



# MILLER THOMSON LLP

Barristers & Solicitors  
Patent & Trade-Mark Agents



## COMMUNIQUÉ for the Health Industry

*July 14, 2006*

*A publication of Miller  
Thomson LLP's Health  
Industry Practice Group*

### STRATEGIES TO MANAGE THE DIFFICULT CLIENT/FAMILY MEMBER

*Kathryn Frelick  
Toronto  
416.595.2979  
kfrelick@millerthomson.com*

Dealing with the difficult or even abusive client, substitute decision maker (SDM) or family member in the health care setting can place incredible demands upon an already resource-stretched work environment. Health facilities and organizations have an overriding duty to ensure the quality of health care and to protect the safety of clients, visitors and staff members. They also have an obligation to protect staff members from abuse and harassment. While health professionals are trained to prevent and manage abusive behaviour, and health facilities need to ensure that there are appropriate resources in place to support a safe environment, including workplace policies and procedures, there are situations where additional steps, including legal action, will be necessary.

Intervention may be required where individual behaviours and demands potentially compromise the care provided to the client or other clients or negatively impact on the ability of staff and physicians to carry out their professional roles. Abuse can take many forms and can be emotional, verbal, physical or sexual.

Health care facilities and organizations may consider the following strategies, among others, when dealing with difficult clients, SDMs or family members:

1. Where capacity of the client is at issue or there are unrealistic demands for care, consider the development of a detailed plan of treatment for the client that sets out clear expectations and which will not require the health care team to enter into repeated discussions with the client or SDM.
2. Establish clear lines of communication with the client, SDM or family member so that staff and physicians are not working at cross purposes. A communication strategy should be developed, which may include designated individuals to communicate with the individual, with clear identification of persons to whom staff should refer questions. Such a strategy is important to ensure that there are consistent messages, limits are set and expectations managed.
3. Concerns about inappropriate behaviour on the part of the client, SDM or family member may be addressed directly at client meetings or case conferences. For concerns of an ongoing nature, it may be appropriate to follow up in writing.
4. Where available, it may be helpful to offer the services of social work, pastoral care, counselling or other support services to the client, SDM or family member to try to assist the individual in managing his or her frustration level and expectations.

5. Documentation ought to be maintained regarding all communication attempts. Further, staff and physicians should report and document abusive behaviour in accordance with the facility's policies and procedures. It may be appropriate to consider legal advice to explore options, and where appropriate, legal counsel may direct further investigation, documentation or activity which may be subject to solicitor and client privilege. Staff should receive direction about what information ought to be included in the record of personal health information and what should be documented separately.

6. There are a number of useful resources on the prevention and management of abuse. For example, the College of Nurses of Ontario has developed a practice guideline on "Nurse Abuse" which outlines strategies for dealing with abuse. It also provides a decision tree for withdrawing services because of abuse.

The publication acknowledges that, "while nurses are committed to meeting the needs of their clients, providing professional nursing services does not include accepting abuse." Health professionals are not required to simply accept abusive behaviour on the part of clients or family members and do have the ability to set limits. At times, however, a more comprehensive response from a corporate level is required.

7. Public hospitals, long term care homes and other health care facilities are private property and the facility has the ability to limit and restrict individuals from the premises. While a client's SDM is entitled to receive information necessary in order to make treatment decisions on behalf of the client, the facility can place limitations upon the SDM.

8. Health care facilities may restrict or limit a person's access by virtue of the *Trespass to Property Act*, by serving that person with a Notice Prohibiting Entry. This Notice may then be enforced by security personnel or the local police. Alternatively, the facility may go to court to obtain a peace bond, restraining the individual. This may be necessary where, for example, the individual is making harassing telephone calls to staff members or is contacting staff members outside of the work place.

9. Individual health professionals may certainly call for police assistance where there is concern that the client, staff or others are at risk of harm. Staff members should be aware of the appropriate protocols for calling for assistance.

10. In some situations, a 'behavioural contract' with the client or SDM may be effective. This contract may set out guidelines around care, as well as expectations with respect to visiting, communicating with the care team and behaviour toward the staff and physicians. Importantly, this should set out consequences where the contract is not followed.

11. If the client is incapable and there is concern about possible abuse by the SDM for finances or personal care, there may be a need to report the suspected abuse to the Office of the Public Guardian and Trustee for investigation.

12. There may be recourse to the Ontario Consent and Capacity Board in some situations, for example, if the health care professional proposing treatment is of the opinion that the SDM is not acting in accordance with the principles for giving or refusing consent (i.e. prior capable wishes or best interests). This option is also available in relation to admission to a care home or personal assistance services.

There may be other strategies or legal options that may be explored depending upon the particular circumstance of the case and the particular behaviours at question. Needless to say, dealing with difficult clients, SDMs or family members can be challenging, but is a reality with our health care system. It is important for health facilities and organizations to be proactive in managing these situations since they have such a significant effect on the workplace and staff morale.

## ABOUT THE AUTHOR:

**Kathryn Frelick** is a lawyer practising in our Health Industry Practice Group and supervises the Legal Retainer Program. Kathryn provides advice to clients in areas of privacy, administrative law, regulatory law and health policy issues.

*Our National Health Industry Practice Group is dedicated to providing comprehensive and integrated legal services to health industry clients. For more information about our group, visit our website at [www.millerthomson.com](http://www.millerthomson.com) or contact one of our regional contacts.*

## REGIONAL CONTACTS

### **Toronto/Markham**

Joshua Liswood  
jliswood@millerthomson.com

Kathryn Frelick  
kfrelick@millerthomson.com

### **Waterloo-Wellington**

Gregory P. Hanmer  
ghanmer@millerthomson.com

### **Calgary**

Bryan R. Ede  
bede@millerthomson.com

### **Edmonton**

Brian Curial  
bcurial@millerthomson.com

### **Vancouver**

David Martin  
dmartin@millerthomson.com

### **Montréal**

André Dugas  
adugas@millerthomsonpouliot.com

### *Note:*

*This newsletter is provided as an information service to our clients and is a summary of current legal issues. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this newsletter without seeking specific legal advice with respect to their unique circumstances. Miller Thomson LLP uses your contact information to send you information on legal topics that may be of interest to you. It does not share your personal information outside the firm, except with subcontractors who have agreed to abide by its privacy policy and other rules. To be removed from our mailing list, please contact [healthretainer@millerthomson.com](mailto:healthretainer@millerthomson.com)*

**[www.millerthomson.com](http://www.millerthomson.com)**