



HANDLE WITH CARE

In this Issue:

- ◆ Health Team Leader's Message
- ◆ Practical Risk Management Solutions for a Complex World
- ◆ Understanding Insurance
- ◆ Optical Character Recognition
- ◆ Claims Abstract
- ◆ Riskwise Answers
- ◆ Hospital Corners
- ◆ Risk Buzz
- ◆ Conference Registration

Please feel free to copy and distribute as necessary.

If you would like to receive an electronic version of this publication just drop us a line at HCPP@gov.bc.ca and we will add you to our distribution list.

Volume 4, Issue 2

Fall/Winter 2007

A Risk Management Newsletter for the Health Care Protection Program's Members

Health Team Leader's Message

From toxic melamine entering the food chain through wheat gluten and killing our pets (and questionable entry into the human food supply) to record rainfall and floods in July and blazing condominium projects threatening immediate hospital evacuations in September we can find risk coming at us from hitherto unanticipated sources or at odd times in the year. All told, since our last edition of Handle With Care, it has been an interesting past few months.

To say we live in changing times is another understatement. Here at the Risk Management Branch no fewer than fourteen of our forty-five full time employees are on temporary assignment. Janice Butler has taken on temporary responsibility for services to Crown and BC Government Ministry clients and I have moved from my responsibilities as senior claims examiner to this role in Janice's stead.

Our Branch is in the midst of an exciting yet challenging systems-wide technical upgrade

(iVOS) which will eventually streamline much of how we do business, improve our data collection and reporting and thus allow us to provide you, our clients, with improved service. By the time you have read this publication we will have passed the testing stages and have gone live, so to speak: so stay tuned!

Please be patient with us during the introduction of system changes and remember the best way to get our attention is with a well considered, sufficiently detailed request, and do give as much lead time as possible.

We are also pleased to announce the first Risk Management Conference for the BC Public Sector, November 14-15 in Richmond. Please see Risk Buzz for further details. We look forward to seeing you there.

Grant Warrington, A/Director
Health Care Protection Program



Practical Risk Management Solutions for a Complex World— NAVIGATING THE LABYRINTH

Risk Management Branch & Government Security Office presents:
2007 RISK MANAGEMENT CONFERENCE *for the BC Public Sector*
November 14-15, 2007, Richmond, BC

See Page 6 of this Issue for more information

Understanding Indemnity and Insurance in Service Contracts

All activities have the potential to create risks of one type or another and contracting for services is no exception. These risks can result in losses or claims for bodily injury, damage to property, loss of income, inability of the contractor to provide ongoing services, or simply paying for something and getting nothing in return.

Many of these risks can be mitigated through the terms and conditions of the Service Provider Agreement and its attached Schedules. The Health Care Protection Program (HCPP) has developed a recommended template for Service Provider Agreements, including insurance requirements, which is available through the risk manager or chief risk officer of a Health Care Agency (HCA). Contract administrators should have an understanding why specific indemnity and insurance requirements are recommended by HCPP and that there are risks associated with changing the recommended contract language.

The indemnity provision of a contract is one of the terms specifically designed to mitigate risk. Generally, HCPP recommends that a HCA seek an indemnity from its service providers (the Contractors) in all cases. An indemnity provides that the Contractor will reimburse the HCA for any losses, claims, damages etc. arising out of the Contractor's acts or omissions. Because contracted services are outside the control of the HCA, it is reasonable to transfer the associated risks to the Contractor by way of an indemnity.

Requiring Contractors to carry sufficient insurance to cover the exposures inherent in the services provided gives assurance that the Contractor has a means of paying should the HCA need to call on the indemnity. In the absence of adequate liability insurance, the HCA is relying on the financial strength of the Contractor to make good on the indemnity. Note that while many risks can be addressed by insurance, it does not respond to cover every circumstance

(e.g. losses which are purely economical in nature are not covered under basic liability insurance).

Other important reasons for contractors to maintain adequate insurance include:

- third parties who have been injured or suffered damage to their property can be compensated for their loss by the party responsible;
- the HCA is less likely to become involved in a claim arising out of its potential liability for the acts of the contractor.

Generally, HCPP recommends the Contractor be required to carry Commercial General Liability (CGL) in all cases and, if professional services are being provided, Professional Liability. The following discussion gives a brief outline of Commercial General Liability and Professional Liability insurance coverage and provides background as to why they are required.



