period appears high, the patient had been in three units within that period of time. Also, the nature of the patient’s illness, i.e. Covid-19, necessitated infection prevention and control and public health nursing being involved in their care and having a need to know the patient’s PHI.
- No additional information was discovered in the investigation to confirm if a HPEI staff member was the source of information to the blogger’s informant, as alleged.
- HPEI was asked by the patient to ask the blogger to identify their source of information. After consideration, a decision was reached to not take this action. The key factor in this decision was the risk of further breach of the patient’s privacy if the blogger responded to contact from HPEI by re-posting or further commenting on the patient’s admission to hospital. As noted, the blogger has not been cooperative in the investigation and is known to have negative views of Government and the health system.
- The patient suggested that HPEI could take legal action against the blogger. This was taken into consideration, however the conclusion was that HPEI has no cause of action against the blogger because they have not done anything that is civilly actionable by the organization. The patient was advised that they might consider taking civil action against the blogger themselves and/or reporting the incident to police. The patient advised HPEI that they had reported it to police but were told that it was not a criminal matter.

Findings

- **Unauthorized disclosure of personal health information:** Based on the investigation and follow up completed, HPEI determined that unauthorized access to the patient’s PHI occurred, however that access was not found to be connected to the social media post. HPEI also concluded that some unauthorized disclosure of the patient’s PHI may have occurred in relation to the social media post, however the allegation that a nurse providing direct care to the patient was the source of the PHI could not be confirmed with the information available.

Safeguards in place

- Administrative safeguards – HPEI *Privacy and Protection of Personal Health Information Policy*, *Acceptable Use of Patient Records in the CIS Standard* and others. All staff receive privacy training at time of hire and as part of CIS training. All staff sign pledge of confidentiality and acceptable use agreements.
- Technical safeguards – HPEI has an auditing program in place that monitors appropriate access to PHI in the CIS through routine, random, triggered and investigative auditing.

REMEDIATION:

- Provide the patient with an audit report with the access under investigation highlighted to address question of identity of the employee. This is in line with the approach taken in a previous privacy incident and with the related Commissioner’s order HI-18-005 (**completed** - June 14, 2021).
- Ensure the employee has deactivated their patient list for the unit where they formerly worked (**completed**).
- Address unauthorized access to the patient’s PHI by the employee in accordance with Human Resources policies and procedures and union collective agreement (in progress).
- Add provision to HPEI privacy policy regarding re-identification risk related to sharing information without name or other identifiers (in progress - policy review June 2021).

- Develop and implement communication plan to staff on re-identification risk related to sharing information without name or other identifiers (target date for completion – July 31, 2021).
- Conduct a proactive person-of-interest audit on the pediatric patient admitted to hospital with Covid-19 to monitor for unauthorized access (**completed** - no unauthorized access identified).
- Formally document a protocol for response to privacy incidents involving social media, based on HPEI policies, IT security, privacy best practices and learnings from social media incidents to date (dates TBD).

Contacts: Jeanne MacDougall – Privacy Officer (Manager, Health Privacy and Information Access),
(902) 368-4942