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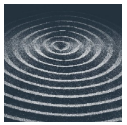
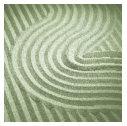
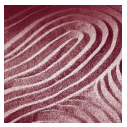
Strategies to Manage the Difficult Client/Family Member

Kathryn Frelick
January 11, 2007

Background

- Organizational/professional goal → provide quality client care
  - Limited resources/many demands

- Individual demands/behaviours →
  - Compromise ability to provide care
  - Negative effect on staff, organization, other clients

Situations are fact-specific

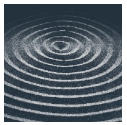
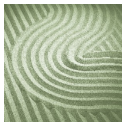
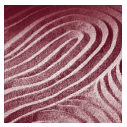
- Depends on individual (i.e. client, SDM, visitor)
- Nature of organization/professional relationship
- Depends on specific behaviour

Common Types of Inappropriate Behaviour

- Abuse and Harassment
  - Emotional, verbal, physical, sexual
- Non-compliance
- Excessive/inappropriate demands
- Actual interference in care

Presentation Overview

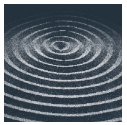
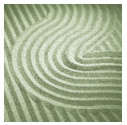
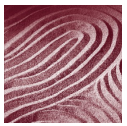
- Organizational and professional obligations
- Strategies to manage difficult clients/SDMs/family members
- Potential legal options

Organizational Responsibilities

Overriding duties:

- Ensure quality of client care
- Protect safety of clients, staff and others
- Ensure safe workplace environment

Organizational Responsibilities

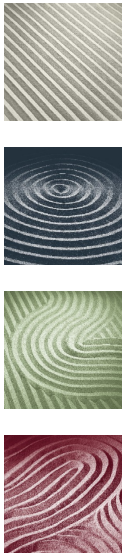
How accomplished:

- Create culture of safety → i.e. position statement, policies and procedures
- Resources → i.e. training and education, staffing, contingency plans
- Communication processes → i.e. prevention and support, reporting and investigation

Professional Responsibilities

- Health professional obligations vary
  - Practice Guidelines (i.e. Nurse Abuse)
  - Ability to withdraw
  - Obligations owed to client and others
- Expected to comply with obligations of employer
- Expected to comply with professional obligations

Organizational and Professional Obligations

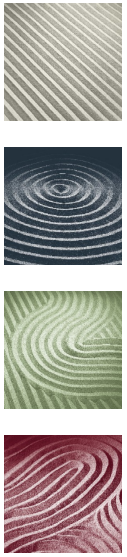


- Not always identical and may at times conflict
- Determine appropriate level of response
- Develop coordinated strategy

Strategies to Manage the Difficult Client/SDM/Family Member

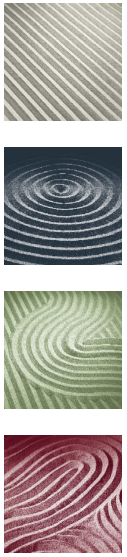
- Ensure that you are communicating with the appropriate individual(s)
  - Authority to make decisions
  - Authority to share information
  - Support for client/health care team

Strategies to Manage the Difficult Client/SDM/Family Member



- Consider development of detailed plan of treatment
  - Capacity fluctuations
  - Unrealistic expectations
  - Changing expectations

Strategies to Manage the Difficult Client/SDM/Family Member



- Establish communication strategy to ensure consistent messaging, set limits and manage expectations
  - Designated individual(s), availability and manner of communication
  - Refer back to designate(s)

Strategies to Manage the Difficult Client/SDM/Family Member

- Utilize client/family meetings and conferences to identify concerns and manage expectations
  - Address concerns directly
  - Set out expectations
  - Document as appropriate
  - Follow up in writing, as appropriate

Strategies to Manage the Difficult Client/SDM/Family Member

- Offer institutional or other support services (i.e. pastoral care, social work, counseling) to the client, SDM or family member
  - Manage stress and frustration levels
  - Manage expectations
  - Determine plan

Strategies to Manage the Difficult Client/SDM/Family Member

- Consider whether a "behavioural contract" with the client or SDM may be effective
  - Set out expectations/appropriate behaviour
  - Individual to agree to abide by terms
  - Identify consequences for failure to comply

Legal Options

- Consider contacting legal counsel early on:
  - Identify your legal rights and obligations
  - Identify possible options and solutions
  - Solicitor and client privilege – investigations and communications

Police Assistance

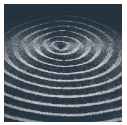
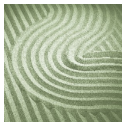
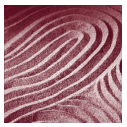
- Contact police if immediate safety concern, threat or illegal activity
  - Most organizations have policies re: contacting police
  - Individual may lay criminal charges or police may do so independently
  - If threat, police may place restrictions on individual (i.e. peace bond)

Immediate Options

- Exercise powers under trespass legislation
  - Public hospitals and other health care facilities are private property
  - Ask individual to leave
  - Exception → emergency treatment

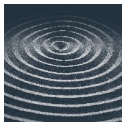
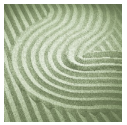
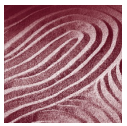
Trespass

- If longer term, preferable to provide written Notice Prohibiting Entry
  - Set out limitations/restrictions
  - Communicate process if concerns
  - May have security requirements
- Assistance from police to enforce
- Communicate within organization

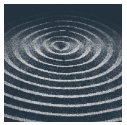
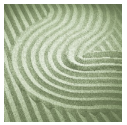
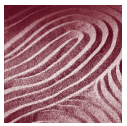
Peace Bond

- Individual may obtain peace bond:
  - Enforceable order under the *Criminal Code,* to restrain an individual from having contact, as specified
  - Reasonable grounds to fear that individual will cause personal injury to self or family, or damage property

Legal Options

- Identify whether specific behaviour is illegal or otherwise actionable
  - cease and desist letter
  - commence legal proceeding (i.e. defamation)
  - pursue criminal charges

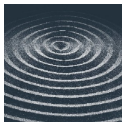
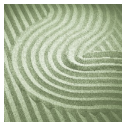
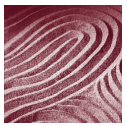
Consent and Capacity Board

Consider recourse to CCB:

- SDM is not acting in accordance with the client's prior capable wishes or best interests (treatment, admission to care facility, PAS)
- Clarification of wishes
- Appointment of representative

Investigation of Abuse

- PGT has obligation to investigate allegations of potential abuse (financial and personal care) where individual is incapable and is at risk of serious adverse effects
- May bring guardianship application

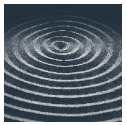
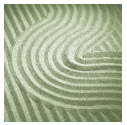
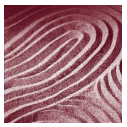





Child Abuse

- Obligation to report suspicion of child abuse or neglect and information upon which it is based to Children's Aid Society
- Ongoing obligation

Transfer/Discharge/Discontinue Services

- Ability to transfer, discharge or discontinue services will depend upon the organization/ professional
- Must consider legislative, professional, ethical and contractual obligations, if any

Conclusion

- Current reality
- Proactive strategies
- Early identification of issues

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Legal Considerations When Outsourcing

Karima Kanani
February 8, 2007

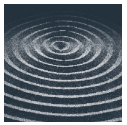
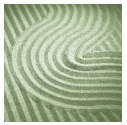
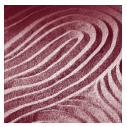
Agenda

1. What is Outsourcing?
2. Identifying an Outsourcing Supplier
3. Preliminary Legal Issues to Consider
4. Key Parts of an Outsourcing Contract

What is Outsourcing?

