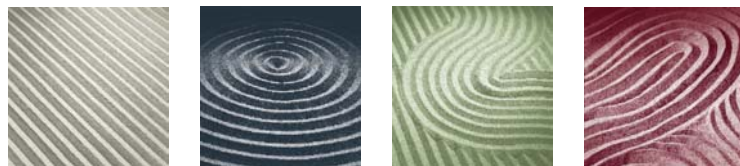


MILLER THOMSON LLP

Barristers & Solicitors
Patent & Trade-Mark Agents

Early Claims Management

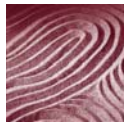
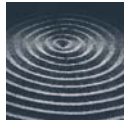


Jennifer L. Hunter
Miller Thomson LLP
416.595.8551
jhunter@millerthomson.ca

This Presentation is provided as an information service to our clients and is a summary of current legal issues. The Presentation is not meant as legal opinions and readers are cautioned not to act on information provided in this document without seeking specific legal advice with respect to their unique circumstances.



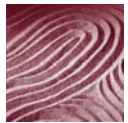
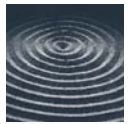
Where Do Lawsuits Come From?



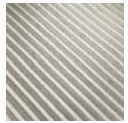
- things that go wrong
- things that are unexpected
- things that are unanticipated
- things that haven't been communicated effectively
 - lack of understanding
 - emotional component



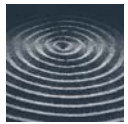
Identifying the Potential Lawsuit



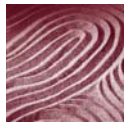
1. incident reporting
 - driven by error or mistake
 - identification of personnel involved
 - driven by negative outcome
 - investigative in nature
 - discretionary



Identifying the Potential Lawsuit



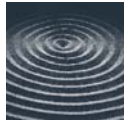
2. occurrence screening



- 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



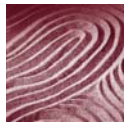
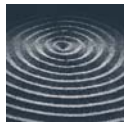
C. supporting and preparing staff

D. identifying indemnification obligations

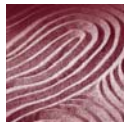
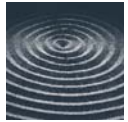
E. statutory reporting obligations



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

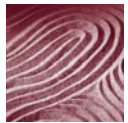
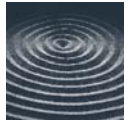


B. Securing and Protecting Information

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



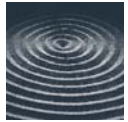
B. Securing and Protecting Information



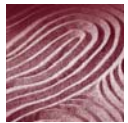
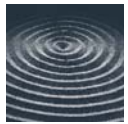
- identify those persons who will collect information
- have a set plan
 - policies • statements • packaging and disposables
 - pictures • identification of witnesses • log books • staffing records • isolate health record • look back



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

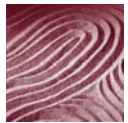
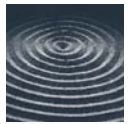


D. Identifying Indemnification Obligations

- 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



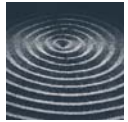
E. Statutory Reporting Obligations



- 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