



# CONDUCT COUNTS!

## Privacy Breach

### SCENARIO

Jen has had a rough few months. She tries to laugh about the fact that she is officially part of the 'sandwich generation,' but she's exhausted. Since January, she's had to deal with her 80-year old Mom having a stroke, her husband getting laid off, and her 11-year old son fracturing two metatarsal bones.

To help bring in extra money, Jen has been picking up extra shifts at her casual position in the Hospital in addition to her full-time homecare job. When her son got hurt at soccer camp a couple of months ago, she took him to Emerg and didn't even give it a second thought when she looked at his health record a week after to remind herself what the physician had said about follow-up. She was just trying to schedule her life so that she could attend his next appointment, and besides, she was his Mom.

Jen didn't realize that the Hospital had been conducting random audits of employees' MIS use until she was asked to attend a meeting with her manager and an HR rep. At the meeting, Jen was told that they were aware she had viewed her son's record, and they also knew that she had looked at her mother's health record on two occasions in the weeks following her admission. Jen had forgotten about looking at her Mom's record and was stunned to hear that the Hospital was terminating her employment because of these privacy breaches. As a result, an employer report is submitted to the CRTO.

### RESULTS

As follow-up to the employer report, the investigator appointed by the Inquiries, Complaints and Reports Committee (ICRC) contacted the Hospital and obtained copies of the audit results from Jen's MIS logins over the past year. The Hospital's privacy policies, as well as copies of emails to Jen that included links to online resources and learning modules on privacy, were also provided to the investigator. In addition, the CRTO's investigator interviewed the manager, the IT person who conducted the audit, the HR representative and Jen.



### PROFESSIONALISM

"Professionalism" or professional conduct is a term often used to describe the behaviours that are expected of individuals who hold a certain role in society. A "professional" is typically someone who has obtained skills that are recognized as requiring specific, intensive training and who applies those skills in a position impacting others (e.g., engineer, lawyer, RT, PT, MD, etc.). Professionals are often held to moral, ethical and legal standards because of this potential impact.



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### EXPECTATION

Jen thought that because it was her son's and her mother's records (her immediate family members, for whom she had at least partial responsibility of their care) that she was allowed to view them. In her statement to the investigator, she said that she would never have looked at a stranger's health record and that she was only trying to help facilitate the care of her family. However, the Personal Health Information Protection Act (PHIPA) is very clear about patients' rights to privacy, and Jen's assumption was false. In addition to her own professional responsibility to understand laws that impact her practice, Jen admitted that she'd been so busy that she hadn't completed the Hospital's learning module on privacy or really read many of the emails pertaining to the policies around it.

The ICRC deliberated for a long time about whether to refer allegations of professional misconduct against Jen to the Discipline Committee for a hearing; it was after all, a breach of legislation. In the end, the ICRC decided to require Jen to attend training courses on professionalism and privacy, as they recognized that Jen was remorseful about her actions, that this had been the first issue brought to them about her practice, and that the public interest would be protected by her completing the training.

### BOTTOM LINE

A breach, is a breach, is a breach. It doesn't matter whether it's your own record, a family member's or a complete stranger's. If you are not currently providing care for the patient/client in your practice, you cannot view their personal health record.

### RESOURCES

[A Commitment to Ethical Practice](#)

[Changes to the \*Personal Health Information Protection Act \(PHIPA\)\*](#)

[CRO's Standards of Practice](#)

[Personal Health and Information Protection Act, 2004 \(PHIPA\)](#)

