

Personal Health Information Breach: A Case Study



Jacob Giesbrecht
LLP

A recent case out of Saskatchewan serves as a reminder of the serious obligations health care professionals have in maintaining the confidentiality of personal health information.

In that case, a physical therapist with a long and unblemished work record who was described as “one of the best physical therapists I have ever seen” was terminated from her position based on her breach of patient confidentiality. She grieved the termination to a three member board of arbitration.

The employer had conducted an investigation over a 10 month period that alleged the grievor had accessed patient records inappropriately on over 100 occasions.

On examples of a breach was discovered in the following context:

Two coworkers were having a casual conversation in the hallway. The Grievor asked an apparently innocent question about a patient’s husband’s last name. The coworker did not know that last name. As another coworker walked by, the Grievor asked her the same question. The third coworker did not know the husband’s name off the top of her head and kept walking.

The Grievor said, “It’s alright, I can find out the husband’s name on Facebook.” The coworker then got curious with the grievor and asked, “Why do you want to know a patient’s husband’s last name?” The grievor responded, “So I can look him up on PACs.”

PACS is an information storage system that electronically stores images of patient’s x-rays, ultrasounds, and CT scans together with the radiologist’s clinical notes. The stored information can only be accessed by someone with authorization

and a password. The following statement appears on the webpage before the user can access the records: “The information in PACS is confidential personal health information. By accessing this system you agree to be legally bound to the PACS Services/Access Policy.” The PACS system keeps a record of every time a user views a patient record.



The employer conducted an audit of the PACS system to see whether the Grievor had violated the confidentiality policy on the basis of two supervisor’s reports. The grievor was apparently quite open about her use of the PACS information. She confided in her supervisors and coworkers about the information she was able to glean from private patient records.

It was determined that the Grievor had inappropriately accessed personal health information on 99 occasions during the 10 month period.

During the audit, it was determined that the Grievor had inappropriately accessed personal health information on 99 occasions during the 10 month period. She had reviewed records of deceased and living prominent members of the community, past and present co-workers, senior management, members of her family

and a supervisor who had given the Grievor a poor performance review. The Grievor said that she did not know it was wrong to access the information so long as she did not disclose that information to others or used it for improper purposes.

The arbitration panel stated:

Personal health information is confidential and is restricted to health care providers who are in the "circle of care" of the patient and then only on a "need-to-know" basis.

Put simply, personal health information is off limits unless the health care provider needs to know this information to provide treatment to his or her patient. The access and use of the information for this specific purpose does not change the confidentiality of the information.

The confidential personal health information is not to be disclosed to anyone without the consent of the patient except to those within this circle of care who need the information to treat the patient.

The employer was never able to prove that she did use the information for purposes not related to her job. It did however prove that she accessed information from patients that were far outside her "circle of care".

The employer informed the Saskatchewan College of Physical Therapists (SCPT) about the Grievor's conduct. After she was terminated, the Grievor fought for her licence to practice and her licence as a physical therapist was re-instated on the following conditions:

- a) a three-month licence suspension, starting on the date the agreement is signed;
- b) a one-year probation, during which time the Grievor would be obligated to report changes in employment to SCPT and to disclose the agreement to any employer;
- c) the suspension and probation would be recorded in the SCPT register, as required by the Act; and

- d) the contents of the ADR Agreement, including the Grievor's name, would be published in the SCPT newsletter and website.

The Board of Arbitration had to consider all of the factors to determine whether the Grievor should be reinstated to her job. It considered the Grievor's 25 year unblemished record, that there was no progressive discipline, that the dismissal was based on "one" incident that led straight to termination. The Board had to consider whether that "one" incident was so egregious as to merit termination.

The Board considered the nature of the Grievor's employment. They reviewed whether there was a higher standard that applied to those who worked in the health care field. They referenced that the sick and elderly were more vulnerable and unable to fend for themselves and are therefore more dependent on their caregivers than others in society. The Board also recognized that employees in the health care field are directly accountable to the public that use and rely on health services.

The Board considered that when it comes to breaches of patient information, there are varying degrees of seriousness. It is not every breach of patient confidentiality that would cause irreparable harm to the employment relationship.

The Board ultimately determined that when it weighed all of the factors in this case, that the Grievor merited termination.

This case is obviously of such a degree as to show the worst sort of possible breach of personal health information. There are many cases that might fall more toward the middle of the spectrum of seriousness. It does serve as a reminder that although health care professionals have a great deal of information at their fingertips, they must use their professional discretion when they access that information.

