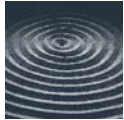


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Considerations When Conducting Internal Reviews

Valerie Wise, Miller Thomson LLP

Coffee Talk: September 17, 2008

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.

OUTLINE



1. Perspective: Risk Management

2. Context: 2 “Insureds”

3. Considerations

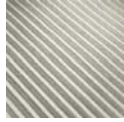
A) Reviews under QCIPA vs. Reviews Under Solicitor-Client Privilege

B) Drafting Responses

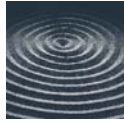
A) Avoiding Causal Linkages

B) Evidentiary Considerations

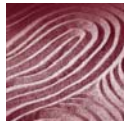
C) Comments re Professional Staff



Perspective: Risk Management



Considering Legal & Ethical Obligations to:

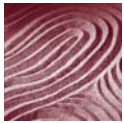
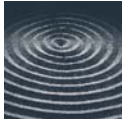


- Patients and Patients' Families (Specific and More General Quality of Care)
- Coroners
- Insurers
- Credentialed Professional Staff
- Employed Staff

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Context: 2 “Insureds”



- Physicians
(independent
contractors)

- Hospital
- Hospital Employees
(vicarious liability)



Joint and Several Liability

- Trial Judge

Determines:

- Defendant Physician
99% liable
- Defendant Hospital
1% liable
- Total Damages:
\$100,000.00

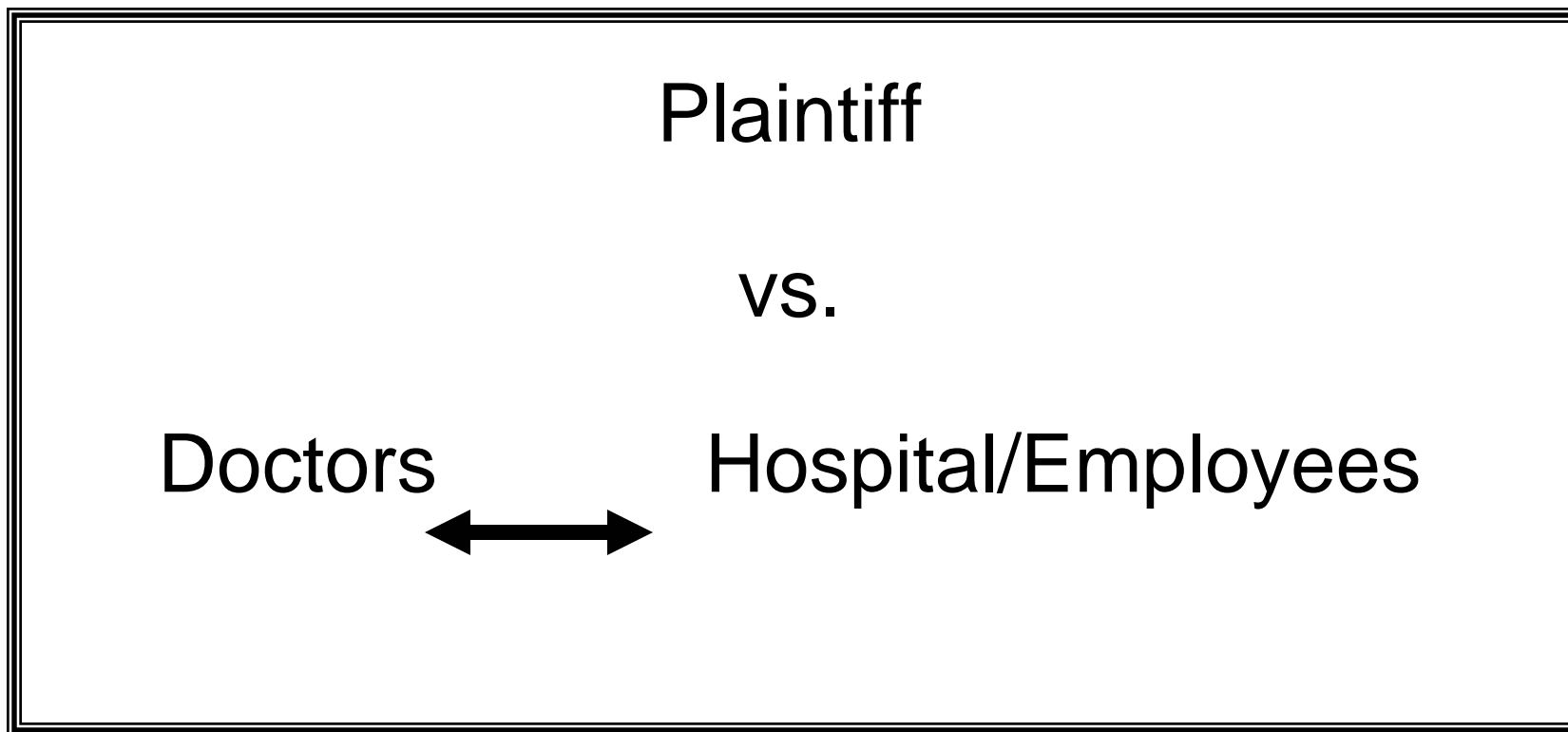
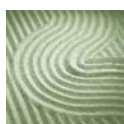
- Plaintiff can recover
\$100,000.00:

