

# INFORMATION AND PRIVACY COMMISSIONER OF ALBERTA

## Report of an investigation concerning erroneous disclosure of patient information

July 3, 2008

Dr. Deji Raphael Akintola

Records Storage and Retrieval Services, (RSRS) Ltd.  
&  
Optimed Software Corporation

Investigation Report H2008-IR-002

(Investigation H1944)

### Introduction

- [1] On January 30, 2008 CBC Radio 1 in Edmonton carried a story about a resident of Grande Prairie (“the complainant”) who had received other individuals’ health information on a data CD in response to a request for access to his own information. He had made his request to a records management company in Toronto named Records Storage and Retrieval Services (RSRS). The complainant was a former patient of Dr. Deji Raphael Akintola (“the custodian”). He had called Dr. Akintola’s office to get a copy of his records, was informed that the practice had closed and was given RSRS’s 1-800 number to call to fulfill his request.
- [2] Later that day, a representative of RSRS contacted our office to report the same incident. The representative advised that RSRS had fulfilled several requests for information from former patients of Dr. Akintola without incident. However, after checking their records as a follow-up to the CBC report, RSRS discovered they had given 2 further individuals health information belonging to other patients.
- [3] On January 31, our office received a letter from the complainant, asking the Commissioner to investigate. The Commissioner authorized me to conduct an investigation under section 84(a) of the *Health Information Act* (HIA). Section 84(a) allows the Commissioner to conduct investigations to ensure compliance with any provision of the HIA. This report outlines findings and recommendations resulting from my investigation.

## Background

- [4] Dr. Akintola had an independent medical practice in Grande Prairie from May 2006 to October 2007. He took over this practice from two other physicians who maintained paper records. Dr. Akintola maintained an electronic medical record (EMR) and stored the paper records from the previous physicians, referring to them when clinically necessary.
- [5] Dr. Akintola decided to close his independent practice on October 16, 2007. Dr. Akintola contracted with RSRS to securely store and manage his paper and electronic records, until they could be disposed of, according to College of Physicians and Surgeons of Alberta policy.
- [6] RSRS is a records management company based in Toronto, Ontario and Langley, British Columbia. It specializes in storage, retrieval and destruction of records. According to its website, RSRS offers the following services in relation to health records:
- Patient record storage for active practices (off-site, dormant records)
  - Patient file reactivations
  - Authorized Patient Record Transfers (copies only)
  - Liaison with authorized 3rd party requests for information
  - Complete adherence to the rules, regulations and recommendations of the Provincial Colleges of Physicians and Surgeons, medical and other professional associations, as they apply to issues of retention, transfer and privacy of patient records
  - Conversion to Electronic Medical Records & Scanning to CD-ROM
  - Certified document shredding<sup>1</sup>
- [7] While in independent practice, Dr. Akintola used Optimed Software Corporation's ("Optimed") Accuro Electronic Medical Record. Optimed is based in Kelowna, British Columbia. Optimed has EMR customers in British Columbia, Alberta and Saskatchewan. According to Optimed's website, the Accuro EMR offers a comprehensive clinic management package by combining the administrative functions of scheduling, billing, and messaging with clinical solutions that include forms, virtual charts, prescriptions, letter generation and lab results.<sup>2</sup>
- [8] In order to manage his electronic records, RSRS needed Dr. Akintola's EMR data to be converted to Portable Document Format (PDF) format. PDF is an electronic document format that is compatible with most operating systems and can be read by anyone with freely downloadable software.
- [9] Dr. Akintola asked Optimed in writing to convert data from his EMR into PDF format. Optimed performed the conversion and sent two DVDs to RSRS on

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<sup>1</sup> <http://www.rsrs.com/medical.html>, viewed June 23, 2008

<sup>2</sup> [http://www.optimedsoftware.com/accuro\\_emr.html](http://www.optimedsoftware.com/accuro_emr.html), viewed June 23, 2008

November 23, 2007. RSRS then used these DVDs, along with Dr. Akintola's paper records, to respond to patient requests for health records.

