



# Legal Issues in Hospital Enterprise Risk Management

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# AGENDA

1. Enterprise Risk
2. Health Care: The Perfect Storm
3. Legislated Expectations

# ERM

- Focus is on achieving the Hospital's objectives;
- Top down awareness and bottom up process – Board and Senior Management
- Identification of areas and occurrences of risk
- Management of risk in the face of tolerance for risk
- The creation of an ERM culture

# Hospitals: The Perfect ERM Storm

- A highly regulated and prescriptive environment
- Direct links to the Board for key areas of operational performance
- Fiduciary obligations extend beyond the corporate walls
- Total dependency for funding
- Product quality has direct consumer impact
- An environment of absolute transparency

# Legislation and Regulation

## *Public Hospitals Act* – Regulation 965

- Every hospital shall be governed and managed by a board –can't delegate ultimate responsibility for risk
- The board shall, monitor activities in the hospital for compliance with the Act, the regulations and the by-laws and take such measures considered necessary to ensure the Act, the regulations and the by-laws of the hospital are being complied with;
- Every board shall ensure that procedures are established in the hospital such that, within twenty-four hours after each patient is admitted to the hospital, an admitting note is entered in the patient record

# Legislation and Regulation

S. 33 of the PHA provides:

- The board may,
  - (a) appoint physicians to a group of the medical staff of the hospital established by the by-laws;
  - (b) determine the hospital privileges to be attached to the appointment of a member of the staff; and
  - (c) revoke or suspend the appointment of or refuse to reappoint a member of the medical staff.

# Governance vs. Management

- The ERM discussion will usually begin with aligning “management's” responsibility to risk manage operational risk and the “board’s” responsibility to ensure risk oversight.
- In the Public Hospital this distinction is being blurred and at times confused as more direct operational responsibilities are placed with the board.

# A View from the Bench

- A hospital has an obligation to meet standards reasonably expected by the community it serves in the provision of competent personnel and adequate facilities and equipment and also with respect to the competence of physicians to whom it grants privileges to provide medical treatment. – *expansion of fiduciary obligations*

# A View from the Bench

- The **Board of Governors** of a public hospital is entrusted by its community with the responsibility of providing a program of health care tailored to the particular needs of that community. The **Board must** establish objectives that are within the capacity of its plan and resources. It must create a balance within its medical staff to ensure a broad base of expertise, and select the staff capable of developing excellence in health care while obtaining the most efficient utilization of the facilities and resources of the hospital... It is the task of a **Board of Governors** to balance the operation of its hospital and tune it to that level of optimum performance permitted by its inherent limitations. The **Board of Governors** has a responsibility to determine the pace at which the facilities of its hospital will be operated and to establish those staffing policies which satisfy the requirements of that operation.

# Transparency/Disclosure

- *Freedom of Information and Protection of Privacy Act (FIPPA)* - a right of access to a record or a part of a **record** in the **custody** or under the **control** of an institution
- PHA Reg. 965 responsibility to ensure system for disclosing every critical incident to affected patient, SDM, estate
- Patient Safety Indicators - a hospital, when requested to do so by the Minister in writing, shall disclose information concerning indicators of the quality of health care provided by the hospital, the hospital shall disclose the information under subsection (1) through the hospital's website as relate to any or all of the following:
  1. Diagnoses of hospital-acquired infections.
  2. Activities undertaken to reduce hospital-acquired infections.
  3. Mortality.

# ERM and Governance Challenges

## – external factors

- Pre 1980 – risk limited to a restrictive view of what hospitals did and owned;
- Post 1980 – risk expanded to the things we do, that we own and the systems that ensure the quality of our objectives;
- 1985 > expanding financial constraint
- 1990s > restructuring/integration
- 2000 > quality, disclosure and transparency

# ERM and Governance Challenges

## – internal factors

- Shift from incidents/occurrences in established silos (reactive) to a proactive identification of risk/threats across the organization;
- The production of voluminous and complex information
- Likelihood that identified enterprise risks and assessment stays the same
- Little opportunity to manage (cost)
- Complacency

# ERM and Governance Challenges

## – internal factors

Are we creating a new standard to be judged against?

- Issues:
  - does the ERM framework meet a reasonable standard?
  - have management acted reasonably in their identification and assessment of risk?
  - have board committees and the board responded in a reasonable manner?
- “What did you do about it”

# What's the Answer?



Or  
ERM

# Questions?

## Thank You

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