Handle With Care

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A Risk Management Newsletter For The Health Care Protection Program's Members

In this Issue:

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Health Team Leader's Message

As we move into the fall and winter both organizations and individuals are readying themselves for the onset of flu season. With national and international focus on planning and preparedness for a pandemic influenza, this issue of Handle with Care includes a brief article, "Pandemic Preparedness." British Columbia is a leader in pandemic preparation and a summary of activities and related info can be found at *http://www.health.gov.bc.ca/pandemic/index.html*

Also in this issue we provide an update on Health Care Protection Program (HCPP) activities with respect to disclosure and the BC Patient Safety Learning System (PSLS), formerly known as "IRIS". Pilot sites at Vancouver Coastal Health Authority and the Provincial Health Services Authority are set to go live in January 2007.

You've received a letter from a law firm in the US demanding a patient's records be produced at an American courthouse three days hence with a warning that failure to comply will result in sanctions, including significant fines – how do you respond? To find the answer, Handle with Care presents Part II in a series on Confidentiality.

Hope to see you at Halifax 6 Symposium in Vancouver October 19th to 21st! Organizers have worked tirelessly to ensure this year's premiere Canadian conference on Patient Safety is full of interesting and relevant sessions and speakers. Pre-symposium events include *Partnering for Patient Safety II* and *Advances in Education and Team Training for Healthcare.* See you there!

Janice Butler, Director
Health Care Protection Program

Update on Human Rights Code Decision — Personal rights do end at death

In our Spring/Summer 2006 issue we reported on the BC Supreme Court ruling against a human rights action brought on behalf of a deceased individual. This is an update to that article.

On April 16, 2006 the Supreme Court of Canada also dismissed the appeal in the Gregoire case, without giving reasons. In doing so it affirmed the earlier decisions of the BC Court of Appeal and the BC Supreme Court . Rights established by the BC Human Rights Code are personal and they abate on the death of the person whose human rights have allegedly been breached. Although human rights violations might be similar to torts, human rights complaints are not similar to actions, so s. 59 of the *Estates Administration Act* does not apply. Personal representatives are therefore unable to continue a human rights claim on behalf of a claimant who dies before hearing.➤

Confidentiality - Part II of a series

This is the second in a series of articles on confidentiality in which we present a brief scenario and ask you to consider how the questions raised should be resolved.

Health Authorities often receive requests and demands for the production of patient records. Such requests and demands can take varying forms, including court orders, and be made from a variety of applicants for a variety of purposes. The Health Records professional needs to know when it is appropriate to produce the requested documents and when producing the documents would violate patient confidentiality.

Sometimes demands for records originate from individuals or organizations that reside or conduct business outside British Columbia. Often the demands arrive unexpectedly and are accompanied by impossibly short time lines. The records keeper may be warned that not complying with the demand will result in sanctions. The demand may take the form of a letter from a lawyer or insurance adjuster or a court order naming the institution from which records are sought. Sometimes the demand is accompanied by some form of authorization from an organization, such as an insurance company, authorizing receipt of the information.

Recently, one Health Authority received a letter from a law firm in Louisiana, U.S.A., demanding that a patient's records be produced at the courthouse in a Louisiana city the following Monday. The demand included an official looking document from Louisiana's equivalent of the Worker's Compensation Board. It warned that a failure to comply would result in sanctions, including significant fines. The demand also advised that the Health Authority was entitled to receive payment for disclosing the documents, the amount of which was determined by Louisiana law.

When faced with such a demand originating from outside British Columbia, what should the Health Records person do?

Once you've had a chance to consider this, please turn to page 6 for HCPP's advice.➤

Can a seemingly legitimate demand for health records violate patient confidentiality?

Important Bulletin - Failure of Emergency Power Supply

Last year a failure occurred during a scheduled test of the emergency power supply at a health care facility in BC when a coolant hose on the prime mover (engine) ruptured causing a coolant escape.

The prime mover was being monitored remotely via an auxiliary monitoring system on the facility building alarm system panel. Unfortunately, this system could only annunciate (signal) a single alarm. Thus, it was unable to annunciate any other alarms such as the incoming low coolant level signal.