## Application of HIA

- [10] The *Health Information Act* (HIA) applies to health information in the custody or control of custodians. Dr. Akintola was, at all material times, a health services provider who was paid under the Alberta Health Care Insurance Plan to provide health services and consequently fell under the definition of "custodian" set out in section 1(1)(f)(ix) of the HIA.
- [11] I examined the records that were erroneously included in the complainant's data CD. They include registration information, diagnostic, treatment and care information and health services provider information and consequently fall under the definition of "health information" set out in section 1(1)(k) of the HIA.
- [12] The contract Dr. Akintola signed with Optimed says that Optimed would provide services in relation to his EMR, which included administration, data set-up and system configuration and hardware and third party software configuration. The services Optimed performed for Dr. Akintola are consistent with those listed in section 66(1)(a) and (c) of the HIA, which define information managers. Therefore, Optimed was acting as Dr. Akintola's information manager.
- [13] The contract Dr. Akintola signed with RSRS states that "RSRS agrees to be responsible for the secure and fully compliant, storage, transfer and eventual destruction of the Records..." The services RSRS performed for Dr. Akintola are consistent with those listed in section 66(1)(a) and (c) of the HIA. Therefore, RSRS was acting as Dr. Akintola's information manager.

## Issues

- [14] Did the custodian disclose individually identifying health information to an individual who was not the subject of the information, in contravention of section 33 of the *Health Information Act*?
- [15] Did the information managers, Optimed and RSRS, fail to comply with the *Act* and the agreement entered into with the custodian in respect of information disclosed to them, as required by section 66(5) of the *Health Information Act*?

## Findings

- [16] In conducting this investigation I interviewed the complainant, Dr. Akintola, and representatives of RSRS and Optimed. I also examined Dr. Akintola's EMR, the

data CD received by the complainant, contracts Dr. Akintola signed with RSRS and Optimed and the DVDs created by Optimed and used by RSRS to fulfill patient requests for information.

### **Dr. Akintola**

- [17] After examining the data CD that RSRS had sent to the complainant, I found health information belonging to 3 individuals other than the complainant, who are also former patients of the custodian.
- [18] Section 33 of the HIA gives a custodian authority to disclose health information to an individual who is the subject of the information or to the individual's authorized representative. The complainant has no relationship to the other three patients whose information he received. He simply received their information in error.
- [19] Therefore, I find that the custodian disclosed individually identifying health information to an individual who was not the subject of the information, in contravention of section 33 of the *Health Information Act*.
- [20] As stated earlier, Dr. Akintola maintained his patient records in an EMR. If paper records came into his office by mail or fax, an assistant would scan these records to create electronic copies. These scanned copies were then inserted into the appropriate patient file in the EMR. All other patient information related to medical treatment was entered into the EMR by Dr. Akintola himself.
- [21] Dr. Akintola told me that the very tight labour market in Grande Prairie made it difficult for him to find qualified office assistants to help him with patient record filing. Because of this, records were not always properly filed. In light of this risk, Dr. Akintola regularly reviewed records that were scanned into his EMR to ensure they were appropriately filed.
- [22] Dr. Akintola still owns the computer server that houses his EMR. I met with Dr. Akintola to review his electronic patient records. We reviewed the records related to the complainant, which appeared to be intact. Unlike the data disc from RSRS, the complainant's EMR record did not include any health information belonging to other patients.
- [23] After this visit, I believed that Dr. Akintola's EMR records were in order. Dr. Akintola regularly checked his EMR to ensure scanned records were inserted in the proper patient files. Dr. Akintola was not aware of any disorder in his electronic records before asking Optimed to make a copy of his records to send to RSRS.

## Information Managers

- [24] Two other parties are involved in the disclosure that led to the above contravention of section 33 of the HIA: the information managers Optimed and RSRS. Before I examine their role in this matter it is important to establish the relationship between custodians and information managers and how duties and responsibilities flow from one to the other under the HIA.
- [25] Section 66 of the HIA describes the custodian's power to make agreements with information managers as follows:

### **Power to enter agreement with information manager**

**66(1)** In this section, "information manager" means a person or body that

- (a) processes, stores, retrieves or disposes of health information,
- (b) in accordance with the regulations, strips, encodes or otherwise transforms individually identifying health information to create non-identifying health information, and
- (c) provides information management or information technology services.

