Handle With Care

Volume 3, Issue 1 **Spring/Summer 2006**

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

In this Issue:

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.

Health Team Leader's Message

The Cascade Effect – Party or Disaster? "Imagine a black tie affair complete with a tower of champagne glasses waiting to be filled with the finest bubbly …" Intrigued? You can't afford to miss Handle with Care's 2nd part of this series on water damage. You can "pay a little now or pay a lot later!"

Also in this issue you will find articles on **human rights**, **confidentiality** and reference to Health Care Protection Program's (HCPP's) latest **Risk Notes** including the effects of soured communication "**when surveillance is turned on the caregiver.**"

Risk Buzz addresses the latest advice on risks associated with the use and operation of 15–passenger vans. **Hospital Corners** provides a quick risk tip when considering items to cover with departing employees.

RiskWise answers your questions regarding **treating foreign patients** and includes a message we want to highlight: Do you know "whoooo" your organization's **Risk Manager** is? Find out!

Your **Risk Manager** (or Chief Risk Officer) can provide you with a wealth of information on these and many other topics representing risk to you, your clients and your organization. They can assist you in providing access to resource materials, help in understanding and assessing risks and can provide you with direction should you be involved in a situation requiring HCPP's assistance.

Janice Butler, Director
Health Care Protection Program

When Surveillance is Turned on the Caregiver

When surveillance is turned on the caregiver is a new Risk Note examining some of the factors leading to declining caregiver-visitor/family relations, what steps can be taken to prevent soured communications and how to manage some of the challenges and risks involved.

The article will be of interest to all front-line patient care staff as well as supervisors/ managers and we encourage a wide circulation.

This Risk Note is an adaptation of an article first published in the BC College of Registered Nurses' publication, The Communicator. Warrington, G., When Surveillance is Turned on the Caregiver, March 2006 is reprinted in Risk Note format with permission of the author.

Confidentiality

Health Care Agencies are repositories for some of the most personal and sensitive information obtained about individuals anywhere. And for most of us, by the time we are one year old, the health system has a good deal of our personal information.

Every day Health Care Agencies in British Columbia have to deal with questions of the confidentiality of patient information or employee information. Many, if not most, organizations have internal staff responsible for dealing with information and privacy issues. The Health Care Protection Program (HCPP) regularly receives questions about confidentiality and the disclosure of information, in addition to incident reports generated as a result of breaches of confidentiality.

Some potential breaches of confidentiality are relatively straightforward: for example, the Health Care Agency employee who stops to get a coffee before heading off to see a patient and has the patient's file stolen from their vehicle. Other potential breaches of confidentiality are less straightforward.

The rules pertaining to personal information can also be complex. The collecting, storing, use and disclosure of personal information is governed in British Columbia mainly by two statutes, the *Freedom of Information and Protection of Privacy Act* (*FOIPPA)* and the *Personal Information Protection Act* (*PIPA*), as well as the common law.

FOIPPA applies to public bodies, including Health Authorities. *PIPA*, on the other hand, applies to private organizations. The common law is that law which is developed over time by the courts as they hear, adjudicate and publish their decisions. In addition, professional oversight organizations, such as the CRNBC, often have rules regarding the use and disclosure of personal information obtained by their members in the course of their professional employment.

In this series of brief articles, we will provide scenarios involving questions of confidentiality and ask you to consider how they might be resolved, before giving you our thoughts on the matter. In this way we hope to provide some basic information regarding those questions of confidentiality that you deal with frequently.

We would also appreciate receiving your thoughts on this article and any confidentiality scenarios you would like to see discussed in future issues of Handle with Care.

We'll start with a simple and, in its essence, a fairly common scenario: A patient is in a motor vehicle accident. She is treated at the Hospital and after a week's stay, is released. The nursing staff who cared for this patient recall her quite well because of her vivacious character and, shortly after her release, an article is published in the local newspaper about her, the motor vehicle accident and her miraculous recovery. The newspaper article provided a lot of detail about the patient's condition, her treatment and the continuing effects of the injuries on her.

About a year later, someone claiming to be an adjuster from ICBC calls one of the nurses who cared for the patient. She says she is investigating the patient's accident and subsequent injuries because the patient has filed a lawsuit against the other driver. The adjuster says she mostly wants to confirm some of the clinical information that was already published in the newspaper, and, if possible, obtain more information about the patient.

What should the nurse do?

Once you've had a chance to consider this, please turn to page 5 for HCPP's advice.➤

Confidential Information

Human Rights Code –Personal rights may end at death

On December 1, 2005 the Court of Appeal released its reasons in *British Columbia v. Goodwin*, also known as the Gregoire decision, published at 2005 BCCA 585.

In this case, the complainant Gregoire had filed a complaint on behalf of her son Goodwin. They had alleged discrimination under s. 8 of the Human Rights Code (the Code) but Goodwin died before the actual hearing date. The mother, as representative, wished to continue the claim on behalf of the deceased.

The Human Rights Tribunal ruled that it had jurisdiction to allow the matter to proceed. The province then applied to quash the tribunal decision, and was successful in convincing the BC Supreme Court to do so. The BC Supreme Court held that the rights established by the Human Rights Code were personal and abated on the death of the person whose human rights had been breached.

Gregoire then appealed to the BC Court of Appeal. In a 3:0 decision the court unanimously adopted the BC Supreme Court judge's reasons. The Court of Appeal said that the Code established **personal rights.** In order for a representative complaint to be filed there had to be an individual person or a group or class of persons. Further, the human rights protected by the Code and the remedies to be granted were available to a person. If there was no person, then there was no one on whose behalf a complaint could be filed, and there was no one who was being discriminated against.

To view the court decisions go to www.courts.gov.bc.ca and search under "Gregoire"

To view the tribunal decision go to: www.bchrt.bc.ca

Stay tuned as the Supreme Court of Canada may still give a final ruling on this issue.

The Importance of Due Dilligence in Managing Water Damage— The Cascade Effect—Part 2 of a series

Party or Disaster?

Imagine a black tie affair complete with a tower of champagne glasses waiting to be filled with the finest bubbly. The cork is popped, the attendant begins to pour into a single glass at the top of the pyramid. As that glass is filled, it overflows into the glasses below it. Each layer in the descending structure of the glass pyramid contains more and more glasses to catch the champagne and overflow. The more glasses; the more champagne poured - the better the cascade effect.

Now picture a six-storey hospital with a burst sprinkler pipe on the top floor. If unchecked, the escaping water will spread throughout the 6th floor, then find its way through to each of the floors below, causing ever increasing amounts of damage. The bigger the pipe; the higher it is in the building; the greater the pressure; and the longer the time – the more disastrous the consequences.

In order to make sense of these images in the context of risk management in health care facilities this article will outline for you two true case scenarios. At first glance, one may appear to describe a condition requiring more urgent attention than the other. In reality, the risks are more similar. The approaches taken will most certainly have a bearing on whether the facility pays a little now or pays a lot later.

Surrey Memorial Hospital suffered $600,000 in damage due to the failure of a joint between two 6" diameter sprinkler pipes located in a main floor ceiling space. Although the flow was stemmed promptly, a large amount of water escaped resulting in a three day closure of the ER, cancellation of

(Continued on page 4)

The Importance of Due Dilligence in Managing Water Damage—The Cascade Effect—Part 2 of a series (Continued from page 3)

many surgeries and diagnostic procedures, damage to medical imaging equipment and to the pharmacy, records department, and adjacent areas, some flooded to a depth of several feet. The Health Care Protection Program appointed an engineer who determined that the mechanically coupled joint failed due to a groove which had been poorly machined in the end of one pipe. Inspection of other randomly selected joints showed a high percentage of poorly formed grooves. It became clear that there was a high risk of future failures.

A risk assessment considers the likelihood and the consequences of something occurring which will interfere with the operations of the organization. Surrey Memorial conducted a risk assessment and determined that the likelihood of a future failure is high (the defective joints will almost certainly fail) and the consequences will be severe (the pipes are large, pressurized and situated in a critical environment). It also became apparent that the failure could take place on an upper floor, resulting in a cascade effect that would make the present incident seem minor. After further analysis, the Health Authority made the sensible decision to replace all of the 4" and 6" sprinkler pipe in the hospital. The Health Authority chose to pay a little now - about $300,000, rather than pay a lot later – perhaps several million dollars.

In another incident, a water escape occurred at the Royal Jubilee Diagnostic and Treatment Centre when a cast iron fitting on a 1" hot water line burst in the interstitial area located above the 3rd floor. The water spread, then flowed through various perforations and rained down upon the patient recovery area in the cardiovascular unit below. In this case, the clean up and restoration costs were just over $82,000. Prompt action by Health Authority staff was an important factor in keeping the costs down.

This incident may seem relatively minor, the kind that is easily fixed and forgotten. However, the risk analysis of this incident looked at many other factors, including:

- The building has a floor area of about 360,000 square feet, more than half of it interstitial space devoted solely to mechanical services. There are miles of water piping – for sprinklers, potable water, heating and cooling, drains and sewers. What is certain is that one of them will burst at some point. What is uncertain is when and where, and how large the pipe will be.
- The interstitial floors were built without any floor drains; however, they have many perforations in them. This contributes to the flow of escaping water into critical areas.
- Being a Diagnostic and Treatment Centre, the building is not heavily utilized at night or on weekends. It could take quite a while before a water escape is discovered. The centre houses Royal Jubilee's Emergency Ward, Intensive Care Unit, all 19 of its operating rooms, 24 medical imaging units including an MRI, two CT scanners, and two Heart Cath. Labs. And, of course, there are patients in critical care situations.