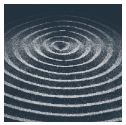
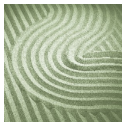
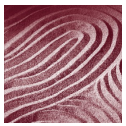
Involves a healthcare facility entering into a long-term service contract with a supplier for the provision of a service that would otherwise be provided by the healthcare facility internally

E.g.
- Food Services
- Housekeeping
- Security
- Purchasing & Materials Management
- Clinical Services
- Administrative back office
- Technology

Identifying an Outsourcing Supplier

- Supplier of choice may be identified through the development and circulation of a Request for Proposal ("RFP")
- The RFP and the chosen supplier's response are key in setting the terms and conditions of the legal relationship
- Outsourcing agreement may even be attached as a schedule to the RFP

Preliminary Legal Issues to Consider

- Employees
- Assets
- Space

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Preliminary Legal Issues
Employees

- Are the affected employees unionized or non-unionized?
- Impact of existing collective agreements
- Will employees of the healthcare facility be moved within the facility? Seconded to the service provider? Transferred to the service provider?

Preliminary Legal Issues
Assets

- Will any assets be purchased, leased or licenced?
- Determine whether relevant assets are currently owned, leased or licensed and whether leases/licenses may be assigned

Preliminary Legal Issues
Space

- From which premises will the outsourced services be provided?
- Consider areas of exclusive use and non-exclusive use
- Specify terms and conditions of use in contract

Key Parts of an Outsourcing Contract

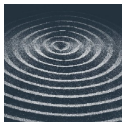
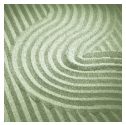
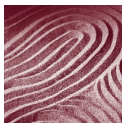
- Scope and Level of Services
- License to Occupy and Use Premises
- Term and Termination
- Representations and Warranties
- Payment and Pricing
- Employees
- Compliance with Laws
- Confidentiality and Privacy
- Indemnity and Insurance
- Trademarks
- Force Majeure
- Dispute Resolution
- General Provisions

Scope and Level of Services

- Clear and specific description of services to be outsourced
- Definitions of expected levels of performance of each service
- Stated in detail in schedules attached to the contract
- Ensure scalability and flexibility to address evolving needs

Term and Termination

- State the duration of the contract and options for renewal (typically long-term)
- Define transition period
- Provide for exit mechanisms (i.e. circumstances allowing for voluntary and automatic termination of the contractual relationship)
- Address how matters such as employees, assets and information will be dealt with upon termination

Representations, Warranties and Covenants

- Corporate and General Matters
- Transactional Matters
- Intellectual Property Matters

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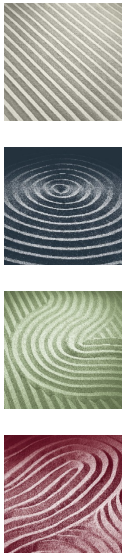
Payment and Pricing

- Price may address up-front capital costs of the service provider
- Structure of pricing and payment may vary depending on the objective of the outsourcing
- Monetary penalties and incentives may be tied to satisfaction of objectives
- May build in mechanisms for “benchmarking” (i.e. industry comparisons by an independent third party to ensure the agreement remains competitive over time)

Compliance with Laws

- Ensure the ability to change the outsourcing relationship/contract in response to legislative/regulatory changes
- Require service provider compliance with applicable law and healthcare facility by-laws, rules, regulations and policies

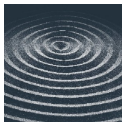
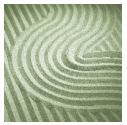
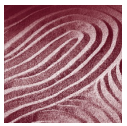


Confidentiality and Privacy

- Of each other's information
- Of patient information
- In compliance with regulatory requirements

Indemnity and Insurance

- Indemnity is:
  - an obligation to make another party whole for third party claims resulting from the first party's negligence, breach of contract or statutory violation
  - "hold harmless" means the first party will take over the defence
- Insurance is:
  - evidence that a party will have the financial means to satisfy its indemnity obligations
- Indemnities and Insurance may be given a monetary limit under the contract

Trademarks

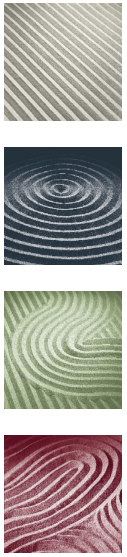
- Acknowledgements of trademark ownership
- Covenants not to use trademarks without express consent

Force Majeure

- Events beyond control (e.g. fire, flood, explosion, riot)
- Consider which events should and should not constitute force majeure (e.g. strikes and lockouts)
- Identify contingency plans for continuing the services in case of emergency

Dispute Resolution

- Problem solving during the outsourcing relationship is an important consideration
- Contractual dispute resolution provisions provide mechanisms for dealing with disputes between the parties before they go to court
- May involve discussion between senior management, mediation, arbitration



General Provisions

- Independent Contractor
- Assignment
- Amendment
- Governing Law
- Notice
- Counterparts

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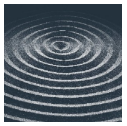
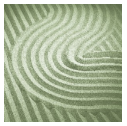
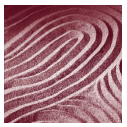
Early Claims Management

Jennifer L. Hunter
April 12, 2007

Where Do Lawsuits Come From?

- things that go wrong
- things that are unexpected
- things that are unanticipated
- things that haven't been communicated effectively
  - lack of understanding
  - emotional component

Identifying the Potential Lawsuit

1. incident reporting
   - driven by error or mistake
   - identification of personnel involved
   - driven by negative outcome
   - investigative in nature
   - discretionary

Identifying the Potential Lawsuit

2. occurrence screening
   - driven by set criteria
   - monitored by professional and non-professional staff
   - pro-active
   - may be a trigger for investigation, communication, claims management

Managing the Incident

A. accountability to patient/public

B. securing and protecting information

C. supporting and preparing staff

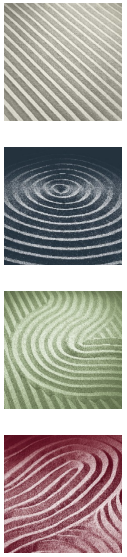
D. identifying indemnification obligations

E. statutory reporting obligations

A. Accountability to Patient and Public

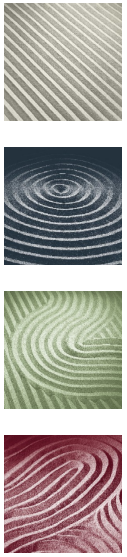
- promoting a culture of safety
- isolated event vs. systems problem
- ensure confidentiality/authorization
- apology and the facts; avoid fault and blame
- don’t make promises you can’t keep
- make sure you have the right spokesperson

B. Securing and Protecting Information



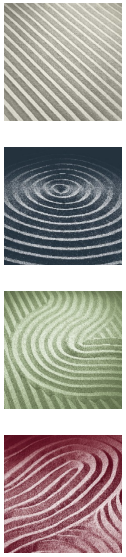
- for what purpose is the information being gathered
  - internal audit
  - quality review
  - potential claim

B. Securing and Protecting Information



- identify those persons who will collect information
- have a set plan
  - policies • statements • packaging and disposables • pictures • identification of witnesses • log books • staffing records • isolate health record • look back

C. Supporting and Preparing Staff



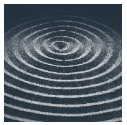
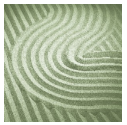
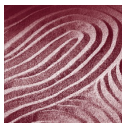
- Meet sooner than later
- present all available information
- what wasn't recorded
- there is no retrospectroscope
- what other support is needed
  - counselling/employee health
  - mentoring
  - legal advice

D. Identifying Indemnification Obligations

- service agreements
  - ensure declaration of independent contractor
  - representation as to credentials, indemnification and hold harmless
- obligation of manufacturer and supplier
  - terms and conditions of purchase
  - representations and warranties