**(2)** A custodian may enter into an agreement with an information manager in accordance with the regulations for the provision of any or all of the services described in subsection (1).

**(3)** A custodian that has entered into an agreement with an information manager may disclose health information to the information manager without the consent of the individuals who are the subjects of the information for the purposes authorized by the agreement.

**(4)** An information manager to which information is disclosed pursuant to subsection (3) may use or disclose that information only for the purposes authorized by the agreement.

**(5)** An information manager must comply with

- (a) this Act and the regulations, and
- (b) the agreement entered into with a custodian

in respect of information disclosed to it pursuant to subsection (3).

**(6)** Despite subsection (5)(a), a custodian continues to be responsible for compliance with this Act and the regulations in respect of the information disclosed by the custodian to the information manager.

- [26] Section 66(2) allows a custodian to make agreements with information managers to provide information technology and information management services. These services may include the services described in section 66(1)(a) to (c). This section reflects the reality in Alberta's health sector that many custodians prefer to concentrate on delivering health care and may rely on external service providers to support their information technology and information management needs.
- [27] Section 66(3) says that a custodian may give health information to an information manager without the consent of the information subjects (i.e. Dr. Akintola's patients) for the purposes specified in an agreement with the information manager. Consent is not an issue in this investigation.

- [28] Section 66(4) says that information managers may only use and disclose health information within the bounds of the agreement with the custodian. For example, if an information manager has a contract to maintain a custodian's backup database, the information manager cannot use it for any purpose other than providing backup services.
- [29] Section 66(5) places an obligation on the information manager to comply with the agreement with the custodian and the *Health Information Act*. This means that any services the information manager performs on behalf of the custodian must be carried out in compliance with the HIA. This also means that a custodian cannot make an agreement with an information manager to provide services in such a way that does not comply with the HIA. For example, a custodian cannot enter into an agreement with an information manager to provide technical support that excuses the information manager from protecting the confidentiality of health information, or from ensuring that only those with a need to know get access to the health information.
- [30] Section 66(6) says that, while the information manager must comply with the HIA, the custodian remains ultimately responsible for compliance with the *Act*. Therefore, while an information manager may provide services in a manner that contravenes the *Act*, the custodian is still responsible for the actions of its information manager.
- [31] To summarize, whatever an information manager does on behalf of a custodian must comply with both the agreement with the custodian and the HIA. The custodian is responsible for whatever an information manager does on its behalf.
- [32] As I review the actions of Optimed and RSRS, I will apply the above analysis of the duties and responsibilities of information managers and custodians to specific provisions of the HIA.

## **Optimed**

- [33] As outlined previously, I need to consider whether Optimed complied with its contract with Dr. Akintola, and with the HIA.
- [34] Dr. Akintola gave written instructions to Optimed that his EMR be converted to PDF, as specified by RSRS. These services were performed under his more general contract with Optimed in relation to his EMR. This contract states that Optimed will comply with the *Health Information Act*.
- [35] Optimed converted his EMR data to PDF format and sent the output to RSRS, per Dr. Akintola's instructions. There is no question that this service was carried out and that RSRS duly received the two DVDs containing the EMR data. Therefore, Optimed performed this service in compliance with the general contract for Dr. Akintola's EMR and section 66(5)(b) of the HIA.