- from Defendant
Physician

OR

- from Defendant
Hospital/Employees

Crossclaims

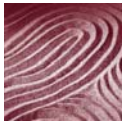
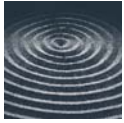


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Obligations to “Insurers”



- Report claims promptly
- Do not prejudice position of insurer

Disclaimer: General concepts - consult insurance policy for specific obligations

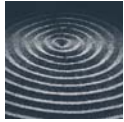
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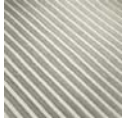


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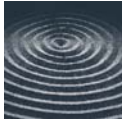
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Considerations



QCIPA Reviews: Pros and Cons



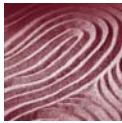
- Pros

- Absolute statutory protection

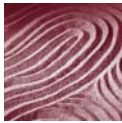
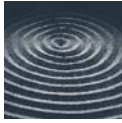


- Cons

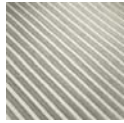
- Absolute statutory protection



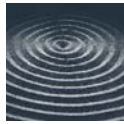
Alternative: Solicitor-Client Privilege



- Flexibility
- Either retained by insurer or hospital directly
- In a position then to assist in responding to family, coroner
- Can also use for other purpose; but consider impact in future



May Need 2 Separate Reviews



- QCIPA: “lockbox”

- All can participate, but none can use



- Solicitor-Client: to answer questions from insurer/coroner/family

- Challenge: participation of physicians

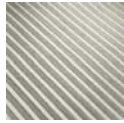




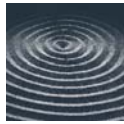
Drafting Responses

QCIPA Review

- Can disclose recommendations, but cannot link to review
- QCIPA applies to requests from coroner



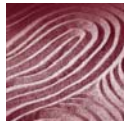
Drafting Responses (cont'd)



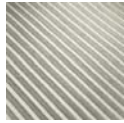
Solicitor-Client Privilege



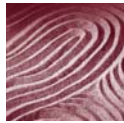
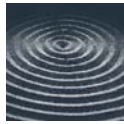
- No statutory restriction, but still use caution around any linkage



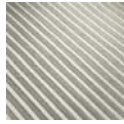
E.g., “While we did not conclude that our policy at the time caused or contributed to the outcome, we have implemented...” or
“Without concluding that the care provided...”



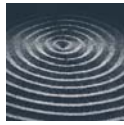
Evidentiary Considerations



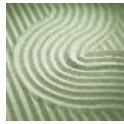
- Assume that responses to coroner will go to the patient's family
 - Could influence decision whether to commence an action
 - Will become a production in any civil litigation
- Emails/drafts - discoverable



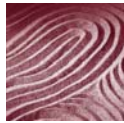
Speaking for Medical Staff



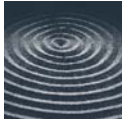
- Options:



- have physician review draft response (involve CMPA?)



- refer family or coroner to physician



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