Handle With Care

Volume 5, Issue 2 **Fall/Winter 2008**

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

In this Issue:

Announcing the second Risk Management Branch Conference for Public Sector Employees: April 16-17, 2009 at the Delta Ocean Pointe, Victoria

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Health Team Leader's Message

The ***Claims Abstract (Injection Sites)*** in this edition of Handle with Care looks at a case involving an intramuscular injection that resulted in permanent nerve damage, highlighting the need for regular reviews of policies and procedures related to the choice of sites. We've had very positive feedback on the inclusion of claims-related learnings in our newsletter; so much so that we have created a new publication. Watch for ***Claims Notes*** to be issued electronically by HCPP -- you'll find them on our website (www.hcpp.org) or you can access through your organization's Risk Manager.

At HCPP we are often asked about the risks of waiving insurance requirements in contracts. In this issue, ***The Risks of Waiving Contract Insurance*** looks at the reasons most commonly cited for waiving the requirement and explores the rationale and logic behind the recommended best practice. Also of interest in this issue, ***Hospital Corners*** explores confidentiality issues to be considered when secondary students are involved in job shadowing or work experience in health care and ***Riskwise Answers*** delves into the question of the difference between traditional risk management and enterprise-wide (or integrated) risk management. Finally, a reminder to mark your calendars for the upcoming ***Risk Management Branch Conference*** to be held in Victoria on April 16-17, 2009 at the Delta Ocean Pointe. Watch for program details shortly!

As we get ready to ring in the New Year, watch for changes at HCPP. After ten years with the program, I'll be leaving my role as Director in January. It has been a pleasure working with all of you and watching the growth of risk management across the health care sector.

All the best for a safe, happy and healthy holiday season.➤

Janice Butler,
Director
Health Care Protection Program

A New Publication from HCPP—Claims Notes

Many of you are familiar with the Risk Note publications produced by HCPP. Risk Notes are written by HCPP staff in response to frequent inquiries we receive from our clients on risk management issues. Topics include, but are not limited to, Responding to Legal Instruments, Host Liquor Liability, Construction issues, Patient Record Retention and Release issues—to name a few.

In furtherance of HCPP's strategic goal of being responsive to our clients' needs, we have created a new publication—Claims Notes. Claims Notes will share specific lessons learned from real claims experiences. De-identified, the Claims Notes will provide you with an inside view of the types of incidents giving rise to claims that HCPP handles on a daily basis. In this way, we hope you will benefit from the broadest perspective possible.

Many of the Claims Abstract articles included in Handle with Care will be suited to adaptation as Claims Notes—allowing them to be accessible on an ongoing basis as reference. Our first Claims Note deals with the topic of **Compartment Syndrome.** Watch for it soon! ➤

Claims Abstract - Negligence and Injection Sites

Background: The patient, a 25 year old male, arrived at an emergency department with pain in the groin after a relatively simple daycare surgery. He arrived at 2220 hours, had an intramuscular injection (IM) into the deltoid area of his right arm of morphine and gravol at 0015 hours and was discharged shortly thereafter. The next day he returned to an emergency department with complaints of pain in the groin and what was diagnosed by the ER Physician as right radial nerve palsy.

The Allegations: That IM injection into the right deltoid (ie the choice of site) resulted in permanent right radial nerve palsy and that negligence in the actual administration of the IM injection caused permanent nerve damage.

The Outcome: The RN stated that she was unable to remember the patient or the injection given to this particular patient. She did not chart the injection site. In the Examination for Discovery (which are questions asked under oath prior to trial) the RN outlined her usual practice which was to use the deltoid site when it was embarrassing to the patient to expose their buttocks (usually with young adults) or when there was an infection near the injection site. For this particular patient she said she avoided the buttocks as an injection site as she thought the patient likely had an infection in his scrotum although she did not look at his scrotum. She also believed it would be embarrassing to the patient.

It was the RN's opinion that it was reasonable to use the deltoid site. She indicated that she was taught IM injections in the first or second year of her university program many years prior. She admitted that she was not taught about IM injections when she took her Emergency Nursing Certificate from BCIT several years later.

The RN stated that usually she would use a 22 gauge needle that was 1" to 1 ½" in length but varied that depending on the patient. She outlined that she land marked the injection site by using two to three finger breadths from the acromium process (the acromioclavicular joint – shoulder joint) and gave the injection just below that.

The patient suffered permanent radial nerve damage which affected the brachioradialis and more distal muscles. He had an electromyograph (EMG) and nerve conduction studies which showed that responses in both the motor and sensory nerves of the right radial nerve were absent. He did eventually recover with some nerve reinervation (nerve growth). He was able to partially extend his right fingers, thumb and wrist, but that was the extent of use of his right arm.

The patient was training for a particular vocation which involved extensive use of his arms, especially the dominant right arm and experts determined he would be unable to continue this pursuit. In addition, due to his intellectual, social and psychological capacities it was determined that very few other employment options were available to him. After a very long and thorough litigation process this matter was settled for several hundred thousand dollars.