- [36] I will now consider whether Optimed performed the data conversion in compliance with the HIA.
- [37] Section 60(1)(c)(i) of the HIA says that custodians have a duty to protect against any reasonably anticipated threat or hazard to the integrity of health information. Section 61 of the HIA says that custodians must make a reasonable effort to ensure that health information is accurate and complete before using or disclosing it.
- [38] In my opinion, checking for data integrity and accuracy are directly related to the data conversion service that Dr. Akintola asked Optimed to perform. It is reasonable to expect that an information manager would take measures to protect against threats to data integrity and to ensure accuracy in order to comply with the HIA. While the custodian remains ultimately responsible for these duties, the custodian's information manager must also fulfill them.
- [39] I examined the two DVDs created by Optimed (as mentioned in paragraph 9). The first DVD contains patient EMR data (part 1) and the second DVD contains all scanned files associated with the patient (part 2). Part 1 links to part 2 using a unique identification number for each patient.
- [40] For example, to get a complete record for patient "John Doe," a user would follow this process:
- a. Look for John Doe's PDF file on the first DVD to get part 1 of his record. Part 1 includes all of the data entered directly into the EMR by Dr. Akintola. This file would be labeled, "DoeJohn12345."
  - b. Look on the second DVD to get part 2 of John Doe's record, which includes any scanned documents from other sources, such as laboratory or radiology reports. On the second DVD there would be a folder, or directory, labeled, "12345."
  - c. Look in the 12345 directory and retrieve any PDF files located there.
- [41] These DVDs show the same error as on the data CD received by the complainant. The complainant's data from part 1 on the first DVD is intact. The complainant's data from part 2 on the second DVD is intact, but it also includes data from the other three individuals (as described in paragraph 17).
- [42] I reviewed the 2 DVDs with Optimed staff. After looking at the erroneous data, Optimed concluded the following in an incident report:
- Optimed has determined that data in part 2 contains not only the files belonging to that patient, but in addition contains a backup copy of any files that have ever been misfiled or deleted from that chart. This was a safety mechanism in the EMR system.

- This means the Accuro EMR retains copies of misfiled records in their original location to provide an audit record that a file was moved. While the EMR does not display records that have been moved, the data is still there<sup>3</sup>.
- [43] To test the above conclusion, Optimed followed the PDF conversion process with test data and was able to re-create the same errors that occurred in Dr. Akintola's records. This custom conversion process is the source of the error.
- [44] As mentioned earlier, Dr. Akintola had a regular practice of reviewing scanned documents to ensure they had been added to the proper patient record. The Optimed Accuro EMR is able to recognize that a file was moved or deleted, while the "safety mechanism" mentioned above keeps a copy of the moved file in the background to show that the file was once there. Therefore, when I examined Dr. Akintola's EMR, it displayed only the appropriate records.
- [45] I asked Optimed whether it had done a data integrity check after converting Dr. Akintola's EMR records to PDF format. Optimed did perform a check in the following manner:
- a. Optimed did a patient count to ensure all records were copied. The numbers of records matched.
  - b. Optimed analyzed the size of the data contained in the copied files. The file sizes matched.
  - c. Optimed spot checked some records, which showed only data belonging to the proper patients.
- [46] Counting the overall number of patient files would not have detected the error that is the subject of this investigation. The data size check matched because both Dr. Akintola's original EMR and the exported files contained the backup copies of transferred and deleted files. Unfortunately, the spot check did not happen to touch on any of the records Dr. Akintola had moved.
- [47] Was it reasonable to expect Optimed to anticipate and protect against this integrity error?
- [48] Optimed was not aware that copying files in the manner described in this investigation report would cause the resulting errors. Optimed had no prior experience with this kind of data conversion and has performed none since. Optimed offers a data export that meets provincial requirements set through the Physician Office System Program (POSP) in Alberta. Instead, Dr. Akintola requested a customized data export.

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<sup>3</sup> Accuro EMR maintains this audit information to comply with provincial requirements set through the Physician Office System Program (POSP). POSP is a joint initiative of Alberta Health and Wellness, the Alberta Medical Association and regional Health Authorities. POSP helps Alberta physicians use technology, such as EMRs, to improve work flow and patient care in their clinics