E. Statutory Reporting Obligations

- Coroner's Act (s.10)
- Child and Family Services Act (s.72)
- Regulated Health Professions Act (s.85)
- Controlled Drug & Substances Act
- Technical Standards and Safety Act, 2000 (i.e. elevating devices)
- Health Promotion and Protection Act re: reportable diseases (ss. 26 and 27)

Managing the Claim

- insurance reporting obligations
- supply of all relevant documentation through counsel
- participating in the defence, critique the claim
- supporting the parties

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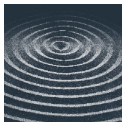
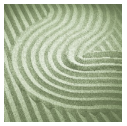
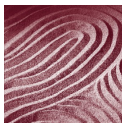
Working With the Police

Jennifer White
May 10, 2007

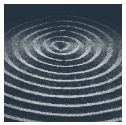
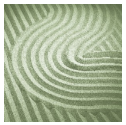
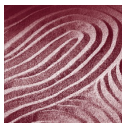






AGENDA

1. Police Enquiries
2. Police Assistance
3. Police Responsibilities
4. Reporting Crime
5. Evidence

POLICE ENQUIRIES

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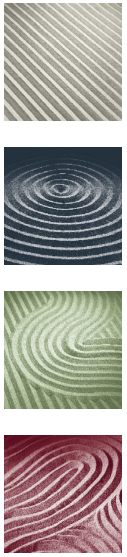
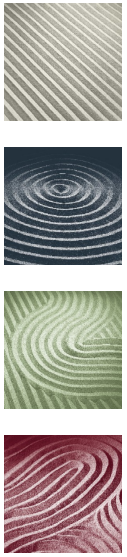
What May I Tell The Police About A Patient?

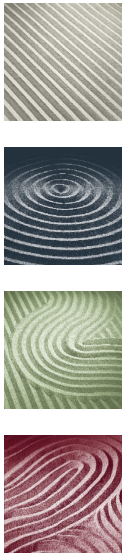


- Anything the patient gives consent for you to say
- The principle is to disclose as little as is necessary and relevant for the purpose



- Without consent or exception under PHIPA, you may give nothing without a subpoena or warrant except
  - confirm that the patient is/was in the hospital if the police give you the name of the person they are seeking
  - where the patient is in the hospital
  - the general condition of the patient
- This is after the patient has been given to opportunity to object

Can I Tell The Police That An Accident Or Other Victim Is In Hospital?



- Not if the police do not give you a name
- Do not accept a physical description of a patient or of a type or location of an accident in lieu of a name

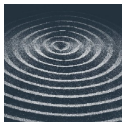
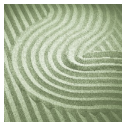
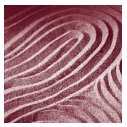
Does This Apply to Outpatients?

- It is not clear in PHIPA whether it covers outpatients but deals with residents and in patients

- Prudent not to release outpatient information as all PHI is protected

Can I Call The Police To Let Them Know A Patient Is About To Be Discharged?

- No. This is PHI
- You can tell them that the patient is in the Hospital as long as you are given a name and as long as the patient has not refused consent for this to be disclosed

OBTAINING POLICE ASSISTANCE

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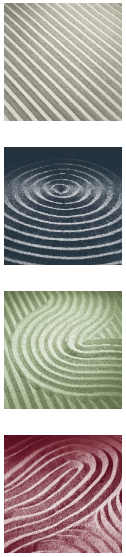
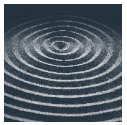
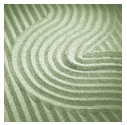
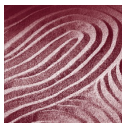
What Can I Tell the Police If We Need Help with a Patient?

- S.40(1) PHIPA – may disclose PHI if the custodian believes on reasonable grounds that the disclosure is necessary to eliminate or reduce significant risk of serious bodily harm.
  - That which is necessary for the purpose i.e. to obtain assistance with no/minimal harm to patient



If We Need Help From The Police With An HIV Positive Patient, Can We Tell Them He Or She Is HIV Positive?

- Not without the patient's consent
- Should rely on universal precautions

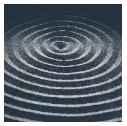
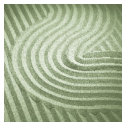
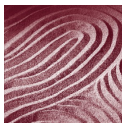
What Can I Tell the Police If We Need Help Finding an Incapable Patient?

Non-Psychiatric Patients

- This is a serious harm issue and is covered as an exception under PHIPA
- You tell the police only the amount of information that is relevant to their needs when looking for the patient

Psychiatric Patients

- *Voluntary Patients*
  - Same as other patients
  - Usually, it is not appropriate to give the complete Form 1 to the police
- *Involuntary Patients*
  - S.28 MHA – the legal status of the patient
  - Anything necessary to recover the patient

POLICE RESPONSIBILITIES

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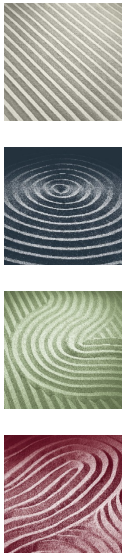
What Do I Do If A Police Officer Wants To Remain With The Patient During Examination Or Treatment?

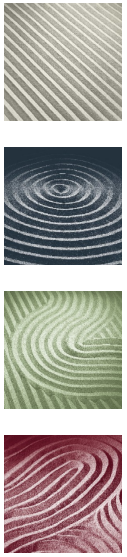
- If the patient is in custody:
  - The officer may choose to stay and you cannot require him or her to leave
  - Remind the officer that there is an expectation of privacy regarding the PHI obtained
  - provide for the patient's personal dignity during examination

- If the patient is not in custody:
  - Try to arrange for the officer to be near but out of ear shot
  - If the Officer needs to be present:
    - Remind the officer that there is an expectation of privacy regarding the PHI obtained
    - provide for the patient's personal dignity during examination

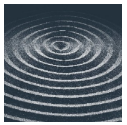
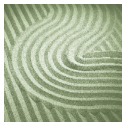
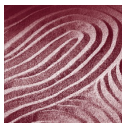


Must I Assist With A Police Investigation?

- No
- Assisting an investigation is a personal decision. The police cannot insist and neither can the Hospital
- However, the spirit of co-operation is important for mutual reliance

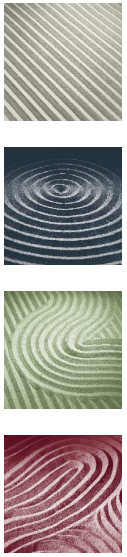


- S.43(1)(g) PHIPA – A HIC may disclose for carrying out an investigation
  - Permissive for the Hospital: we suggest requiring consent or warrant
- The police cannot insist under *Freedom of Information Act* because the Hospital is not an Institution for the purposes of that Act

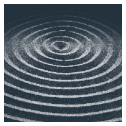





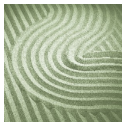
What May I Do if I Wish to Assist?

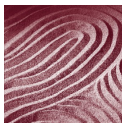
- You may request a warrant/consent to release record
- You may give a written statement to the police
  - We suggest having the statement reviewed by legal counsel before submitting



- You may agree to be interviewed by the police
  - If you agree, we suggest not permitting any audio or video taping
  - We suggest a hospital representative be with you to watch for disclosure of PHI





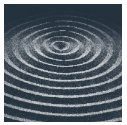
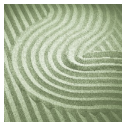
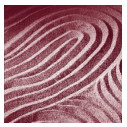


- Stick to facts
  - What you saw
  - What you did
  - What you heard

What May I Not Do?

