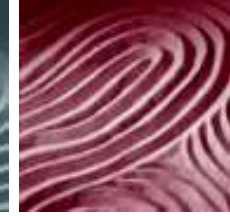
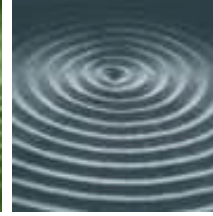


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Liability, risk and
responsibility issues
attached to teletriage

Joshua Liswood
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**Liability, Risk and Responsibility
Issues Attached to Teletriage**




Joshua Liswood, Partner
Miller Thomson LLP


 **Overview**

-  1. Professional responsibility and the reasonable standard of care
-  2. Who is legally responsible?
3. Effective charting and communication
4. Standards and policies as part of risk management

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 **Definitions**

 Telehealth - Industry Canada definition of telehealth (adopted by CNO and OHA):

 “the use of communications and information technology to deliver health and healthcare services and information over large and small distances”

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Definitions (Cont'd)

Nursing Telepractice - CNA has defined nursing telepractice as:

"Client-centred forms of nursing practice, which occur through, or are facilitated by, the use of telecommunications or electronic means. Nursing telepractice uses the nursing process, which encompasses client assessment, planning and implementation through the provision of information, referral, education and support, evaluation and documentation."

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Definitions (Cont'd)

Teletriage usually involves specially trained nurses providing advice and support to those with immediate concerns, based on acceptable clinical practice guidelines and standardized protocols

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**Professional Responsibility/
Accountability**

- Health professional must use clinical judgment to determine nature of advice, availability of resources and who is the most appropriate professional to provide advice
- Once determined that requested advice is within scope of practice, may provide advice
- Responsible both for advice provided and for accurate and complete documentation

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Liability - Negligence

1. Health professional must owe duty of care to patient
2. Health professional must breach standard of care established for conduct
3. Patient must suffer loss or injury as a result of breach
4. Conduct of health professional must be the cause of loss or injury

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Duty of Care


- Once call accepted and health professional provides information or advice, he or she owes a duty of care to caller and is responsible for the information or advice given

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Standard of Care

- Health professional required to "exercise a standard of care and skill which would reasonably be expected of a normal, prudent practitioner of the same experience and understanding" in relation to time at which incident occurred
- CNO, CNA standards, organizational standards
- Expert evidence of accepted practice
- Academic knowledge

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Risks of Liability

- Inappropriate advice based on inaccurate assessment, lack of knowledge/expertise, inappropriate referral resulting in treatment delay or failure to refer
- Confidentiality/privacy concerns
- * Limits to scope of professional advice must be communicated clearly so that there are no unrealistic expectations or reliance, i.e., cannot diagnose or order treatment

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Inherent Risks

- Comprehensiveness of assessment - limited by inability to use observational skills
- Caller may be unreliable source of information
- May be unable to elicit enough pertinent data for accurate assessment
 - If in doubt...err on the side of caution

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Who Is Legally Responsible?

- Potentially, both health professional and organization
- Vicarious liability for care provided by employees
- Organizational responsibilities of due diligence regarding provision of telephone advice, i.e., qualified and skilled staff
- Duty to provide safe and appropriate systems
- Appropriate development of policies and procedures, guidelines, standards; availability of current information and community resources

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Effective Charting and Communication

- Every call must be documented for continuity of care and protection from liability
- Typing information directly into computer most expedient
- System-specific protocols may double as documentation tools
- Guidelines established for documentation, i.e., minimum requirements (date, time, demographic information, nature of inquiry, advice given, follow up recommendations)

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Effective Charting and Communication

(Cont'd)

- Policy development for information practices, including storage, retention and destruction, access, correction, confidentiality, privacy and security of information

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Principles of Professional Documentation

- Documentation is an integral part of providing care and services
- Primary communication method
- Accurate, clear, concise and legible
- Reflect services/advice provided
- Practices consistent throughout organization
- Forms/protocols should facilitate documentation

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Principles of Professional Documentation (Cont'd)

- Recorded information conforms with accepted standards
- Information in format that facilitates monitoring and evaluation
- Records are confidential and can be retrieved as necessary

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Practical Considerations

- Record entries chronologically
- All entries should include date, time, professional designation and signature
- Record information immediately or as soon as possible
- Records should be written from personal knowledge
- Subjective/objective data - source identified

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Practical Considerations (Cont'd)

- Do not make assumptions (i.e., knowledge of others)
- Use uniform terminology and abbreviations
- Use uniform system of recording information
- Report factually and objectively
- Do not add editorial comments
- Be prepared to support opinions by objective clinical evidence

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Risk Management

- Philosophical approach "what is the most effective way to manage risk?"
 - Results in a defensible position as allows health professionals and organization to demonstrate that aware of the risks, standards, guidelines, policies and expectations and took steps to address them through a systems approach or development of appropriate policies or practices

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Standards and Policies as Part of Risk Management

- Limits to scope of professional services should be brought to callers attention
- Where advice commonly requested:
 - Guidelines set out questions which should be asked at minimum in order to ascertain if sufficient information available to provide telephone advice
 - Standard information/advice to be provided
 - Set out circumstances where advisor must advise caller to seek medical attention immediately or follow up with family physician

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Standards and Policies as Part of Risk Management (Cont'd)

- Standardization does not take away from expectation that professional must use clinical judgment
- Simply establishes minimum criteria and ensures consistency
- Mechanisms to protect confidentiality/privacy of individuals
- Quality control mechanisms
- Once developed, organization has obligation to implement and monitor guidelines, policies and procedures

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