- [49] To gauge Optimed's practices, I asked Optimed about data integrity checks it performs when importing data from other vendors' EMRs to Optimed's Accuro EMR. In addition to running the tests described above, Optimed runs the data import process two weeks ahead of time for testing by both Optimed and clinic staff. Optimed also trains clinic staff using the imported data as another integrity check. During the training phase, staff would likely notice any errors. These measures are prudent and reasonable.
- [50] Optimed has recognized an inherent risk to data integrity in data conversion. This is demonstrated by Optimed's testing practices in clinics that are switching EMR vendors, where it conducts tests in cooperation with clinic staff. The patient count, data file size test and spot check Optimed conducted after converting Dr. Akintola's records are a good start, but do not appear to be equivalent to those tests conducted for clinics switching EMRs. I note that Optimed had never before performed a data extract as requested by Dr. Akintola. This lack of prior experience also points to a need for caution.
- [51] Optimed needed to take reasonable measures to protect against the risk to data integrity in data conversion. In carrying out Dr. Akintola's data conversion request Optimed should have taken one of three actions:
- a. Conduct more extensive tests to ensure no data were misfiled.
- or,
- b. Inform Dr. Akintola that this was a custom data conversion, executed outside of the provincial standard (see paragraph 48) and advise that he review the data before sending them to RSRS.
- or,
- c. Decline to perform an untested data conversion and offer Dr. Akintola a data extract performed according to provincial requirements instead.
- [52] I find that the information manager, Optimed, failed to reasonably protect against a threat to data integrity and to make a reasonable effort to ensure that the health information was accurate and complete before disclosing it to RSRS. This contravenes sections 60(1)(c)(i) and 61 of the *Health Information Act*. While Optimed did not contravene its agreement with Dr. Akintola, it did not perform its services in accordance with the HIA. By contravening sections of the HIA directly related to the services it provided to the custodian, I find that the information manager, Optimed, did not comply with the *Act*, in contravention of section 66(5)(a) of the HIA.
- [53] While the information manager contravened the HIA, Dr. Akintola, as custodian, remains responsible for this contravention, pursuant to section 66(6) of the *Act*.

- [54] It is important to note this data conversion is the only one performed by Optimed for use by RSRS. No other Optimed customers have had their data converted in this manner. The resulting errors are limited to Dr. Akintola's EMR.
- [55] As stated earlier, Dr. Akintola did give written instructions to Optimed to convert his EMR records into PDF format. However, he did not execute a detailed agreement with Optimed to cover this conversion. Such an agreement could have clearly laid out, among other things, a process for checking the integrity of data.

## **RSRS**

- [56] Dr. Akintola's contract with RSRS states in Article 6.1, "The Client [Dr. Akintola] hereby acknowledges and confirms that RSRS shall only be responsible for the storage and transfer of the Records provided herein, is unfamiliar with the files on a file by file basis, and is not responsible in any way for the completeness of the Records assumed or for the accuracy or organization of the Records being transferred to it."
- [57] The contract also states that parties will follow the privacy legislation of Ontario and British Columbia, with "Alberta" written in by hand before Ontario and initialed by Dr. Akintola.
- [58] Once again, I will examine whether the information manager met its obligation under HIA section 66(5) to comply with both its agreement with Dr. Akintola and the HIA.
- [59] RSRS described its process to collect health information from physicians as follows:
- a. Physician closes practice
  - b. Physician sends paper and electronic records to RSRS
  - c. RSRS performs a check on a small number of patient files to ensure that they are in order and to determine if any kind of specialty scanning is required (radiology images, for example)
  - d. Some physicians will inform RSRS that their files are not in order. In such cases, RSRS performs a more thorough check.
- [60] RSRS described its process to fulfill patient requests as follows:
- a. Patient calls physician and discovers the practice has closed (usually by way of a recording or voicemail message).
  - b. Patient is advised to contact RSRS using a toll-free phone number
  - c. RSRS takes the following patient information to assist them in finding the record: patient name, address, phone number and date of birth
  - d. If RSRS has the record, it contacts the patient and provides a fee estimate, based on the number of pages
  - e. RSRS sends an authorization form to the patient
  - f. Patient returns signed authorization form to RSRS

- g. To ensure it is sending the proper records, RSRS checks patient information at the file level, rather than page-by-page
- h. RSRS copies patient records on to a CD and sends them to patient.