The coolant temperature sensors were the typical immersion type and once sufficient coolant had escaped these sensors were effectively disabled, thereby preventing the control system from automatically shutting down the engine. As a result, it overheated, caught on fire, and failed catastrophically.

This failure underscores the need to review emergency power supply maintenance practices to ensure:

- A thorough inspection of coolant hoses and/or an appropriate hose replacement schedule;
- Low coolant level or coolant escape does not disable engine temperature sensors, alarm or controls;
- Remote or auxiliary alarm systems perform appropriately and as required by the Code. ➤

Pandemic Preparedness

Early and thoughtful planning by operational management can reduce the impacts of pandemic influenza, protect health care clients and staff, protect essential services and minimize financial losses for the organization over the long term. Every organization can benefit from applying a number of key principles to planning efforts as highlighted below:

- Organizations that have access to **reliable data** will understand what to do. In particular, information available through websites maintained by your own health authority, the BC Centre for Disease Control and the Provincial Health Officer address the nature of the virus and the value of specific interventions;

- Internal monitoring of illness (**surveillance**) will be important to track client health and employee absenteeism and to help plan immediate operational decisions;

- Offering **awareness and education sessions**, brochures and other materials will help employees respond to the influenza threat with reason instead of fear;

- Strict adherence to **hand-washing** protocols is the cornerstone of an infection control plan and, as with other types of infectious diseases, may be the most successful preventative action an organization can undertake;

  Informing and protecting the workforce will help avoid interruptions in essential functions, and may be the most important step any organization can take in managing pandemic risk. Information materials on protecting employee health generally are available on the BC Ministry of health—Pandemic Influenza Preparedness website at: *http://www.health.gov.bc.ca/pandemic/pdf/Employee_Leaflet_04.pdf*

  and, more specifically to prevent transmission of influenza in a health care setting, in Annex 1 of the BC Pandemic Preparedness Plan at: *http://www.bccdc.org/downloads/pdf/epid/reports/BC%20PI%20Plan%20(Final)PAB%20REVISED-%20AUG%20Appendix%20I.pdf*

- Keep your organization functional by understanding **essential functions.** Know your **key players** and their required **skills**. Consider succession planning, cross-training and alternative ways that employees can work (e.g. teleconferencing or telecommuting, the use of replacement workers, retired workers or contractors);

- **Collaborate** with other community members and stakeholders. It is worth the effort to check assumptions and let others know your intentions and expectations. Consider making connections with the following:
  - Employees, unions, occupational health and safety committee;
  - Significant client support organizations and/or service partners (eg. auxiliaries);
  - Suppliers and service providers;
  - Local government, especially the emergency program office;
  - Your own Pandemic Planning Committee or Risk Management Department.

Online Resources:

BC Ministry of Health - Pandemic Influenza Preparedness website
http://www.health.gov.bc.ca/pandemic/index.html

BC Centre for Disease Control—Pandemic Influenza Preparedness website
http://www.bccdc.org/content.php?item+150

Canadian Pandemic Influenza Plan
http://www.phac.aspc.gc.ca/cpip-pclcpi

Hospital Corners – Quick Risk Tips

The frequency of crash cart checks (i.e. per shift or daily) is dependent upon the relative degree of risk in the area they are stocked for. The higher the risk area and the more important the equipment is in resuscitation activity, the more frequently the carts and their contents should be checked.

Manufacturers' specifications for preventative maintenance criteria should assist in setting inspection frequency time frames. Some equipment may need to be regularly charged or have batteries replaced.

Expiry dates on drugs should be reviewed carefully with every check. Replace items that have reached or are reaching their expiration dates.

There should be a consistent process for checking crash carts. Checks should be performed by an appropriately qualified staff member and documented. A checklist, dated and initialled by the staff member is a recommended means of documentation. At a minimum, a process should include a check that:

a) the cart is conveniently located near the emergency treatment area(s) (e.g. not locked in a closet);
b) the crash cart has an inventory that is up-to-date and everything is accounted for on the cart;
c) all items on the cart are in a viable condition and sterile items are in clean and sealed wrappers; and
d) anything taken from the cart is replaced.

Some carts have seals which can easily be broken/accessed, yet if not broken provide reassurance that the cart has been restocked and checked according to unit policy.