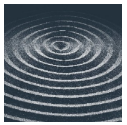
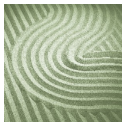
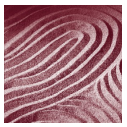
- You may not reveal PHI except with consent or under subpoena

- Do not pass personal opinion

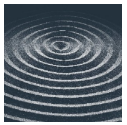
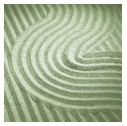
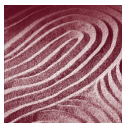
- We suggest you do not assume or speculate on something you have forgotten or do not know

- You may not obstruct an investigation. This is unlawful under the *Criminal Code* s.129

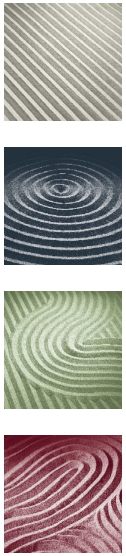





Can the Police Arrest My Patient?

- Yes. If they have the appropriate reasons and paperwork they may perform their arrest duties in any place
- To prevent disruption of other patients, they may agree to perform this duty discreetly, in a secluded area

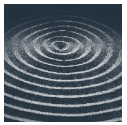
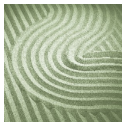
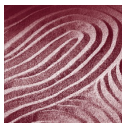





- If you wish to have the police arrest the patient in a secluded area, you can bring the patient to that area but you cannot force him or her to go there



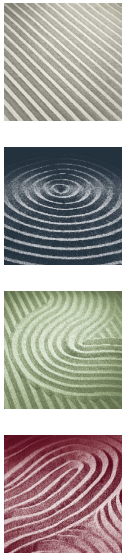
Must I Assist in the Arrest?

- You may not obstruct
- You do not have to assist unless the police request assistance under the *Criminal Code*. As in most situations, the police would rather you not become involved

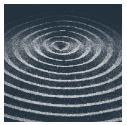
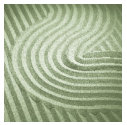
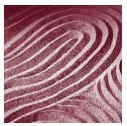





What Do I Do if the Police Wish to Remove the Patient from the Hospital?

- Inform Hospital authorities of the impending arrest and let them deal with the situation



- If it is dangerous to the patient's health for the patient leave the Hospital:
  - Inform the Officer(s)
  - If they insist, discuss with their Superior Officer

REPORTING CRIME

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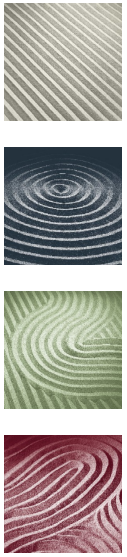
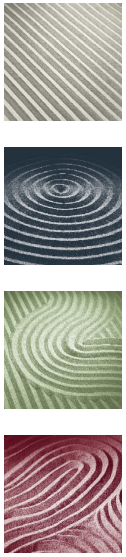
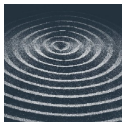
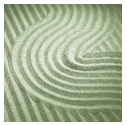
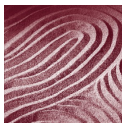


Reporting a Crime

- What do I do if my patient tells me about a crime?
  - There is no statutory obligation to report a crime with some exceptions:
    - Reporting child abuse/neglect
    - Reporting a health professional for sexual abuse

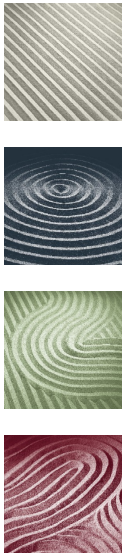


- If the patient says he will or intends to commit a crime that will seriously hurt another person:
  - The Hospital/health professional may have an obligation to warn the individual. This can be through the police
  - There has to be a belief that the crime will be carried out (*Smith v Jones*)
    - Clarity of intent
    - Seriousness of intent
    - Imminence of crime

- What do I do if I witness a Crime on Hospital Property?
  - You have an obligation to protect the interests of your employer
  - If it involves theft of Hospital or someone's property or assault to some one, inform hospital authorities
  - The hospital may report it to the police

Can I Lay Charges if I am Assaulted by a Patient?

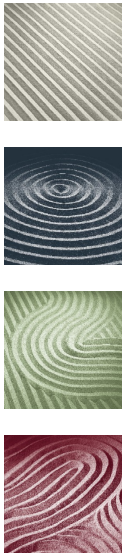


- You can certainly contact the police
- The police usually determine whether to lay charges
- A private information may be laid through a JP

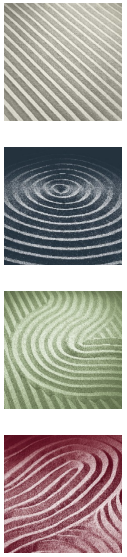
Can the Hospital Lay Charges?

- Again, usually police lay charges.
- The Hospital can request a police investigation but usually the person assaulted is the one who discusses this with the police
- The Hospital should support the staff member

What if a Police Officer Sees a Criminal Act in the Hospital?

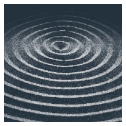
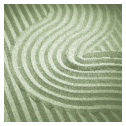
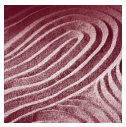


- If the officer sees a crime ongoing he or she has the right to perform his or her duties to stop the crime and deal with the perpetrators
- In that case, as soon as is practicable the hospital authorities should be notified



Do We Have to Report Stabbings?

- No. You are prohibited under PHIPA from reporting a stabbing unless there is an exception such as imminent harm to another person
- The statutory reporting requirement is for gunshots only
- We suggest that gunshots include BB guns and pellets

EVIDENCE

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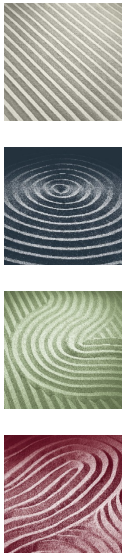
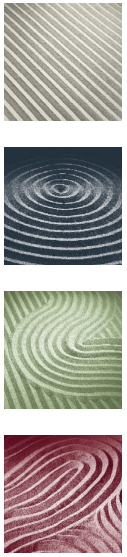
What Patient Belongings Can I Give to a Police Officer?

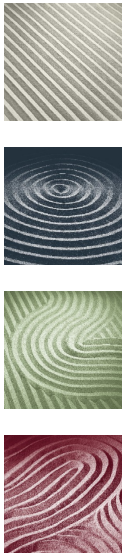


- Anything illegal that is surrendered to you – drugs, weapons.
- Do not try to take these from the patient and endanger yourself; obtain police assistance if necessary

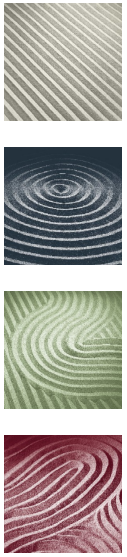


- Small amounts of drugs can be destroyed by the Hospital e.g. through the pharmacist
- Drug paraphernalia can also be confiscated and destroyed

Can I Give the Patient's Belongings Such as Clothing for Evidence?



- You may give nothing without consent or with a warrant – other than the illegal items
- Do not obstruct the Officer if he/she takes something
  - Make a record of it including the officer's Police Force, name and badge number

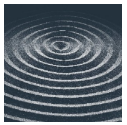
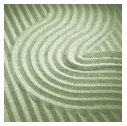
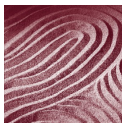


What About Bullets Or Other Objects Taken From The Patient's Body?

- The *Public Hospitals Act* requires tissue removed from a patient must be examined. A bullet carries blood and other tissue on it and is normally sent to the laboratory.
- After examination, the police may obtain it with a warrant

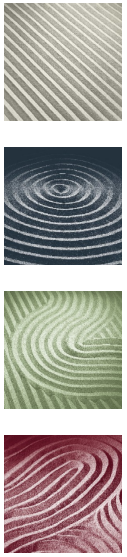
What About Taking Blood Or Urine Samples?