- [61] RSRS followed the above business process when it provided the erroneous information to the complainant. The above process also falls in line with the agreement RSRS signed with Dr. Akintola. Therefore, there is no indication that RSRS contravened HIA section 66(5)(b).
- [62] I will now consider whether RSRS delivered these services in compliance with the HIA.
- [63] Section 61 of the HIA places a duty on custodians to make a reasonable effort to ensure health information is accurate and complete before using or disclosing it. In my opinion, making a reasonable effort to ensure that records are accurate prior to disclosing them is directly related to the services Dr. Akintola asked RSRS to provide, namely, storing his records and sending them to patients on request. While the custodian remains ultimately responsible for this duty, the custodian's information manager must also carry it out.
- [64] As mentioned above RSRS performs a check of a small number of files on receipt. This is a reasonable safeguard to determine if there are major problems in a clinic's records. Unfortunately, this random check did not uncover the error in Dr. Akintola's DVDs.
- [65] The complainant's records were entirely in electronic form. In fulfilling his request, RSRS would have ensured that the directories or folders on the DVDs were those of the complainant, but did not look at the individual PDF files contained in the directories.
- [66] RSRS acknowledges there may be filing errors in records provided by physicians (which is why RSRS performs spot checks as described in paragraph 59). It is therefore reasonable to assume that some records from a medical practice may be misfiled. Prior to fulfilling a specific patient request for health information, it would be reasonable to check each page of each record to ensure that no pages have been misfiled. This could be done as a final check before sending the CD to the patient.
- [67] I am not suggesting that RSRS is responsible for the accuracy of all records it holds in storage. This is still ultimately the custodian's responsibility. RSRS was engaged to perform two tasks: store the custodian's records and send them to former patients on demand. As long as the records are held securely, whether they are accurate while resting in storage is not a concern, under this particular contract. However, as soon as RSRS fulfills a patient request for information on behalf of the custodian, RSRS must make a reasonable effort to ensure the record is accurate and complete before disclosing it.
- [68] RSRS's Director of Operations informed me that the company checks records at the file level, rather than page-by-page to respect patient privacy. As an information

manager, RSRS can use, or view, health information in order to perform specified services for a custodian. Section 61 of the HIA would allow RSRS to examine a file page-by-page to ensure information is accurate and complete prior to disclosure and would not be a contravention of the HIA. Furthermore, the privacy risk of a page-by-page review can be minimized. As I stated above, it is not necessary to review files page-by-page until a patient request is about to be fulfilled. Furthermore, it is not necessary to read the full contents of each page, only to ensure that each page matches the intended recipient. All of the records I examined in relation to this case had the name of the patient clearly marked at or near the top of the page. In my opinion the privacy concern expressed by RSRS is mistaken and somewhat of a ‘red herring.’

- [69] The information manager, RSRS, failed to make a reasonable effort to ensure the requested records were accurate prior to disclosure. This contravenes HIA section 61. By contravening a section of the HIA directly related to the services it provided to the custodian, I find that the information manager, RSRS, did not comply with the *Act*, in contravention of section 66(5)(a) of the HIA.
- [70] While the information manager contravened the HIA, Dr. Akintola as custodian remains responsible for this contravention, pursuant to section 66(6) of the *Act*.
- [71] In addition, I note that Dr. Akintola’s contract with RSRS contravenes section 66(5)(a) of the HIA in that it appears to excuse RSRS from complying with HIA section 61 (see paragraph 56). Therefore, that article of Dr. Akintola’s information manager agreement with RSRS was not valid under the HIA. Also, the business model as proposed by RSRS in its standard contract needs to be adjusted to work within Alberta’s *Health Information Act*.

## **VII Actions taken by the custodian**

- [72] Dr. Akintola now fulfills any requests for patient information himself, using his EMR and the paper records from the previous owners of his practice as data sources. Dr. Akintola also checks the records to ensure they are sent to the right patients. As discussed earlier, there is no evidence to suggest that the records in Dr. Akintola’s EMR are not in order. Nor have any questions been raised regarding the accuracy of Dr. Akintola’s paper records.
- [73] Dr. Akintola put a notice to former patients in the local Grande Prairie newspaper with new instructions on how to get copies of their health records. Dr. Akintola has set up a new phone number and post office box for patients to contact him to order copies of their records.
- [74] Dr. Akintola has met with all of the patients who were affected by this breach and retrieved all information sent in error. This included meeting with the complainant, the two other patients who erroneously received other people’s health information, as well as those patients whose information was sent in error.