High risk areas identified in HCPP claims data have included intensive care, ER, PAR, LDR and psychiatric units.➤

Links of Interest and Dates to Remember

Insight Obstetric Malpractice and Risk Management Conference, Vancouver, Nov 21st—22nd, 2006
www.insightinfo.com

Institute for Healthcare Improvement
www.ihi.org

Joint Commission on Accreditation of Healthcare Organizations (JCAHO)
http://www.jcaho.org

ECRI's 14th Annual Conference—Confronting Dilemmas of Risk in Healthcare: Emerging Trends & Practical Approaches for Decision Makers. Nov 15—16, 2006 Philadelphia
www.ta.ecri.org/taconf/2006/default.aspx

Riskwise Answers

What coverage is provided for volunteers to the hospital or health care agency?

HCPP automatically covers volunteers to our member entities for liability arising out of their volunteer activities. Volunteers are afforded third party liability for personal injury or property damage to third parties as a result of the volunteer's negligence. In addition, volunteers may be eligible for nominal voluntary compensation benefits if they are accidentally injured during the course of their volunteer activities. Some of our member entities purchase additional coverage for volunteers in the form of accident benefits.

Volunteers to other organizations, including legally incorporated hospital auxiliaries, are not covered by HCPP.

HCPP has developed a Risk Note on this subject in the form of a Frequently Asked Questions and Answers document. This can be found on the HCPP website or by contacting your organization's Risk Manager or Chief Risk Officer for a copy. ➤

Patient Safety Learning System (PSLS)

HCPP is pleased to be part of the BC Patient Safety Learning System project (formerly known as IRIS). The PSLS is a multi-health authority initiative to implement a province-wide patient safety reporting system supporting the project's vision to make healthcare safer while improving the quality of care. The PHSA is leading the way, in partnership with Vancouver Coastal Health, to pilot the system using Datix software. Datix is widely used in the United Kingdom to report incidents, claims and complaints. The new system will:

- Support the identification, investigation & analysis of all safety & risk related incidents (including safety hazards & near misses)
- Capture and facilitate response to client feedback (complaints, compliments & requests for information)
- Enable claims management
- Offer optional anonymous reporting for individuals using the system to report an incident
- Allow health authorities to share and disseminate recommendations and best practices and support a culture of safety and learning.

The two pilot areas for the project are the Neonatal Intensive Care Unit (NICU) at BC Women's Hospital and the Vascular & General Surgery unit (Tower 8) at Vancouver General Hospital. These two pilots will test the PSLS to ensure it gathers the right information, confirm ease of use of the electronic forms and validate the Change Management approach with an objective to inform the rollout of the PSLS across Health Authorities.

The pilots will go live in January 2007, with provincial expansion planned over the next three years. Key indicators will be measured pre- and post-pilot implementation through tracking and reporting, focus groups, and surveys in order to develop an Implementation Tool Kit for the provincial rollout.

Watch for further updates on the HCPP website!➤

Confidentiality - Part II of a series (continued from page 2)

The following discussion is based on the advice HCPP would give to the scenario on page 2.

Demands for client records that are not court orders must be accompanied by a properly executed authorization from the patient, or the patient's duly authorized representative. Outside of a court ordered production of records, if the patient has not consented to the disclosure either directly or through his legal representative, the records cannot be disclosed. In the event the patient is deceased, the records may be disclosed to the executor of the estate or to anyone as long as the authorized representative of the deceased's estate consents. Where the deceased dies intestate and no representative has been appointed, the deceased's next of kin may receive the records. However, in this case, we suggest you contact your local Risk Manager or Legal Counsel prior to releasing the records. There are statutory exceptions to these rules. One exception is a demand from a BC Coroner made pursuant to the *Coroners Act*. If you receive a demand for records from an organization that is not familiar to you, do not hesitate to request assistance from your legal counsel or risk manager.