- The law is not clear on this.
  - Even with a warrant, the *Criminal Code* only says the person must comply. It does not clarify what to do if the patient refuses to consent
  - We recommend not taking the sample without consent
  - A SDM cannot provide consent for samples for police as this is not treatment

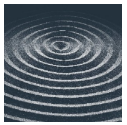
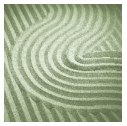
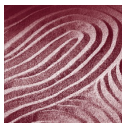





- If the patient is consenting, he/she must not be misled that the sample is for medical purposes
- If the warrant is for obtaining the blood alcohol results, these can/must be given without consent
  - This is true even if the sample was taken for medical purposes

What if the Police See a Victim of a Crime Incidental to the Officer's Presence in the Hospital?



- If the person is in common, public areas, the police may approach the person as they would anywhere else
- Hospital may request that the police wait until treatment is given
- If the person is a patient and is in a triage or treatment area, the police may be allowed in only with the consent of the patient

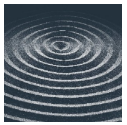
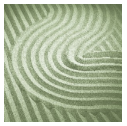
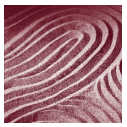





What is a Trail of Evidence?

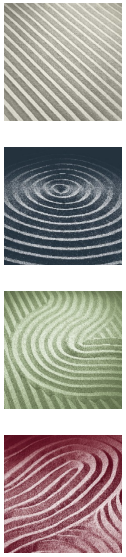
- This is tracking something so that it cannot be said that the item presented in court is not the same item taken from the scene/patient

Do We Have A Role in the Trail of Evidence?

- Yes. As long as any privacy provisions for the patient or any other patient are not compromised, you should assist the police in maintaining the trail of evidence.

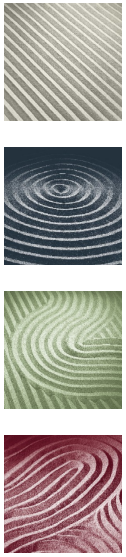
- Such compromise may occur by allowing the officer to enter a laboratory where there is information, telephone calls and other exposure to PHI



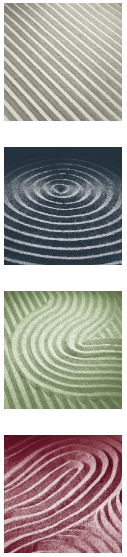
Can the Police take Photographs of the Patient?

- Not usually without consent
- They make take them as part of a CAS apprehension and related investigation; or
- a Coroner's process

Should We Collect Forensic Evidence Without The Patient's Consent – E.G. Sexual Assault?



- This is a difficult question.
  - The substitute decision maker cannot consent because this is not treatment however, unless the SDM is a suspected perpetrator, it is wise to consult the SDM if possible. If not, perhaps other members of the family may be available



- Technically, you cannot do this. However, you could be criticized if you do not. It is a judgment call depending on the presenting circumstances but there could be times when it would be wise to collect and preserve such evidence even without consent.
- If you collect this evidence, do not release it without consent

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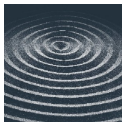
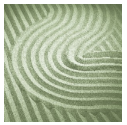
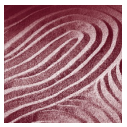
Working with the Media

Kathryn Frelick

June 14, 2007

Background

- Working with the Media:
  - Who will say what and to whom?
  - What policies and procedures should you have?
  - How will you respond to your unique set of needs, clients, and stories?

Presentation Overview

- Fielding inquiries from the media
- Establishing a communications plan
- Developing a media policy
- Special considerations
- Q&A

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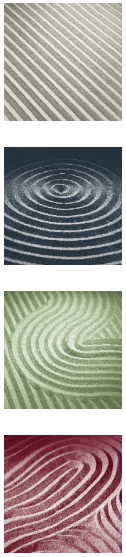
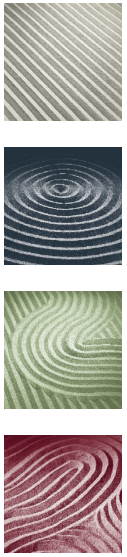
Fielding Inquiries from the Media

- Process established to determine:
  - when and how media contact is made and handled
  - who is responsible for effectively responding to media inquiries and requests
  - how calls are directed may depend on the subject matter

Reactive Media Relations



- No obligation to provide information or allow access to premises
- Privacy of personal information of clients and others
- Duty to provide proper and adequate care
- Establishing ground rules



Proactive Media Relations

- Health organizations are knowledgeable and informed sources of health care information for the news media
- Excellent media relations assists the media *and* your organizations
- A proactive media program can be integrated into your communications plan

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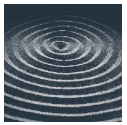
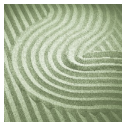
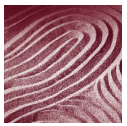




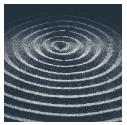
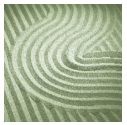
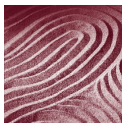
Establishing a Communications Plan

Drafting a communication plan:

- Identify your:
  - Goals and objectives
    - Issues and assumptions
    - Risks and opportunities
  - Audience: Internal and external stakeholders
  - Key Messages
  - Strategies and Actions
- How will you evaluate your plan?

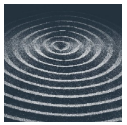
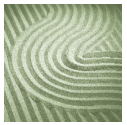
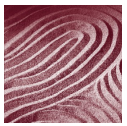
Proactive Communication Tools

- Proactive communication efforts:
  - enables you to select, plan and follow through with what the public learns about your organization
  - pave an image to generate an awareness of your organization – “branding”

Generating Awareness

- Proactive communication can:
  - Keep your community informed about new treatments or approaches to health care
  - Create awareness of fundraising efforts and capital projects
  - Inform the public about the proper utilization of resources (e.g. bed management, crisis situations – SARS)

Communication Tools

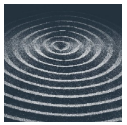
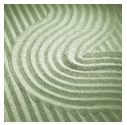
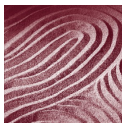
- Dedicated media websites with press releases, information and communiqués
- Fact sheets
- Employee newsletters
- Public service announcements
- Advertising
- Solicitations
- Annual reports
- Open Houses

The Spokesperson

- Considerations:
  - Designate one person or department as media liaison and provide media training
  - Establish policies that ensure person(s) who are speaking publicly are so authorized
  - Recognize relationships (i.e. employees, physicians, board members) and special duties that may have to organization

Developing a Media Policy

- Components of a media policy
  - Purpose
  - Ground rules: clearance, access
  - Documentation and training
  - Identification of most appropriate spokesperson
  - Procedures re: photographs, on-site media coverage, after-hours requests

Privacy Considerations

- Health information custodians have an obligation to protect the privacy and confidentiality of their clients
- Presence of the media must not compromise the provision of care

Statutory Requirements

- *Regulation 965 under Public Hospitals Act*
- *Regulated Health Professions Act*
- *Personal Health Information Protection Act, 2004*

Personal Health Information Protection Act, 2004

- A health information custodian shall not disclose PHI about a client unless it has the individual's consent and it is necessary for a lawful purpose or as otherwise permitted

Personal Health Information Protection Act, 2004

- In facility, if person is given opportunity to object and does not do so, may disclose:
  - The fact that the individual is in the facility;
  - The location of the individual within the facility; and
  - General condition i.e. critical, poor, fair, stable, satisfactory

Special considerations

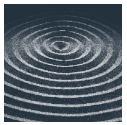
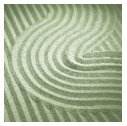
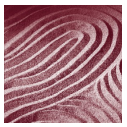
- Crisis/Disaster Communications
- Bed/Department closures
- Client Notification programs i.e. look back programs, sterilization issues
- Public safety issues

Special considerations

- Potential liability and risk – involvement of insurer/legal counsel
- Accepting responsibility/apology
- Controlling the message

Resources

- Consider having:
  - Policies and procedures
  - Internal information resource sheet – where to direct calls
  - Media log
  - Media request forms
  - Consent forms
  - Communication scripts
  - Legal counsel to assist you in managing aspects of your communication plan

Conclusion

- Proactive strategies
- Development of communications plan
- Media policy

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Medical Staff/ Board/ Administration: Why it is a Partnership

Joshua Liswood
September 19, 2007

Statutory, Regulatory and Legal Structures

a) *Public Hospitals Act* R.S.O. 1990 cP40

- Board Powers s.36
  - Appointment
  - Privileges
  - Revoke, suspend or deny

a) Public Hospitals Act (cont'd)

- Medical Advisory Committee s. 35
  - Consider and review
  - Recommendations re: appointment and reappointment
  - Other duties as assigned by Act or Board

a) Public Hospitals Act (cont'd)

- Advice Re: Quality of Professional Work s. 34
  - Chief of Staff, Chief of Dept. President of Medical Staff
  - Duty to confront and assume care
  - Duty to report
  - M.A.C. to report to administrator

b) Hospital Management Regulation R.R.O 1990 Reg. 965

- Board to Pass By-Laws s.4(1)
  - Establish criteria for appointment & reappointment
  - Procedures for appointing Chief of Staff & Dept. Chiefs
  - Establishment & duties of medical staff committees
  - Criteria for appointment and duties of dentists, midwives and extended class nurses

c) Common Law Obligations

- Board has duty to appointment physicians that
  - Meet the needs the needs of the community
  - Effectively utilize the resources of the hospital
  - Are skilled & experience
  - Will work as an effective member of the healthcare team

c) Common Law Obligations (cont'd)

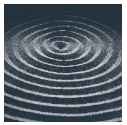
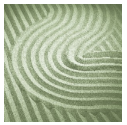
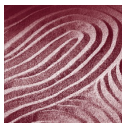
- Board duty to set appointment standards
  - Application contents
  - Criteria - credentials, manpower need, utilization impact, resource availability
  - Establish due process
  - Performance review

c) Common Law Obligations (cont'd)

- Liabilities
  - Corporate responsibility for reasonable policies/safe environment
  - Responsibility to ensure quality
  - Responsibility to enforce legislation
  - Responsible for Chief of Staff and Administration

By-Laws, Rules and Regulations

a) General Principles/Corporate Responsibility
   - Legislated requirements reflect minimum standards for content
   - Common law and other standards will extend content
   - Need to reflect local environment
   - What goes in the Professional Staff Rules

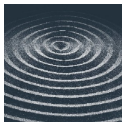
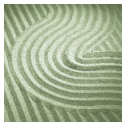
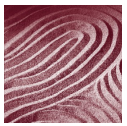





b) Appointment Criteria

- Minimum credentials
- Application information
- References
- Personal traits and qualities
- Internal or regional impact:
  - Manpower statement
  - Impact analysis
  - Resource statement

b) Appointment Criteria (cont'd)

- Commitment to provision of services
- Criteria are a condition precedent to appointment will set the terms of the contract

c) Appointment Categories

- There is no statutory imperative re categories
- Categories should be responsive to meeting community and regional needs
- Responsive to facilitating physician recruitment and retention

d) Privileges

- May be locally defined
- Will represent rights and obligations
- Privileges shall integrate with appointment

Midwives, Dentists and Extended Class Nurses

- Statutory recognition
- Nature of relationship
- Credentialing principles
- Quality review

e) Process and Procedure

- Appointment and reappointment
  - Specifically prescribed by P.H.A. s.37
  - Opportunity for streamlined procedures when combined with quality review

e) Process and Procedure (cont'd)

- Mid-term action
  - Little direction from PHA s.41
  - Common law has dictated the adoption of process based upon principles of natural justice

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Credentialing: The Partnership in Operation

Valerie Wise
October 17, 2007

Competing Duties in Credentialing

- Duty to physicians
    - to be treated fairly in appointment process
- Duty to patients
    - to have a meaningful credentialing process and ongoing quality review
    - Allegations
    - Content: unknown

The Partnership: Statutory/ Regulatory Framework

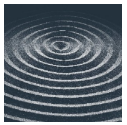
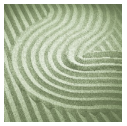
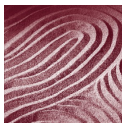
- Board: Power and Responsibility to Appoint, Reappoint, Revoke, Suspend, Deny Privileges (s. 36)
- MAC: Responsibility to review applications and make recommendations to the Board (ss. 35 and 37)

Process

- Request for Application
- Application to Credentials Committee
- Completed Application to MAC for Review
- MAC's Recommendation to Board
- Decision of Board
  - Deference to MAC (expertise on quality)
  - But not rubberstamp

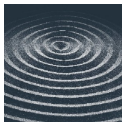
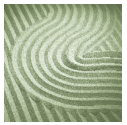
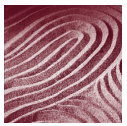
Reasons for Meaningful Appointment Process

- Defend against civil liability for credentialing
- Fairness to Applicants
- Provide Administration, MAC and Board with tools, if necessary

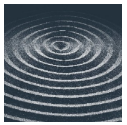
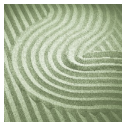
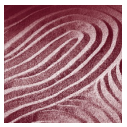
Appointment Criteria

- Minimum credentials, certificates of registration, liability insurance, etc.
- Statements have read statutes, regulations, Bylaws, Rules, Codes of Behaviour, etc.
- Undertakings, if appointed, to abide by statutes, regulations, Bylaws, Rules, Codes of Behaviour, etc.

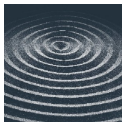
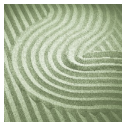
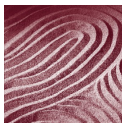
Appointment Criteria (cont'd)

- Undertaking, if appointed, will provide agreed upon services (application and/or by-laws)
- Disclosure (civil suit, criminal proceedings, College complaints/action, previous involuntary/voluntary resignations or restrictions of privileges, health issues)

Appointment Criteria (cont'd)

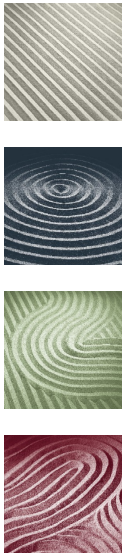
- Undertaking, if appointed, will abide by policies relating to confidentiality and no statements to media/public
- Board may refuse if inconsistent with needs, resources, strategic plan, etc.