Commercial General Liability Insurance:

The CGL policy provides insurance to the Contractor to protect it against third party losses the Contractor may incur as a result of bodily injury, property damage or personal injury (i.e. injury to a person without harming their body such as libel, slander, or defamation). The CGL responds only to claims made by unrelated third parties, not first party losses of the Contractor itself.

HCPP recommends the HCA be added as an Additional Insured to the Contractor's CGL. This gives the HCA protection under the Contractor's policy for losses arising from the Contractor's negligence. Note that this differs from an Additional *Named* Insured, which would give the HCA protection from its own negligence as well as that of the Contractor. Insurers are not likely to add a HCA as an Additional Named Insured because of the increased exposure this presents to them.

Continued on Page 3

HCPP urges HCAs to request evidence of coverage in the form of our recommended Certificate of Insurance. A copy of this document is included with the Service Provider Agreement template recommended by HCPP.

Professional Liability (Errors & Omissions/E&O or Malpractice):

Professionals are expected to perform the services for which they were hired according to standards of conduct for their profession. Because others are relying on their technical knowledge, training, and experience, professionals are held to a high duty of care and can be held responsible in law for damages or injury they cause to others if they do not perform to the standard expected of a professional in their area of expertise.

Professional Liability (also called Errors & Omissions or Malpractice) insurance protects a professional against losses which they are legally liable to pay arising out of the rendering of or failure to render professional services. Professional Liability policies may be specifically tailored to the profession they protect. As examples, professionals can face claims arising from advice given (e.g. legal counsel),

recommendations provided (e.g. physicians recommending course of treatment), or design solutions (e.g. architects or engineers).

What is the difference between Professional Liability coverage and Commercial General Liability coverage?

Commercial General Liability is intended to cover bodily or personal injury to people or physical damage to property. Professional liability is intended to financially compensate for losses arising from sub-standard service or by failing to deliver a professional service promised. They both provide a source of funds should specific claims occur, but address very different types of losses. A CGL excludes coverage for professional services and a Professional Liability policy excludes bodily injury and property damage losses.

Without insurance, the HCA is left in a position of absorbing the loss itself or pursuing the Contractor to fund the loss from its own financial resources (if any available). If the HCA contract manager is unsure what types of coverage or limits are appropriate to require in the terms of the agreement, the HCA's risk manager or chief risk officer should be contacted. ◀



Optical Character Recognition

This article is adapted with permission from a Health Insurance Reciprocal of Canada (HIROC) notification to its subscribers.

Some physician offices are using optical character recognition (OCR) technology to scan hospital laboratory and diagnostic imaging reports into their electronic office records.

Concern was first raised when an Ontario physician discovered erroneous results on an ultrasound report. He queried the results with the hospital radiologist, who compared the report to the original filed on the film bag. The scanner had misinterpreted some of the uterine measures and all measures related to fibroids in the uterus. Subsequent review of other reports showed errors in both

numbers and words. Such errors could represent a serious risk to patient safety.

Optical Character Recognition is not an exact science and should not be relied upon as the only record of a document. The data captured is only as good as the quality of the image. If there is even so much as a dot on an image, it can skew the result that would be rendered during the OCR process. Other factors that might skew OCR results stem from the quality of the scanner used to do the scan originally, or the resolution setting and the OCR program itself as some are better than others. Being essentially limitless in combination, numbers are recognized on an individual character-by-character basis, with all the limitations that OCR has.

(Continued on Page 4)

Decimal points can be missed; numerals can be confused with other numerals, and even with some letters (e.g. 2 may be read as z; 2.2 may be read as 22 or 2 2 or zz). To further compound matters, it is not clear even to a human reviewer when there is an error in a column of numbers. Numbers do not have as easily recognized a context as words. Given these risks we recommend caution in the use of scanning technology

and that you ensure the technology you choose is appropriate for the accuracy required in a healthcare record. Should your organization currently be utilizing OCR technology consider regular auditing of scanned results to reduce the risk that erroneous information is left uncorrected. Your organization's disclosure policy should assist you with any clinical implications requiring follow-up. ◀

Claims Abstract

Background: The client was an elderly gentleman, disabled but competent following a stroke. The Health Care Agency (HCA) employed a home care worker (HCW), who cared for the client in his own home. The client used a motorized scooter to move about and had an elevator lift mounted on the outside of his home to access the second floor.