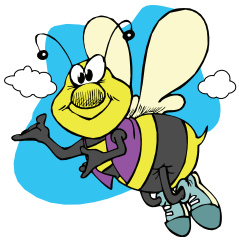
As for court orders, the Health Authority must comply with the terms of an order of a British Columbia court. Of course, orders made by the Supreme Court of Canada and the Federal Court of Canada have jurisdiction in British Columbia as well. If an application is being made to a British Columbia court for the production of records, the Health Authority will usually be served with the application, called a Notice of Motion. The Notice of Motion is not an order. It is notice that an order is being sought. This notice gives the Health Authority the opportunity to respond to the application for records if it chooses. For example, if the Health Authority opposes the application for records or certain parts of it, such as the deadline for providing the records, or if the Health Authority would like conditions imposed upon the release of records, it can make this known to the judge. A judge will hear the application and decide whether or not to grant the request for records. If the judge grants the request, a court order will be issued. Prior to releasing the records, the Health Authority must assure itself that it has in hand a certified copy of the court order. The terms of the order must be complied with. If, for example, the order states that the records will be produced in 10 days, the Health Authority must ensure the records are produced within 10 days.

Remember that a court order from a jurisdiction other than British Columbia has no legal force, **on its own**, within British Columbia. Such an order may be disregarded by the Health Authority. This is the case whether the order originates in Alberta or Louisiana or anywhere else. In order for a court order from a jurisdiction other than British Columbia to have legal effect in British Columbia, it must be certified by a British Columbia court. An application must be made to a British Columbia court and if the court agrees, it essentially makes the order its own. When this happens, the Health Authority must comply with the terms of the order.

So why do Health Authorities keep getting demands from outside British Columbia that are not accompanied by proper authorizations or court orders not endorsed by a British Columbia court? We speculate it is either because the originator does not realize the requirements necessary for the Health Authority to release the documents, or they are hoping that the records keeper will provide them with the documentation without them having to spend the time and money to obtain the proper requirements.

All Health Records professionals should understand the requirements needed before releasing patient records. If you have any doubt when dealing with a request, please contact your organization's Risk Manager, Chief Risk Officer or legal counsel. ➤

Risk Buzz



Did you know that HCPP regularly produces written risk management advice in the form of **Risk Notes**?

The HCPP website contains many **Risk Notes** on topics of interest such as *Host Liquor Liability, Giving Evidence* and *Police Requests for Blood Alcohol Samples*, to name a few.

In addition to our data base of existing **Risk Notes,** HCPP is continually updating and producing new **Risk Notes**, whether in response to a specific request from one of our members entities or to address risk management concerns as we become aware of them during the process of investigating and settling claims.

To date in 2006, HCPP has released two new **Risk Notes**:

- Property on Consignment
- Frequently Asked Questions about Volunteers

Coming soon in 2006:

- Disclosure of Incident Reports to Coroner's Office
- Telephone Cord Alert

These can be found on the HCPP website or by contacting your organization's Risk Manager or Chief Risk Officer for a copy.➤

BC Provincial Forum on Disclosure

On May 29th, 2006, the Health Care Protection Program, with the support of the BC Patient Safety Task force held the first BC Provincial Forum on Disclosure. The goal for the one day workshop was to bring together various perspectives and experiences in order to inform provincial agreement on guiding principles with respect to the four key policy areas for implementation:

- Just Culture – providing the philosophical framework;
- Disclosure;
- Informing; and
- Reporting

A panel discussion provided a focus on:

- Key learnings and highlights from provinces where significant activities have been undertaken (specifically Alberta and Nova Scotia);
- The need to understand the legislative context in which we currently operate; and
- Acknowledgement of a common interest in success and how all the pieces fit together.

The BC Patient Safety Task Force is taking the summary information from this discussion (which can be viewed on the HCPP website) along with draft policies supplied by the Health Authorities and is working toward the development of a consistent policy that can be adapted and individualized for use across the Province. HCPP will continue to be involved in this key initiative; however, the Patient Safety Task Force is responsible for coordinating and promoting province-wide efforts to enhance patient safety and will take the lead.

Watch for updates concerning this important initiative on the HCPP website. ➤

About Our Organization...

We are the Client Services Team for the Health Care Protection Program (HCPP). HCPP is a self-insurance program which is funded by the Province of BC. The program is housed within the offices of the Risk Management Branch of the Ministry of Finance which also has responsibility for similar programs such as the Schools Protection Program, and the University, College & Institute Protection Program. As part of the services of our program, we provide risk management and claims & litigation management services to HCPP member entities including all the Health Authorities and various other stand-alone health care agencies in the Province of BC.

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