Risk Management Issues: Our own nursing expert determined that the RN did not meet the standard of care for a RN administering an IM injection. The hospital policy at the time stated that the deltoid injection site was only to be used if no other sites were available or accessible. The RN also injected into the dominant arm which was not the preferred site, although the expert did not go so far as to indicate that was inconsistent with the standard of care expected.

The patient was not found to have unusual positioning of the radial nerve and thus it was concluded the RN must have been negligent in land marking her IM administration site on the patient's arm. She had indicated that she used two or three finger breadths and depending upon the size of the patient (this individual was not particularly tall and quite thin). The nursing expert indicated that the injection is to be no more than 2.5 to 5 cm

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Claims Abstract *(continued from page 2)*

below the acromium process or no more than 2 fingerbreadths.

The RN also indicated that she gave the injection into the deltoid site while the patient was standing. The nursing expert indicated it is preferred to have the patient sitting as you can never be sure what kind of reaction you may get with an IM injection. Also when administering an IM injection it is to be at a 90 degree angle and that may be hard to achieve if the patient is taller than the nurse.

In addition, the nursing expert indicated that the patient ought not to have been discharged so quickly as had he been discharged 10-30 minutes post-injection he may have complained about the nerve injury then.

In summary, the incorrect site was used, hospital policy was not followed, the injection site was not charted nor land marked prior to the injection and the patient was discharged a little too soon.

Other Injection Sites

We have other claims which involve administration of IM injections into the gluteal muscle (buttocks), flu shots into the deltoid area which may have caused permanent nerve damage as well. Both new and experienced nurses sometimes have not recognized that the methods for land marking the injection site or choice of sites have changed. In other cases the nurse continued to give the injection even though the patient was complaining of pain. Frequently the location of the site and reaction of the patient is not charted.

The incidences we see have usually resulted in permanent nerve damage resulting in permanent disabilities.

Lessons Learned:

The administration of injections should be reviewed by all nurses on a regular basis using current policy and procedure manuals. Such reviews should include:

- Choice of sites;
- Amount of medication to be administered into each site;
- How to land mark each injection site;
- Gauge and length of needles to be used;
- Actions to be taken if there is pain or blood upon insertion of the needle;
- Documentation of the injection site, time, dosage and any reaction to the injection by the patient;
- That avoiding patient embarrassment not take precedence over best practice.

To ensure all those administering IM injections, both new and experienced, are up to date we recommend periodic reviews of IM injection procedures be held as well as ensuring the policy and procedure manuals are current. ➤

Sharing the Knowledge

Don't miss the next risk management conference hosted by the **Risk Management Branch** which will focus on **Sharing the Knowledge** of risk management and enterprise risk management through tools and lessons learned over the years by your public sector colleagues and others engaged in this fascinating field.

April 16 and 17th, 2009, Delta Ocean Pointe Hotel, Victoria, BC

The Risks of Waiving Contract Insurance

WHY SOME ORGANIZATIONS WAIVE IT, AND WHY YOU SHOULDN'T

Smart contract managers understand the legal risks of competitive bidding. As case after case has shown, you need to be clear and concise when drafting your solicitation and contract documents, and then proactively manage your contracts and contractors.

But before you get there, you need to assess and plan for risks. That means asking some basic questions. For instance, what might the repercussions be for your organization if the actions of the contractor cause an injury or a lawsuit, or if there are damages?

Many risks directly under the control of the contractor (i.e., associated with the actions of the contractor) are transferred to the contractor by way of an indemnity clause in your organization's standard contract. In contract language, this is the term that generally states: "The contractor will indemnify and hold harmless … " Essentially, this means that the contractor will reimburse you ("make you whole") for any losses it causes as a result of its performance, actions or decisions in providing a service and/or good under the contract, or it will pay those costs up front. This is a contractual promise, but it is only as good as the contractor's financial ability to back that promise.

Insurance is a means of managing the financial impact of the indemnity promise and other risk, but some contractors ask to have the insurance requirements waived entirely. There are a number of reasons why.

The contractor says it's too expensive or not necessary: Not fully understanding insurance and indemnity, you may waive insurance on the advice of a contractor who convinces you that it's too costly, not available, not worth the paperwork, or simply not needed.

Better logic: Independent contractors should be the first to encourage adequate insurance coverage, both for the organizations with which they contract, and to protect their own personal assets and finances. Ensuring that potential financial risks are covered is just sound business practice.

Best practice: Without insurance, the contractor could go bankrupt attempting to finance legal costs by itself. These provisions are intended to protect the contractor against financial hardship, in the event the contractor causes a loss or makes a mistake: the contractor's insurance will finance many of the possible losses, or pay to remedy its errors.

In addition, the contactor's insurance protects you! Without sufficient contractor's coverage, you may be drawn into underfunded third-party claims, and you may need to pay, from your own budget, for losses that the contractor causes directly to your organization.

A manager has a $50,000 signing authority: This is often a source of confusion. You may waive insurance coverage because you believe that your signing-authority level is 'enough' to cover any potential risks.

Better logic: If your standard agreement contains an indemnity clause that transfers the contractor's risk to the contractor, ask yourself why you would want to take back the financial risk, in the event that the contractor causes a loss. Insurance will cost far less than a loss might – or will it? Have you done a risk assessment?