On a particular occasion, the HCW assisted the client in utilizing the lift by holding open the gate so that he could drive his scooter into the lift. The HCW allowed the gate to shut by itself since it was on springs. As the lift began to move, the HCW walked up the stairs to meet the client and by the time the HCW arrived at the second floor, the lift was already there. At that point, the client pushed the button on his scooter to exit the lift, but the scooter was stuck. The HCW was about to grab the handlebars in an attempt to straighten the scooter wheel when the scooter suddenly began rolling backwards, struck the rear gate which was not closed firmly, and the client fell to his death. The client's widow alleged she had given the HCW detailed instructions on the operation of the lift which would have prevented the death had they been followed. She also alleged that the HCA should have trained the HCW in the operation of the lift.

The Claim: The client's widow sued the HCA and the HCW alleging negligence against the:

- HCA for failure to adequately train its employee; and
- HCW for failure to ensure the client's safety while under the HCW's care.

The matter proceeded to trial.

The Outcome: The court found that the widow had not instructed the HCW in the operation of the lift as she had testified and the claim against the HCW was dismissed. The court did, however, find the HCA forty percent liable for the death of the client because the HCA:

- failed to take steps to investigate the use of the lift;
- made no inquiries regarding whether the client required supervision while using the lift; and
- supervisor's own evidence was that if workers were expected to use equipment, they should be trained in its use.

The court found that if the HCA had made enquiries, they would have been led to the elevator installer who would have explained the locking mechanism. Had the HCW understood the locking mechanism, the HCW could have warned the client that it had not properly latched, preventing the accident.

The court found the client was also negligent and assessed him sixty percent liable for his own injuries and death. The widow was awarded costs.

Risk Management Issues: HCAs must ensure staff are adequately trained in the use of any equipment they are expected to use in the course of their employment, regardless of whether:

- the work site is located at a HCA facility or private property;
- the equipment is owned by the HCA; or
- the equipment is installed or maintained by the HCA. ◀



Riskwise Answers

What is a doula and what role do they play in Labour and Delivery?

A doula assists a woman during labour and provides support to her, the infant and the family after childbirth. Doulas are retained by the patient and family and are not employees of the facility. They are not regulated health care providers although they may be graduates of college programs for doulas. Doulas do not provide any clinical care.

They provide assistance to the woman in labour and her partner, giving non-clinical emotional and physical support such as back rubs, fluids and helping the client adhere to the birth plan as much as possible. Trained doulas may provide translation services for women who do not understand the English medical terms or the Canadian medical system relieving anxiety for the labouring mother and her family. They have the same status in the delivery suite as other family members.



Hospital Corners—Quick Risk Tip



Remember that any notes or audio visual recordings made by a doula, just as with any notes or recordings made by a family member, could be used as evidence in a court of law. Those notes or recordings could differ from the clinical records (e.g. in critical times, signs and symptoms of discomfort or pain or other significant details). In some instances unhelpful commentary spoken in the intensity of the moment may be recorded or captured on film. Be sure that all persons present during delivery, including a doula, understand that in an emergency some persons may be instructed to leave and that only essential clinical care staff may be allowed to stay with the labouring mother and actually record events.

Risk Buzz

Throughout British Columbia, many of our older citizens live in resident care facilities operated by Health Authorities. For many, these facilities will be their homes for the remainder of their lives.

There is a risk, which HCPP expects to increase as baby boomers age, that Health Authorities become embroiled in disputes between residents' potential beneficiaries. There are a few simple steps Health Authorities can take to help reduce this risk.

Often, where a resident is not capable of doing so her or himself, a family member or close friend will manage the resident's financial affairs. After the resident passes away, these matters will be managed through the estate.

Occasionally, a resident who does not have capacity to manage their own affairs will not have anyone who is able or willing to take on this function. In these cases, the Public Guardian and Trustee (PGT) will be involved.

While it is the executor or PGT's responsibility to ensure the resident's property is properly accounted for and dealt with according to the law, staff of residential care facilities should be able to advise where the resident's property is located – whether in the resident's room or in storage within the facility.