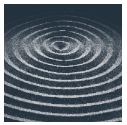
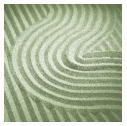
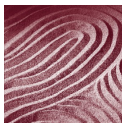
Reappointment Criteria

- Usually less stringent
- First-hand information
- Undertakings, Statements

Meaningful Credentialing Process: Managing Risks



- Civil liability for credentialing
- Fairness to Applicants
- Provide MAC and Board with tools, if necessary

Risk: Applicant Feels Aggrieved

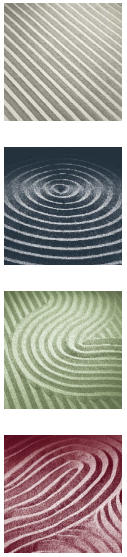
- Procedural Fairness
  - Sources: PHA, Common Law, By-laws
  - Notice, hearing, written reasons, appeals
- Different for appointment vs. reappointment/mid-term
- Categories of appointment
- Expectations, impact

Procedural Fairness

- MAC Recommendations (within 60 days or, if longer, requires written reasons)
  - Written Notice of Recommendation to Board and Applicant
  - Right to written reasons in 7 days
  - Right to Board hearing before decision

Procedural Fairness (cont'd)

- Board Hearing
  - Counsel: MAC, Applicant, Board
  - Disclosure
  - Witnesses
  - Right to Written Reasons
  - Right of Appeal to HPARB
  - Divisional Court



Risk: Civil Liability

- Allegation: Should not have credentialed
- Credentialing process comes under scrutiny
- Additional processes of monitoring quality and activity during appointment under scrutiny

Concerns at Reappointment or Mid-term

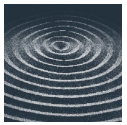
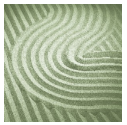
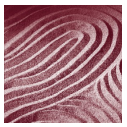
- Potential Concerns:
  - Competency and quality of care
  - Collegiality
  - Compliance with obligations, undertakings, terms of appointment

Mid-Term Concerns

- PHA (s. 36): Board can revoke or suspend
- PHA (s. 34): Responsibility of Chief of Staff to intervene if "serious problem exists in the diagnosis, care or treatment of a patient"
    - Assume care
    - Suspend privileges
    - Inform MAC and CEO
- Reg. 965 (s. 18): Responsibility of CEO to notify Chief of Staff etc.

Mid-Term Action (cont'd)

- By-laws
  - Immediate/emergency (suspend, pending consideration by MAC and recommendation to and decision by Board)
  - Non-immediate (consideration by MAC and recommendation to and decision by Board)
- Common Law
  - Procedural Fairness/Due Process
  - Balancing expectations vs. urgency

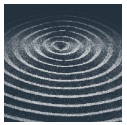
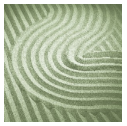
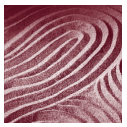





Elements of Due Process

- Notice of allegations
- Participate in investigation/review
- Notice of MAC proposed recommendation
- Participate in MAC meeting to consider a recommendation
- Notice of MAC's recommendation
- Right to request written reasons for recommendation

Elements of Due Process (cont'd)

- Right to hearing before Board prior to decision
- Right to disclosure
- Right to counsel, call witnesses
- Appeal to HPARB
- Divisional Court

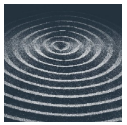
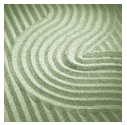
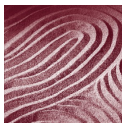





Balancing Risks of Mid-term Action

- Consider Less Adversarial Options
  - After review, consider remedial approach
  - Outcome: agreement including expectations, consequences, accountability
- If Adversarial:
  - Ensure due process
    - To be fair and to be seen to be fair
    - To discourage appeals
    - To protect the decision from being overturned
  - Consider strength of and commitment to position

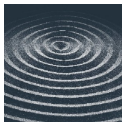
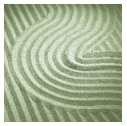
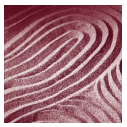
Balancing Risks (cont'd)

- Risk of Civil Liability to Patients
  - Failing to Intervene
  - Failing to have processes in place to detect quality concerns or behavioural issues
  - Failing to have process in place to address quality concerns or behavioural issues

Case Examples

- Plaintiff's procedure occurs in the middle of a process to review, negotiate a voluntary resignation
- Disclosure obligations
- Allegation: knew/ought to have known
- Credentialing and monitoring
- Exceeding privileges
- Corporate and individual liability

Changes in Litigation

- Plaintiffs are more sophisticated – asking the right questions
- Increasing obligations to document adverse events – so more documentation to produce
- Corporate and individual liability
- Likelihood of litigation

Conclusion

- Be able to demonstrate reasonable diligence: a fair and meaningful credentialing process
- Requires effective partnership involving Board, MAC, and administration playing their respective roles
- Best interests of hospital, staff, patients, and community

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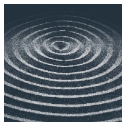
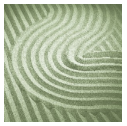
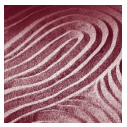
Coroner Inquests

Jennifer L. Hunter
November 21, 2007

Coroners Act, R.S.O. 1990, c. C.37

- Where a coroner is notified of a death under the Act, the coroner is required:
  - to issue a warrant to take possession of the body
  - make further investigations to determine whether or not an inquest is necessary
- Where the coroner determines that an inquest is necessary, the coroner shall issue a warrant for an inquest

Notifying the Coroner

- Every person who has reason to believe that a deceased person died for one of the following causes must notify a coroner or police officer:

  a) As a result of violence, misadventure, negligence, misconduct, or malpractice;
  b) By unfair means;
  c) During pregnancy or following pregnancy in circumstances that might reasonably be attributable thereto;

Notifying the Coroner

- Every person who has reason to believe that a deceased person died for one of the following causes must notify a coroner or police officer: *(cont'd)*

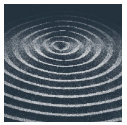
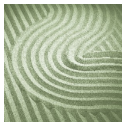
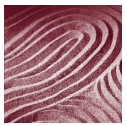
  d) Suddenly and unexpectedly;
  e) From disease or sickness for which he or she was not treated by a legal qualified medical practitioner;
  f) From any cause other than disease; or
  g) Under such circumstances as may require investigation.

Notifying the Coroner

- Where a person dies while a resident or in-patient in:
  - Charitable institution;
  - Children's residence;
  - Facility under the Developmental Services Act;

Notifying the Coroner

- Where a person dies while a resident or in-patient in: *(cont'd)*
  - Psychiatric facility designated under the Mental Health Act;
  - Institution under the Mental Hospitals Act; or
  - *Public or private hospital to which the person was transferred from a facility, institution or home referred to above*.

The Powers of the Coroner

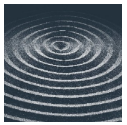
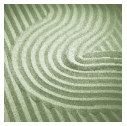
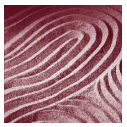
- A coroner may:
  - Inspect any place in which the deceased person was;
  - Inspect and extract information from any records or writings relating to the deceased and reproduce copies;
  - Seize anything that the coroner has reasonable grounds to believe is material to the purposes of the investigation.
- A coroner may authorize others to exercise the above powers

Necessary Inquests

- The coroner shall consider whether the holding of an inquest would serve the public interest:
  - Whether the answers to the five questions are known
  - Whether it is desirable that the public be fully informed of the circumstances of the death
  - The likelihood that the jury might make useful recommendations directed to the avoidance of death in similar circumstances

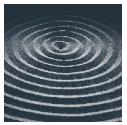
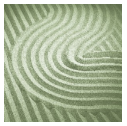
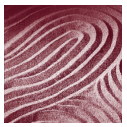
Mandatory Inquests

- Death of a person in custody
- Death of a person in the course of their employment at a construction project or mining plant or mine

The Pre-Inquest Meeting

- The parties:
  - Coroner's counsel
  - The family of the deceased
  - Other parties with standing
- The inquest brief
- Where the hospital may not attend the inquest

The Five Questions

The purpose of the inquest is to determine:

1. Who the deceased was;
2. How the deceased came to his or her death;
3. When the deceased came to his or her death;
4. Where the deceased came to his or her death; and
5. By what means the deceased came to his or her death.

Procedure at the Inquest

- Less formal forum
- Relaxed rules of evidence
- Open to the public unless:
  - danger to national security or
  - person charged with indictable offence,
- Five member jury
- Jurors entitled to ask relevant questions
- Verdict returned by a majority of sworn jurors

Standing at the Inquest

- Standing = substantial and direct interest in the inquest
- May make application before or during an inquest

Standing at the Inquest

- A person with standing at an inquest may:
  - Be represented by counsel or an agent;
  - Call and examine witnesses and present arguments and submissions; and
  - Conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible.

