

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

Report on the Investigation into the Privacy Breach

by

Lake Beaumaris Physical Therapy Ltd.

October 24, 2001

Investigation Report H2001-IR-009

I. Introduction

On Wednesday, October 10, 2001, a local television broadcaster reported that physical therapy records had been located in a field in Northeast Edmonton. The records contained health information related to care and treatment provided through Lake Beaumaris Physical Therapy Ltd. (the Clinic).

On October 11, 2001, the Information and Privacy Commissioner ordered an investigation under the *Health Information Act (HIA)*. This report outlines the findings and recommendations of this Office.

II. Background

The October 10, 2001 news report said that the records were discovered amongst garbage that had been torn apart and strewn in an open field. These records have since been returned to the Clinic.

These records contained the patient's name, address, personal health number, and information concerning care and treatment, all of which is "health information" as defined in section 1(1)(k) of the *HIA*.

Alberta's *HIA* came into force on April 25, 2001. This law applies to regional health authorities, and other health service providers paid under the Alberta Health Care Insurance Plan to provide health services. The *HIA* sets out rules governing the collection, use, disclosure, and security of health information.

III. Investigation Findings

Lake Beaumaris Physical Therapy Ltd. is paid through various sources, including Worker's Compensation Board claims, third party insurance coverage, personal pay, and under agreement with the Capital Health Authority. The agreement with the Capital Health Authority is to provide ambulatory physical therapy services under the Community Rehabilitation Program.

The Capital Health Authority is a "custodian" as defined in section 1(1)(f) of the *HIA*, and is therefore subject to the Act. Based on my examination of the Community Rehabilitation Program agreement and the *HIA*, I find that the Clinic is an affiliate of the Capital Health Authority as defined in section 1(1)(a)(ii) of the *HIA*. The Clinic is therefore subject to the *HIA* for services provided through this agreement. Although being an affiliate of the Capital Health Authority does not bind the Clinic to the *HIA* in all aspects of their business, it seems reasonable to expect the same levels of security for all records. It is legally required for at least some records.

The Clinic says that all patient records are maintained in a single patient chart regardless of the funding source. As the records created under the Community Rehabilitation Program are subject to the *HIA*, I conclude that at least some of the patient charts in this Clinic hold health information that is subject to the *HIA*.

I find that when a custodian or affiliate under the *HIA* holds patient health information in a patient chart and some of the information in the chart is subject to the *HIA*, the patient chart must be secured to the standard and requirements as set out by the *HIA*.

In this particular case, the records that were found in the field were drafts that do not become part of the patient chart. Only the final version of the record is placed on the chart.

The relevant sections of the *HIA* read:

"60(1) A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical, and physical safeguards that will

(d) otherwise ensure compliance with this Act by the custodian and its affiliates.

Section 60(2) The safeguards to be maintained under subsection (1) must include appropriate measures for the proper disposal of records to prevent any reasonably anticipated unauthorized use or disclosure of the health information or unauthorized access to the health information following its disposal.

Section 62(4) Each affiliate of a custodian must comply with

- (a) this Act and the regulations, and*
- (b) the policies and procedures established or adopted under section 63.*

Section 63(1) Each custodian must establish or adopt policies and procedures that will facilitate implementation of this Act and the regulations.”

I find that even though the information in question was never part of the patient chart, it is nevertheless health information for which appropriate measures must be taken to ensure proper disposal.

It is clear that health information was not properly disposed of. However, the investigation must also examine the appropriateness of the measures taken.

At the time, the Clinic normally disposed of records in the following way:

1. The patient presents for treatment and is seen by a physical therapist following the completion of an intake form that involves the collection of initial data elements necessary for identification, billing, and authorization for treatment purposes.
2. A chart is created that includes the intake form, an assessment form, and authorization for treatment. The chart is provided to the physical therapist.
3. The physical therapist completes the assessment and/or treatment and initiates a draft report that is provided to administration staff to produce a final version. This draft may pass back and forth between the therapist and the administration until all necessary corrections are made.
4. The final approved version is placed on the patient chart and the draft(s) are disposed of.

During a tour of the Clinic on October 12, 2001, the Clinic demonstrated where draft documents are placed for disposal and stated that they have had a process in place for approximately 5 years whereby drafts are shredded. A shredder was evident and had the appearance of regular use.

Although there is a process in place for the disposal of records, the Clinic advised that they do not have any written policy or procedures regarding the disposal of records. That being said, the Clinic's governing body, the College of Physical Therapists of Alberta, has Clinical Practice Standards which state that a physical therapist has a clinical requirement to protect confidentiality of patient information.

The Clinic was unable to explain why the records located were not shredded and why their internal process was not followed in this instance.

Examination of the Clinic's booking records show that the patients involved in this privacy breach were last scheduled into the Clinic on September 5th or 6th, 2001. A review of the draft records located shows that the records were created on or near this period of time. The Clinic has stated that the turnaround time in producing a final version from the draft record normally occurs within 24 hours. Therefore, it is reasonable to conclude that a final version of these drafts would most probably have been produced on the 6th or 7th, and on one of these days the drafts would have been disposed of. This suggests that these records were part of a single batch that was lost rather than different sets lost over time.

I find that, although the Clinic's process for disposing of draft records was reasonable, this process should be incorporated into a written policy and procedure and staff trained to the standard required by the *HIA*.

Conclusions

As an affiliate of the Capital Health Authority, the Clinic is obligated under the *HIA* to ensure that appropriate measures are taken to prevent unauthorized access to patient health information following its disposal.

In this instance, the Clinic has acknowledged that a privacy breach occurred. The Clinic has been very cooperative in this investigation and demonstrated their commitment to protecting the confidentiality of their patients through the seriousness with which they have participated in this investigation.

On a balance of probabilities, it is concluded that this was a single breach that involved a small number of patients. This breach was caused by human error when the Clinic's established process was not followed.

Recommendations

1. That the Clinic work with the College of Physical Therapists of Alberta to establish written policy and procedures concerning the security and proper disposition of health information.
2. That the Clinic review current process with their staff, including janitorial services, and train staff to follow the written policy and procedures that are developed.
3. That the Clinic contact the individuals whose privacy has been breached and inform them of the particulars of this privacy breach.
4. That the College of Physical Therapists of Alberta advise physical therapists of their professional obligations with regard to security and proper disposition of health information.

5. That the Capital Health Authority ensure Lake Beaumaris Physical Therapy Ltd. is aware of and adheres to Capital Health Authority's administrative, technical and physical safeguards in respect to health information related to the Community Rehabilitation Program.

Closing Comment – Custodians and Their Affiliates

Section 60(1)(d) of the *HIA* requires that a custodian take reasonable steps to protect the confidentiality of health information and ensure that its affiliates comply with the *HIA*.

Section 8(6) of the Regulations requires that a custodian ensure that its affiliates are aware of and adhere to all of the custodian's administrative, technical, and physical safeguards in respect to health information and establish sanctions to be imposed against affiliates who breach these safeguards.

The Capital Health Authority has said that they have draft policy and procedures that are under review for approval and final adoption and that their Implementation Plan states that the plan along with policies and procedures will be communicated to affiliates.

I recommend that custodians take steps to ensure that the requirements to develop, communicate and ensure compliance to safeguards is attended to. The development of these safeguards is an important activity in protecting the confidentiality of Albertan's health information.

Submitted by,

LeRoy Brower
Team Leader, HIA