Staff should keep an accurate record of all the resident's property (at the very least the significant property) that has been placed in storage by the facility. Upon the passing of the resident, notification should be provided to the appropriate authority (executor or PGT) alerting them to the existence of the resident's property. This ensures the onus for accounting for and distributing the property is with the proper authority.

Although difficulties in dealing with a deceased resident's property is not common, we can expect the number of residents in care to increase as our population ages with a concomitant increase in disputes over residents' property.





Practical Risk Management Solutions for a Complex World *NAVIGATING THE LABYRINTH*

Ever wondered what risk managers do? Ever wondered what your colleagues were doing about risk management? Where does your insurance come from? Who is your risk manager?

Join us November 14-15, 2007 at Delta Vancouver Airport Hotel for a day and a half of interactive sessions, expert panels, workshops and presentations geared to the management of risk in the BC public sector. In addition to the educational program, there will be plenty of opportunity to network across the education, health and government sectors – make new contacts, share advice, meet your risk manager!

Who Should Attend?

Be a part of this inaugural event! The Risk Management Conference for the BC Public Sector is designed for public sector employees who have responsibility for some aspect of risk management in their organization, and for employees with a thirst for knowledge about the complex and diverse realm of risk management. Whether you work for a ministry, a crown corporation, a college, a school district, or in health care, there is something for you!

For more information about the 2007 Risk Management Branch conference, please contact 250-356-1794, email RMB@gov.bc.ca, or visit the conference website at:

<http://www.fin.gov.bc.ca/PT/rmb/conference.shtml>

Registration

Registration is open until November 7 or until the conference sells out. *There will be no registration after November 7.*

Registration fee:

\$199 Regular (before November 7) plus GST as applicable

Registration includes all conference sessions, all conference materials, morning and afternoon refreshment service, and lunch on both days.

All conference sessions must be pre-registered so we can plan space accordingly.

Requests to transfer or substitute your registration must be made no later than November 9 by calling 250-356-1794.

<http://www.fin.gov.bc.ca/PT/rmb/confreg.shtml>

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 services including risk mitigation, risk financing and claims and litigation management to HCPP member entities including all the Health Authorities and various other stand-alone health care agencies in the Province of BC.

Our Team of Professionals

Kirsten Coupe – Claims Examiner/Legal Counsel (250) 356-5578 Kirsten.Coupe@gov.bc.ca

Linda Duffin – Client Services Coordinator (250) 952-0846 Linda.Duffin@gov.bc.ca

Linda Irvine – Risk Management Consultant (250) 952-0852 Linda.Irvine@gov.bc.ca

Kevin Kitson – Claims Examiner/Legal Counsel (250) 952-0840 Kevin.Kitson@gov.bc.ca

Blair Loveday – Claims Examiner (250) 952-0841 Blair.Loveday@gov.bc.ca

Jeff Milne – Risk Management Consultant (250) 952-0784 Jeffrey.Milne@gov.bc.ca

Kathie Thompson – Risk Management Consultant (250) 952-0848 Kathie.Thompson@gov.bc.ca

Grant Warrington – A/Director (250) 952-0849 Grant.Warrington@gov.bc.ca

Lori Watson – Risk Management Consultant (250) 952-0852 Lori.Watson@gov.bc.ca

Sharon White – Risk Management Consultant (250) 952-0850 Sharon.P.White@gov.bc.ca

In addition to the core Health Team above, HCPP continues to rely on the expertise of many individuals within the Risk Management Branch including:

Kim Oldham, Director, Claims and Litigation Management

(250) 952-0837 Kim.Oldham@gov.bc.ca

Barbara Webster-Evans, Supervising Legal Counsel/Claims Examiner

(250) 952-0839 Barbara.WebsterEvans@gov.bc.ca

Shaun Fynes, Director, Risk Mitigation and Government Security

(250) 387-0522 Shaun.Fynes@gov.bc.ca

Janice Butler – A/Director, Core Government and Crowns

(250) 356-8915 Janice.Butler@gov.bc.ca

Handle With Care is published twice a year by the Health Care Protection Program

CONTACT INFORMATION

MAILING ADDRESS:
PO Box 3586
Victoria BC V8W 1N5

PHONE:
(250) 952-0846

FAX:
(250) 953-3050

CLAIMS FAX:
(250) 356-0661

E-MAIL:
HCPP@gov.bc.ca

We're on the Web!
See us at:
www.hcpp.org

It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate.