HANDLE WITH CARE

Volume 8, Issue 1 **Spring/Summer2011**

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

In this Issue:

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Health Team Leader's Message

This edition of Handle with Care showcases the diversity of our operations here at HCPP. A full spectrum of risk issues is what we expect in the complex and constantly changing environment of healthcare operations.

Our support of the Provincial roll-up of risks related to the 2010 Olympic Games is summarized in the article ***ERM and the 2010 Olympics.*** With the hindsight of a year now passed, the value of being able to identify and prioritize risk from such a high-level lens is evident and will provide groundwork for future risk management initiatives with Provincial implications. Thank you to all of our clients who assisted us in the reporting necessary to inform this project!

Property losses are an ongoing reality in health care and often preventable. Read our ***Hospital Corners*** article about using good sense when making decisions around storing costly vaccines and other medications – a loss which happens all too frequently. "Prevention provides the best medicine" is an apt opening line.

In our ***Claims Abstract***, we share with you a case involving installation defects related to a sprinkler system and what the outcome and recovery was. "Subrogation" may be a technical insurance term but what it means for health care agencies is that HCPP will rigorously pursue recovery from those who are responsible for causing damage, both for itself and the HCA.

We also draw your attention to a brief overview of ***Waivers, Releases and Disclaimers*** for those whose interest extends to contractual risk transfer and the weight of the written word. Case law in relation to these historical methods of transferring risk and avoiding liability has recently shifted. Another sign of the changing landscape.

And finally, we announce the release of a toolkit for health care agencies who work with ***Section 51 of the Evidence Act***. No small task, this project reflects years of consultation and discussion among stakeholders around a piece of legislation that presents complicated challenges.

As always, we welcome any suggestions for future articles, risk tips you would like to share or initiatives you may like to showcase. Please do not hesitate to send your comments/suggestions to us at HCPP@gov.bc.ca.➤

Linda Irvine, Director—Client Services
Health Care Protection Program

HCPP Orientation

HCPP extends a standing invitation to HCA's risk management, patient safety and/or board staff to visit our office for an orientation of the HCPP Program and the Risk Management Branch and Government Security Office itself. It is also a nice opportunity to meet our staff.

We have a comprehensive orientation plan that introduces clients to the HCPP Program, advisory and consulting services, claims and litigation management, loss control and enterprise risk management.➤

ERM and the 2010 Olympics

It's been a year since the Province of BC hosted the 2010 Winter Olympic Games. The Games were considered by many to be a huge success, leaving a lasting impact on the Province. Helping to support the success was the largest Enterprise Risk Management (ERM) project ever undertaken by the Province. The project was spearheaded by the Risk Management Branch and Government Security Office (RMB) whose team collected, collated, analyzed and communicated on more than 300 risks and 400 mitigation strategies from 29 provincial government entities. The health care sector was key in informing this ERM process with the BC Ministry of Health Services, BC Emergency Management Commission (including BC Ambulance Services), and four of the six Provincial Health Authorities participating.

The Olympics risk register provided understanding and insight into the risks and opportunities associated with the massive undertaking of hosting the Games. RMB, acting in the centralized role of Chief Risk Office, made a decision to depart from more traditional risk management concepts when identifying and assessing risk. Rather than identify risks within categories such as financial, reputational, legal, etc., each participating entity was asked to think about risk in relation to three basic objectives: 1) the entity's ability to provide services to the Games (e.g. water and food safety inspections at Olympic venues); 2) its usual delivery of service to BC citizens (the day-to-day operations – "business as usual"); and 3) the development of Olympic related programs (e.g. community "healthy lifestyles" initiatives). By beginning with the objectives in mind and not fussing over how to categorize them, entities found risks were much easier to identify. Categorizing them came later and was done at a higher level of participation.

RMB also adopted a format that was more intuitive for users and drove-out better risk statements. Entities were asked to identify a risk event and then think separately about what might cause the event to happen and what its impact on objectives would be. By using this "event-cause-impact format", entities did not lose sight of objectives and were able to develop better mitigation strategies tied directly to cause and impact of events.

It is important to recognize that entities were not asked to assess these risks against Provincial objectives, but rather against their own objectives. This kept the process more meaningful for the individual organizations but also allowed RMB, in its central role, to assess the cumulative effect on Provincial objectives.

The discrete separation of event, causes and impacts enabled RMB to identify common risks and interdependencies across the various reporting entities. For example, "traffic congestion" was a risk event identified by many entities, but had varying degrees of impact depending upon the objectives of the individual entity or program. For some, the individual impact may be minor, but when considered across all entities, the impact on Provincial service delivery objectives was significant.

Because it collated all reported risks, RMB was able to adjust risk severity and co-ordinate mitigations strategies. For example, some employees were able to work remotely, continuing to deliver essential services from temporary locations (e.g. family social services), which helped eased traffic flow for others whose services could only be delivered from the worksite (e.g. emergency room staff). The coordinated approach helped achieve the overall Provincial objective of uninterrupted service delivery across all programs it provides.

RMB reported every two weeks to senior decision makers using a "top risks" narrative and quick "dashboard" format which was supported by the complete updated risk register. Risks were assigned a target rating depending upon the tolerance set by the Province. As mitigation strategies were implemented, the reported "current" risk ratings moved closer to their "target". Thus, the risk register became a living tool, able to monitor and manage risk, truly informing decision makers and providing evidence that risk was being effectively managed within set tolerance levels. Because the risk register was not static, it captured emerging risks and recognized that other risks may need elevation or downgrading. This meant that planning and preparedness of each participating entity and the Province overall was better informed, allowing more efficient allocation of resources as the risk profile of the Games evolved.

Additionally, RMB recognized that the Province's

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ERM and the 2010 Olympics *(continued from page 2)*

ERM work needed to mesh with similar work being done by the Vancouver Olympics Committee (VANOC). RMB provided continued oversight of the VANOC risk register, ensuring coordination with the Provincial risk register. This was made easier by VANOC's use of the same framework as RMB .

While the Games were not "risk-free", the certainty and comfort provided by a comprehensive ERM approach allowed the Province to proceed with confidence, knowing that risk had undergone a rigorous assessment and management process. Perhaps the most tangible evidence that ERM provides value to Olympics Games management is that it has been adopted by future Games committees. Recognizing the key role ERM played in the successful 2010 Winter Games for both VANOC and the Province , the London 2012 organizing committee is using an ERM framework to inform its own decision making processes.➤

Sharon White, CIP, CRM
Senior Risk Management Consultant

Risk Wise Answers

What is the difference between a Waiver, Release and Disclaimer? Are they effective in transferring risk?

A waiver and release are very similar and generally have the same effect in a contract. Both attempt to relieve one party to an agreement from a responsibility or obligation that it may otherwise have. With a waiver, one party agrees to voluntarily give up a right that it has (i.e. the right is waived). A release means that one party is relieving the other from an obligation or responsibility. Both are often used when there is some risk associated with an activity that could appropriately be assumed by the individual undertaking that activity. For example a community care client agrees to waive his/her right to claim against a health care agency (HCA) and/or release the HCA from any claims in exchange for permission to participate in a recreational program. It is possible that injury could result for reasons that are not the fault of the HCA and it is reasonable to expect the participant to assume responsibility for these.

A disclaimer is used by a party seeking to be relieved of a responsibility or obligation related to the subject of the disclaimer. A common example would be with respect to the donation of used medical equipment – the health care agency may disclaim any warranty of merchantability or fitness of purpose (obligations which usually exist when distributing or supplying a product). Disclaimers are often used in conjunction with a waiver or release. For example, the HCA disclaims any responsibility for personal property of a resident in a long term care facility and the resident agrees to waive its right to make a claim against the HCA for loss of such property.

While the use of waivers and releases has historically been of somewhat limited value, a shift is occurring in Canadian courts to recognize that waivers can be enforced where it is demonstrated that the individual understood the consequences of a waiver and chose to proceed with the activity (and the waiver) in any event. This supports the concept of informed consent – if the risks are understood and assumed by the individual providing the waiver, others should be able to rely on the waiver.

It is important to note that a parent or guardian cannot waive the rights of a minor (although the parent or guardian can waive their own right to claim). It is also important to recognize that waivers/releases/disclaimers will not generally be enforceable where the loss arises from gross negligence or wilful misconduct of the other party.

Even if a waiver/release cannot be enforced at law, there is often value in their inclusion in an agreement. It will alert the party granting the waiver/release that possible risks are associated and helps demonstrate thoughtful consideration of the undertaking.➤

Sharon White, CIP, CRM
Senior Risk Management Consultant

Hospital Corners— Quick Risk Tip

Refrigeration Unit Failures that Cause the Loss of Medicines, Vaccines, and Other Drugs

It is commonly said *"Prevention is the best medicine" but in this case it may be* better to say "Prevention provides the best medicine." All Health Care Agencies (HCAs) have certain medical supplies requiring storage in refrigerated units which have a controlled environment and regulated temperatures. When this environment is suddenly disturbed or power is lost, it is not uncommon for HCPP to receive a claim as the costs from such a loss can be substantial. These claims can range in value from tens of thousands to hundreds of thousands of dollars which are subject to the HCAs $10,000 deductible and standard coverage exclusions under the Program.

The most common causes of this type of loss that we come across at HCPP is the refrigeration unit is older and failed, a tripped circuit breaker caused a power loss or the alarm system failed.

To help prevent such a loss, we recommend the HCAs have the following mitigations in place:

- When applicable, the storage unit should be specifically designed for medicines or vaccines that require a controlled environment;
- Be sure the electrical line is dedicated (i.e. nothing else is plugged into the same line or outlet) as per the manufacturer's recommendations or to building code to help prevent circuits from being overloaded causing electrical failure;
- Always be cautious if you are using an extension cord. If required, follow the manufacturer's recommendations or consult with a qualified electrician;
- Check with your facilities expert to see if there is a backup electrical system in place (understandably, this may not be available in all circumstances);
- Confirm the location and venting for the unit is appropriate as this may be an important requirement for its proper operation. Again, follow the manufacturer's recommendations and/or consult with an expert;
- Make sure the environmental settings are set correctly for the specific medicines or vaccines;
- Ensure there is a regular scheduled cleaning, equipment maintenance and replacement program in place. All cleaning and maintenance should be performed by a qualified person following the manufacturer's recommendations as well as recorded in a detailed log for reference;
- Should the unit stop operation for any reason, an alarm system should be in place and tested regularly to ensure it is: 1. operational; and 2. received by someone who can respond as occasional failures should be anticipated; and
- Should a facility not have a backup generator and the loss of any medicines or vaccines caused by the failure of an climate controlled refrigeration unit be critical, a backup plan should be in place which may possibly include: 1. making sure a transport vehicle with appropriate refrigeration is available upon notice; and 2. ensure arrangements are premade with an alternate facility to receive any critical medicines or vaccines having the necessary storage equipment. Both of these back up plans should be available on a 24 hours basis.

This list may not be exhaustive so we suggest each HCA contact their own experts in this area to determine any mitigations strategies or plans that best suit your equipment and/or medical storage needs. It is also important to remember the risks from a climate controlled refrigeration unit failing could go beyond the loss of just the medicines or vaccines. For example, if a large loss occurred during a pandemic where medicines or vaccines are in very short supply, this could create public health or reputational risks for the HCA possibly requiring senior executive or a Ministry response if newsworthy.➤

Jeff Milne CIP, CRM, ABCP
Risk Management Consultant

Claims Abstract— Identifying a Systemic Construction Defect Pays Off

Every time Health Care Protection Program (HCPP) handles a property claim for damage to a Health Care Agency (HCA) facility, we work with our client to determine the cause of the loss. Knowing the cause is essential to answering three questions:

1) Is the loss covered by HCPP?

2) What, if anything, can be done to prevent similar losses in future?

3) Is some outside party responsible for the loss and if so, can we recover the cost from them?

The claim discussed in this article is a great example of how this process can benefit the HCA, HCPP, and ultimately, the taxpayer.

The Event
In May of 2005, a BC Hospital suffered heavy water damage in a building caused by the failure of a 6" diameter sprinkler line. Luckily, the pipe was in the ground floor ceiling space rather than an upper floor, or the disruption to medical care and the property damage would have been much, much worse. As it was, the Emergency Room was shut down for 3 days, 25 surgeries and 50 diagnostic procedures were cancelled, the pharmacy and medical records departments and the elevator shafts were flooded to a depth of several feet.

Restoration costs paid by HCPP totalled just under $550,000.

The Cause - Defective Sprinkler System
The sprinkler system was installed during construction of the building, some four years earlier. The joints between pipes were assembled using Victaulic brand cast iron couplings, designed to physically engage with grooves roll-formed near the end of each pipe. The failure occurred at a joint where the pipe end broke and separated at the outboard edge of a groove.

HCPP's engineer determined that the pipe end was grooved too deeply and was so weak that it eventually separated due to normal system loads.

The separation of the pipe end left no mechanical engagement with the coupling, allowing water pressure to force the pipes apart.

Although only one joint had failed, it was likely that other joints were similarly defective. Prudence dictated that further inspection be carried out despite the cost, disruptions, and interruptions to the fire suppression system.

The sampling of joints inspected showed numerous defective groove profiles, in both 6" and 4" pipes. The defects involved the entire system.

Loss Prevention
Through common sense analysis it was clear that:

- more failures were almost a certainty;
- water escapes on the upper floors would result in damages many times greater than the current loss; and
- the $400,000 cost of replacing all of the 4" and 6" sprinkler pipe in the building was money well spent (even though the cost of fixing faulty work is not covered by HCPP).

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Claims Abstract *(continued from page 5)*

The HCA did the right thing – they carried out the piping replacement.

Recovery Litigation
Legal counsel was retained by HCPP and HCA to sue the contractors involved in the original construction. The matter was successfully resolved in a pre-trial mediation with a recovery of $775,000, about 85% of the total spent on the water damage restoration and the pipe replacement.

The Pay Off
Often, we see losses caused by a faulty plumbing, building envelope, or other building system where, as in this case, there is the potential for more losses in future – but our client chooses to repair only the immediate problem, rather than addressing the systemic defects. Sometimes this is the most cost effective approach, but sometimes the result is a series of losses and expenses over a period of years, with no recovery from those responsible for the defects.

In this case, the HCA did the right thing – they recognized a systemic construction defect that needed fixing, and they found the money to fix it. Because it was done in a timely fashion and in conjunction with the water damage claim, HCPP was available to manage the litigation and recover nearly all of the costs, to the benefit of the HCA, HCPP, and ultimately, the taxpayer. ➤

Blair Loveday, Senior Claims Examiner

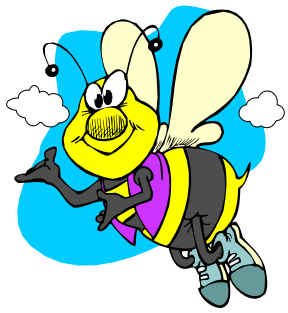
Risk Buzz

In August 2009, HCPP gathered together a group of risk management and patient safety leaders to begin the task of developing a Section 51 Toolkit for Health Care Agencies. Inspired by a similar Toolkit produced by the Ontario Hospital Association, HCPP recognized that although legislative protection from disclosure varies across the country, the need to educate Health Care Agencies (HCAs) on the practicalities of working within the legislation does not.

A 'Just Culture' is one that continually strives for a reasonable balance between the creation of an environment of safety and trust for patients and their health care providers to one that seeks to undercover root causes, determine responsibility, assign accountability and correct mistakes so the potential for adverse outcomes is reduced.

While we present this information in the form of a Toolkit, it is important to understand that Section 51 itself is not a "tool". It is not used at the discretion of the HCAs but is purpose-driven, and applies regardless of a subsequent decision not to apply it. Fundamentally, it protects some information related to health care quality investigations from unfettered access and particularly from access by litigants. It does not allow for the avoidance of responsibility for negligence, rather, it supports the creation of a confidential environment in which persons engaged in the delivery of health care can collect, analyze and share information about an incident or event in the interests of quality care and patient safety without fear it will be used against them in a legal proceeding.

After long consultation and development involving many stakeholders, we are pleased to announce the release of our Toolkit in January 2011. We hope HCAs will find it helpful in their ongoing efforts to create a 'Just Culture'. The need to find balance will always be there. ➤



HCPP Publications

HCPP regularly produces written risk management advice in the form of **Risk Notes**. With over 60 Risk Notes on the HCPP website chances are you've read one or two, but did you know that we also write **Claims Notes** and other forms of **publications**?

In the last year we have released six updated/new **Risk Notes**:

- Charting Tips
- The Risk Management Process
- Registered Midwives with Hospital Privileges and Access to Health Records
- Representation Agreements
- Template General Service Agreement

Two new **Claims Notes**:

- Responding to Privacy Breaches and Claims Implications
- Charting Reflections by Claims Counsel

And six other **Publications**:

- The Program and Practice Guide
- Section 51 Toolkit
- Section 51 Brochure
- HCPP Obstetrical Reporting Guidelines
- HCPP Insurance Matrix
- HCPP Stewardship Report

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

Risk Management Conferences

- **2011 Rims Canada Conference** September 18-21, 2011 Ottawa, Ontario
  http://conference.rimscanada.ca

- **2011 Western Regional RIMS Conference** October 3-6, 2011 Las Vegas, Nevada
  http://2011rimswrc.webs.com

Links of Interest

- Risk Management Magazine
  http://www.rmmagazine.com/

- Canadian Risk Management (CRM) Program
  Simon Fraser University offers evening courses toward CRM designation in downtown Vancouver and downtown Victoria. For more information call them at 778-872-5095, see http://www.sfu.ca/cstudies/mpprog/business/risk/ or send and email to mpp-infor@sfu.ca

- University of Northern British Columbia offers weekend courses toward the CRM designation in Prince George. For more information call them at 1-866-843-8061, see http://www.unbc.ca/continuingstudies/certificates/riskmanagement.html or send an email to cstudies@unbc.ca.

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 Health Authorities 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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We Need Your Feedback!

What do you think about "Handle With Care"? We always love to hear your comments. Please send us your feedback!

Are there any topics you would like us to cover? Email us at HCPP@gov.bc.ca

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