Best practice: Do a risk assessment! Is this work that should be performed by an employee? Is there another qualified supplier who does have insurance? Is there exceptional benefit in waiving insurance provisions (leaving both contractor and your organization exposed to loss)? If there is, then consider whether or not the contractor should instead be hired as an employee, and forego the procurement process or contract. (This decision can only be considered in a direct-award situation.)

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The Risks of Waiving Contract Insurance (*continued from page 4*)

The contractor is a former employee, and so doesn't need insurance: Most organizations indemnify their employees against personal liability for actions taken in the normal course of their employment duties. And some organizations waive insurance coverage for contractors who are former employees, under the misconception that, somehow, former employees are not a risk.

Better logic: The actions and duties of an organization's employees are considered to be under the organization's control, and employees are usually covered by the organization's corporate insurance. Such control, and certainly such insurance, do not extend to an organization's contractors. If a former employee working under contract is not appropriately insured, he or she would be subject to losing personal assets – house, investments, car – to pay for such a loss, just like any other uninsured contractor.

Best practice: Think of your former employees who may be involved in contract work as you would think of any other contractor, and assess the risk of their services that way for the purposes of insurance. Price, length of contract, or status as a former employee have no bearing on risk. This procurement practice does not reflect your lack of trust in the contractor; it's not personal, it's following best procurement practices.

You put insurance requirements in your solicitation document, but the contractor wants to change them at the award stage: Without knowing exactly why you required the insurance you asked for, you might not worry about making changes. The contractor's rationale seems reasonable, and you're in a hurry, so what's the big deal?

Better logic: Other bidders may have priced their bids differently, and some vendors who did not submit a bid at all may have done so if the new insurance "deal" you were making with the successful proponent had been in the solicitation. Depending on how your solicitation was written, you may have no room to negotiate those terms.

Best practice: As part of solicitation planning, do a risk assessment of the goods/services to inform the types and amounts of insurance that will be required of the successful proponent. Include a sample agreement, including the contract-specific insurance requirements, as part of your solicitation document, with advice to your bidders that the contractor will have this insurance. Ask your risk manager for advice along the way.

Here's the bottom line: Ensuring that adequate insurance is in place is in the best interests of ***both*** the purchasing organization and the contractor. What is adequate insurance? You need to determine that in the planning stages of your solicitation, by doing a thorough risk assessment.

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This article originally appeared in the January - February 2008 issue of *The Legal Edge* (www.neci-legaledge.com). It is reprinted by permission of the publisher, NECI.➤

Hospital Corners—Quick Risk Tips

Secondary students and job shadowing or work experience in Health Care Agencies

Health Care Agencies are frequently asked by secondary schools if students may job shadow or gain work experience in health care facilities. The students often must work or attend a work site to gain enough credits to graduate. The students request health care facilities because they are interested in a career in health care and it is viewed as a recruitment tool to encourage students to pursue a career in health care. While it is positive that students, most often high school students, wish to learn more about health care, the benefits must be weighed against the potential risk of loss of confidentiality for patients of the health facility. Young students, while they may have signed a confidentiality agreement through the sponsoring school, may not fully understand the importance of maintaining strict confidence of all that they may hear or see. It may also be disturbing, especially in small communities, for patients to come in direct contact with a friend's child or neighbour in a health care setting. HCPP recommends that students be assigned only to sites in which there will be no likelihood of access to any patient information of any kind including names, addresses, or diagnoses. Students could job shadow in dietary services or maintenance areas with no access to patient information. Confidentiality of patient information in health care facilities should take precedence over the requests of non-health care students to observe or participate in health care activities.➤

Riskwise Answers

What is the difference between traditional Risk Management (RM) and Enterprise or Integrated Risk Management (IRM/ERM) ?

Traditional risk management usually focuses on adverse events that may occur in any particular area and how those risks can be controlled, or managed, to protect the assets of the organization. Risks are usually considered within their functional silos of finance, human resources, patient safety, occupational health, etc.

Because risks are looked at in isolation, traditional risk management fails to appreciate relationships and interdependency across risk categories and thereby lacks the optimization of collective risk evaluation. Because it focuses on hazard risk it does not proactively approach risk as a realistic component of opportunity.

Enterprise risk management (also referred to as integrated risk management) does not ignore or replace traditional risk management but rather, enhances it. The Province of BC, in its ERM Guideline, defines ERM as "1) the management of risk not only in conventional hazard categories, but in the full spectrum of strategic and operational risk; and 2) the adoption of risk management *throughout the organization*." It introduces a generic process that is universally applicable to managing risk in any area of an organization.

ERM is a culture where **everyone** within an organization, from managers to front line staff understand and promote a common risk management strategy. Organizations with a low threshold for risk taking can be mobilized by a robust ERM plan because it removes fear by analyzing and quantifying realistic risk factors. ERM introduces a common definition of risk and universal measurements to gauge the effectiveness of risk management efforts and aid in its value.

How familiar are you with the risk culture of your organization?

For more information contact your organization's risk manager or chief risk officer.➤

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.

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