Standing & The Hospital

- Not required to attend every day, with permission
- May decide not to ask questions of every witnesses
- Permitted to participate in formulating recommendations to suggest to the jury
- Provide support for hospital employees who are called as witnesses

Recommendations of the Jury

- The jury shall not make any finding of legal responsibility or express any conclusion of law
- The jury may make recommendations directed to the avoidance of death in similar circumstances or respecting any other matter arising out of the inquest

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The New Complaints and Investigations Process under the RHPA

Janela Jovellano
December 5, 2007

Presentation Overview

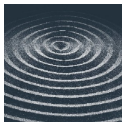
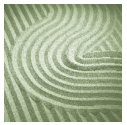
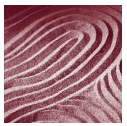
- Bill 171 – *Health Systems Improvement Act, 2007*
- Functions of the new Inquiries, Complaints and Reports Committee
- Changes under Bill 171
- Access to Information on Members
- Q&A

Bill 171 – *Health Systems Improvement Act*

- Achieved Royal Assent in June 2007
- Objectives of Bill 171
- Amendments to over 40 statutes including RHPA
  - Why are changes being made to the RHPA?

The New Complaints and Investigations Process

- Reasons for changes to complaints process
  - Communication to complainants
  - Varied administration of complaints process

Functions of the ICR Committee

- Creation of the Inquiries, Complaints and Reports Committee (ICR)
- Functions of the ICR Committee formerly belonging to the Executive Committee
- ICR Committee as single entry-point of all information

Functions of the ICR Committee

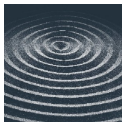
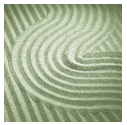
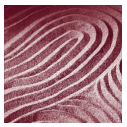
- ICR Functions
  - receives all member-specific complaints and reports
  - conducts initial investigations re: inquiries, complaints and reports
  - conducts practice assessments
  - requests Registrar to appoint investigator, receives report

Functions of the ICR Committee

- ICR Functions, (cont'd)
  - facilitates informal resolution, approves settlements
  - disposes of inquiries, complaints and reports by dismissal, resolution or referral to Discipline Committee or Fitness to Practice Committee
  - accepts voluntary undertakings and may require members to undertake specified continuing education or remediation activities

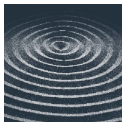
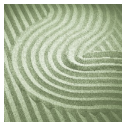
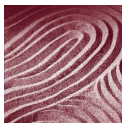
Functions of the ICR Committee

- ICR Functions, *(cont'd)*
  - makes interim suspension and practice limitation orders
  - provides information, status reports and decision to complainant, reporter and member
  - monitors and evaluates and reports on ICR process, compliance and outcomes

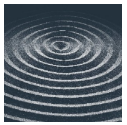
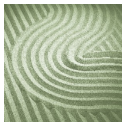
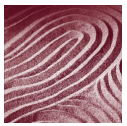
Powers of the ICR Committee

- Powers related to a range of issues
- Interim orders
- Assessments: Physical, psychological, practice-related
- Imposition of terms, conditions or limitations on a member's certificate

Investigations

- Panel for Investigations
  - Investigates complaints or considers reports
  - Composition of Panel
- Notice of Complaint to Member
- Member may make written submissions

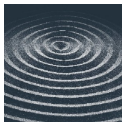
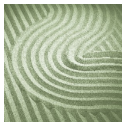
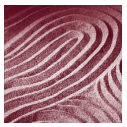





Investigations

- Initial investigation by ICR includes:
  - Obtaining statements from witnesses
  - Obtaining copies of relevant documents
  - Obtaining information from the Register
  - Obtaining a patient's chart
  - Obtaining professional's billing information
  - Approaching the member's colleagues, staff or other person
  - Conducting a practice assessment
  - Other information gathering

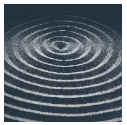
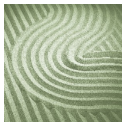
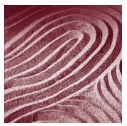
Investigations

- After investigating a complaint or considering a report and considering the submissions of the member the ICR Committee may:
  - Refer the member to a panel of the ICR Committee under section 58 for incapacity proceedings;
  - Require the member to appear before a panel of the ICR Committee to be cautioned; or
  - Take action it considers appropriate that is not inconsistent with the health profession Act, the Code, the regulations or by-laws.

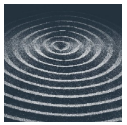
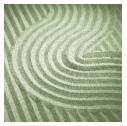
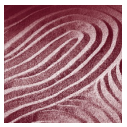
Investigations

- ICR Committee may choose one of the following dispositions:
  - Dismissal of the matter
  - Facilitation of a resolution
  - Approval of informal resolutions, settlement or agreements
  - Cautioning a member
  - Disposal of the matter (including accepting undertakings or remediation)
  - Request the Registrar to appoint an investigator
  - Referral to the Discipline Committee
  - Referral to the Fitness to Practice Committee

Investigations

- Notice of Decision
  - For Complaints
    - Copy of decision to complainant and member and reasons if member cautioned or panel took action it considered appropriate
  - For Reports
    - Member receives copy of decision and copy of reasons if cautioned or panel took action it considered appropriate

Investigations

- Timing of Investigations
  - 14 day requirement for College to notify members of a complaint
  - Expansion of time for college to investigate a complaint from 120 days to 150 days

Health Professions Appeal and Review Board

- Board may
  - consider written reasons for delay
  - conduct an investigation
  - may appoint an investigator
  - exercise review powers if requested by ICR Committee

Changes Under Bill 171

- Mandatory Reporting Obligations
  - Reporting of members who are incompetent or incapacitated significantly enough to require restrictions to practice
  - Report must be filed within 30 days unless there is an urgent need for intervention, in which case the report must be filed immediately
  - Increased Fines for Non-Reporting

Changes under Bill 171

- Self-Reporting Obligations
  - Members must report
    - Any findings by a court of having committed a criminal offence
    - Findings of professional negligence or malpractice must also be reported
  - Mandatory reports must be made as soon as reasonably practicable after the member receives notice of the finding made against him or her

Changes under Bill 171

- ADR Process Now Formalized
  - Initiated by the Registrar
  - Requires consent of both complainant and member
  - ICR has power to reject resolution and continue with its investigation
    - If at any point in the process a settlement cannot be reached, the normal processes of the ICR Committee commence
  - Discussions are without prejudice and must be kept confidential from all other processes both within and outside of the college

Changes under Bill 171

- Applications to Superior Court of Justice
  - College permitted to apply for an order made by a panel of the Discipline Committee on the grounds of professional misconduct
  - Order would direct the Registrar to:
    - revoke, suspend or impose terms, conditions or limitations on a member's certificate to take effect immediately despite any appeal if the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed

Access to Information on Members

- College Websites
  - Any information prescribed by the Minister, including:
    - Findings of malpractice and professional negligence against one of its members
    - Any findings of professional misconduct
    - All matters referred to its discipline committee and result of findings by the Discipline Committee and Fitness to Practice Committee (including synopsis of the decision)
    - Every suspension or revocation of a member's certificate of registration
    - Reprimands, fines and suspended orders are also required to be recorded
  - Exception to information on website: information that might jeopardize the safety of an individual

Access to Information on Members

- Information accessible to public must be made available to any person during normal business hours
- Health colleges now have freedom to confirm publicly whether a member is under investigation where the public may be at risk

Conclusion

- Provisions do not take effect until June 4, 2009 or on an earlier date proclaimed by the Minister
- Effect of changes
  - Greater ministerial oversight over individual Colleges
  - Having single body conduct all investigations will ideally reduce chances of inconsistent and uncoordinated handling of concerns
  - Increasing transparency and accountability of Colleges re: access to information