- [75] I am satisfied that Dr. Akintola has taken reasonable measures to notify patients where they can get copies of their health records, to notify patients who were affected by errors, and to respond accurately to future requests. The risk of sending records to the wrong patients has been reasonably mitigated.

## **VII Actions taken by the information managers**

### **Optimed**

- [76] Optimed has updated its instruction set for future data exports to ensure backup files are ignored (see paragraph 42) when converting EMR data to PDF.
- [77] Optimed has prepared a new policy and advice document that recommends to clinic system administrators and physicians that all information be reviewed prior to disclosure.

### **RSRS**

- [78] RSRS contacted our office as soon as it was made aware of the CBC report that led to this investigation and sought our office's advice and guidance in following-up on this error. RSRS was prepared to take on the responsibility of notifying the affected patients, but Dr. Akintola decided to do this himself.
- [79] Immediately on being informed of this incident, RSRS instructed its staff to review all pages of records sent in response to requests from Dr. Akintola's patients. No further records containing the wrong patients' information were sent.

## **VIII Recommendations**

- [80] I have no further recommendations for Dr. Akintola. He has informed the patients affected by this error and made reasonable arrangements to prevent it from happening again.
- [81] I have no further recommendations for Optimed. Optimed has changed its processes to prevent this kind of error from happening again and will be advising custodians who are their customers to perform data integrity checks prior to disclosing health information.
- [82] I recommended that RSRS review its standard contract and business practices to ensure they comply with the *Health Information Act*. RSRS has agreed to do so, in consultation with our office, as it expands its market in Alberta. (At the time of

writing this report, RSRS has no other customers in Alberta that are HIA custodians.)

## IX Conclusion

- [83] When closing his practice Dr. Akintola tried to do the right thing. He made arrangements to securely store his records and provide on-going patient access. He performed checks to ensure his records were accurate and assumed that his information managers would do the same. His information managers did take some actions to check data integrity, but fell short of meeting HIA requirements. Unfortunately, one information manager introduced an error into his records and the next one did not check for errors before sending records to patients. Giving due attention to the agreements he signed with his information managers may have helped Dr. Akintola avoid this situation.
- [84] Custodians are ultimately responsible for the actions of their information managers. However, this investigation illustrates that information managers must also do their part to comply with the *Health Information Act*. Furthermore, information manager agreements themselves must be in compliance with the HIA. The agreements must not contain provisions excusing compliance with the HIA.
- [85] I thank Dr. Akintola for his cooperation with my investigation and for his diligence in meeting with the affected patients individually.
- [86] I thank RSRS and Optimed for their cooperation in helping to identify the source of the error in Dr. Akintola's records.

### General recommendations to all information managers

- [87] Information managers must follow *Health Information Act* when providing services to custodians.
- Out-of-province information managers operating in Alberta should ensure their business model can accommodate the HIA before commencing operations in Alberta.
  - Information managers currently operating in Alberta should review their practices to ensure compliance with the HIA.
- [88] It is common practice for information managers to prepare standard contracts. This practice saves time and expense for the signatories, rather than writing an individualized contract for each engagement. However, signing an agreement that contravenes the *Act* may leave both parties unprotected.
- Information managers operating in Alberta should ensure their standard contracts reflect the provisions in the *Health Information Act* that apply to the services they offer.

## General recommendation to all custodians

- [89] Custodians have a duty to ensure they sign appropriate agreements with their information managers. A vendor may give you a ‘standard contract’ to sign and make representations that the contract complies with privacy legislation. However, the contract may have been reviewed in another jurisdiction. You should review this agreement carefully to ensure it complies with Alberta’s *Health Information Act*.
- [90] Custodians have a duty to ensure the accuracy of health information prior to using or disclosing it. While you may rely on information managers to store, transform, manage and disclose health information, you must ensure the work is done with reasonable safeguards in place to protect the integrity and confidentiality of patient data. Your information manager may make mistakes, but ultimately you are responsible for its actions under the *Health Information Act*.

Brian Hamilton, CISA  
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