Based on these facts one could easily conclude that the main reason this was not a cascade catastrophe was…luck. Contrary to first impressions, this situation also has a high likelihood that future incidents will occur and that the consequences will be severe.

"Pay a little now or pay a lot later"

The Health Authority is presently exploring effective solutions that will allow them to pay a little now, rather than pay a lot later.

In summary, when considering what can reasonably be spent to mitigate a loss that may or may not happen, health care facilities must take a holistic view and look at the big picture. Water is a destructive force. The more damage, the more time it takes to address, often resulting in exponential cost increases due to mould, shortages of qualified technical personnel, and other logistical issues.

Let's try to limit the cascades to party champagne.➤

Riskwise Answers

Our facility sometimes treats patients who are not residents of Canada. How does Health Care Protection Program (HCPP) respond to lawsuits which are brought outside of Canada? Do we need to have patients who are not residents of Canada sign a jurisdictional agreement before we can treat them?

HCPP has not currently added a territorial limitation to its coverage and, therefore, will respond to lawsuits brought outside of Canada. However, as a risk mitigation strategy, we recommend that health care facilities have patients who are non-residents of Canada complete a governing law and jurisdictional agreement for the benefit of the facility. Note that, ***in all cases, the signing of a governing law and jurisdictional agreement should not delay the provision of urgent care.*** Failure to have this agreement signed will not void the coverage provided by HCPP. In some cases, physicians may ask to be included in the facility's governing law and jurisdictional agreement as part of the admissions procedure. Since the facility is likely to be drawn into claims made against the physician in any event, this practice should not cause concern for the facility.

HCPP has developed a Risk Note on this subject, including a sample governing law and jurisdictional agreement. This document can be found on the HCPP website or by contacting your organization's Risk Manager or Chief Risk Officer for a copy.➤

Confidentiality (continued from page 2)

As everyone who has dealt with confidentiality knows, there is rarely one clear cut answer to a given scenario. The following discussion is based on advice HCPP would give to the scenario on page 2.

The ICBC adjuster is not prohibited from asking the nurse for the information sought. Even a patient who is suing a nurse may ask that nurse for information. However, a lawyer is prohibited from asking the nurse for information if the nurse is represented by legal counsel. The lawyer must ask the nurse's legal counsel for any information sought. A lawyer is under a professional duty to identify him or herself as a lawyer representing a particular party. Others may not be bound by such a duty.

The nurse should first find out who the adjuster is, who they represent, what information they want and why. The nurse should refuse to provide information over the phone, and not promise to provide information, but advise the adjuster that someone will get back to her.

The nurse should advise her manager and risk manager of the request. The risk manager will contact HCPP if there is a concern the Health Care Agency will be brought into the lawsuit. It can then be determined whether any requested information can be released and in what form. For example, the adjuster may be asked to send in written questions and a response, if any, provided in writing. The response will only be able to disclose that information that is not confidential, unless appropriate authorizations (such as the patient's consent) are in place allowing the disclosure of confidential information.

The nurse must keep in mind what information is confidential. It does not matter that clinical information was published in the local paper. The previously disclosed information is still confidential and cannot be disclosed without the appropriate authorization. Even an acknowledgment that the patient was a patient is a breach of confidentiality. The adjuster may eventually obtain the nurse's evidence by either providing an authorization from the patient, applying for a court order, or using other available procedures in the litigation process for obtaining the testimony of witnesses.

If the nurse knows the patient from outside the hospital context, the nurse is entitled to convey information not provided as part of the patient – nurse relationship. Should he or she do so, the nurse must avoid providing confidential information without appropriate authorization. They must also realize they may be called as a witness in court proceedings and that the information they provide to the adjuster will form the basis of questions asked of them.

All Health Care Agency staff should be aware of their obligations to maintain confidentiality of patient information. ➤

Human Rights Reporting and Deferral

In other Human Rights news please remember to report all BC Human Rights Tribunal (BCHRT) complaints as they are most likely included in program coverage!

In most instances the Health Care Protection Program (HCPP) will want to at least review the circumstances of the specific situation (and, where there is coverage, appoint counsel and defend the complaint at our cost). This is even true where a complainant has sought remedies through other mechanisms, such as a grievance and/or an internal human rights complaint pursuant to a collective agreement.

Where there are parallel or prior processes, it is possible (maybe desirable) to apply to defer the hearing of the complaint UNTIL the other processes have concluded.
Rule 26(5) of the BCHRT's Rules of Practice and Procedure sets out the requirements in applying for a deferral.

In *Young v. Coast Mountain Bus Company*, 2003 BCHRT 28 and *Huppie v. Fording Coal Limited*, 2003 BCHRT 29, the Tribunal set out factors upon which it would decide whether to defer a complaint.

Those factors include: the subject matter and nature of the other proceedings, the adequacy of remedies in the other proceedings, concerns about unnecessary duplication of proceedings, the drain the proceedings may have on institutional resources and the parties' resources, fairness to the parties and ensuring a timely resolution of disputes.

Applications to defer were successful in the following cases*: O'Brennan* v. *K.L.M. Industries*, 2005 BCHRT 95; *Dyck v. Vancouver Coastal Health Authority et al* 2005 BCHRT 338; *Parks v. Kemess Mines* 2005 BCHRT 370; and *Barberie v. Vancouver Coastal Health Authority* 2005 BCHRT 384.

As stated by the Tribunal in *Villella* v. *City of Vancouver and others*, 2005 BCHRT 6 a deferral does not result in the dismissal of the complaint. In order for the Tribunal to dismiss a complaint on the basis of an arbitration (for example) it must be satisfied that "the substance of the complaint has been appropriately dealt with" in that proceeding. If, for any reason, the arbitration fails to deal appropriately with the substance of the complaint, the complaint before the Tribunal will continue.

For further information, or to review the BCHRT rules and cases mentioned above, visit www.bchrt.bc.ca and scroll through the menu on the left side of the page.➤

Links of Interest and Dates to Remember

Risk Management: "The process of identifying, assessing and controlling risks arising from operational factors and making decisions that balance risk cost with mission benefits".

2006 RIMS Canada Conference, Calgary , Alberta—September 17 to 20, 2006
http://www.rims.org/chapterwebsite/cwpreview.cfm?cwid=5651

Canadian Patient Safety Institute
http://www.patientsafetyinstitute.ca/index.html

Halifax 6: The Canadian Healthcare Safety Symposium—October 19—21, 2006 In Vancouver
http://www.buksa.com/conferences/Halifax/H6_Sponsor.pdf

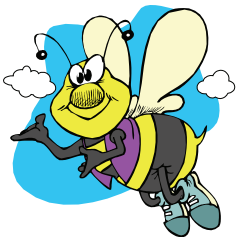
Hospital Corners – Quick Risk Tips

The **administration of employee benefits** is a complex, difficult job. Did you know that departing employees can convert their life insurance to a private plan? Many employees choose to convert on termination of their employment, especially if they have had a significant illness and may not qualify for new private insurance. This opportunity to convert is not limited to retiring employees, so be sure to check your group life coverage for applicability to all departing employees.

The Health Care Agency faces liability if employees are not informed of this option when leaving their employment. In our experience, life insurance carriers are not prepared to extend the opportunity retroactively. In several cases HCPP has had to pay out funds on behalf of a facility that would otherwise be paid by the life insurance carrier.

We recommend that you consider adding this issue to your checklist of items to cover with departing employees.➤

Risk Buzz



On May 26, 2005 the National Highway Safety Administration (NHSTA) issued an **updated safety advisory on 15-passenger vans** following the conclusion of a tire pressure study. The results of the new research reinforces the existing concerns related to the unstable handling characteristics and increased prospect of a rollover crash in 15-passenger vans. The 2005 advisory marks an unprecedented 4th warning from NHSTA in the past five years. US Federal Law now prohibits the sale of 15-passenger vans for school related transport of high school age and younger students.

While similar prohibition does not yet exist in Canada drivers should be aware of and do as much as possible to mitigate the risks of a rollover crash, irrespective of the age of their passengers. When contacted for an update, Transport Canada advised that they have done no follow-up work on the subject since their last research was done in 1997 and 1998 in Ontario. They did, however, advise that most if not all 15-passenger vans are now available with Electronic Stability Control systems. These systems are designed to assist the driver in maintaining control of the vehicle in emergency manoeuvres.

15-passenger vans are convenient, but drivers and passengers have to use extra caution. The risks associated with 15-passenger vans can be minimized if users take some basic safety precautions including mandatory safety belt use, experienced drivers, checking of tire pressure at least once a week and no placing of loads on the roof of the vehicle. When a 15-passenger van is not full, passengers should sit in seats that are in front of the rear axle.

Please go to the Health Care Protection Program (HCPP) website for an updated copy of our Risk Note on 15-passenger vans or contact your organization's Risk Manager or Chief Risk Officer directly for a copy.➤

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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