

Are you up-to-date
on best practices for
managing current and
emerging risks?

3rd Annual Critical Issues in Legal Risk Management for Hospitals

Get strategic and practical advice from some of Canada's top experts on how best to reduce the risk of litigation and improve patient safety. Topics include:

- Employees' rights (and obligations) during pandemics
- Preparing for Ontario's new workplace violence and harassment legislation: what every health care organization needs to know
- Extending the reach of freedom of information request legislation into hospitals: what would this mean for your organization?
- The new reporting obligations regarding health care professionals
- The rise of health care human rights challenges
- The latest on disclosing adverse events and errors
- Best practices for charting and record keeping
- The latest on hospital privilege disputes
- Accountability in collaborative care

Plus! Optional Post-Conference Workshops

- Charting 101: The Medical Record as Evidence of Proper Care*
- Procurement Law Issues For Health Care Institutions*
- Health Information, Privacy and Security: An Intensive Guide to Your Legal Rights, Duties and Obligations*

Chairs

Lonny J. Rosen C.S.
Gardiner Roberts LLP

Pat Fryer
Patricia Fryer & Associates Inc.



DATE & TIME

Tuesday, April 6, 2010
8:30 a.m. - 5:00 p.m. EDT/EST

OPTIONAL WORKSHOPS

Wednesday, April 7, 2010
9:00 a.m. - 12:00 p.m. &
1:00 p.m. - 4:00 p.m.

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

Conference
Webcast
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3rd Annual Critical Issues in Legal Risk Management for Hospitals

Get practical advice on managing and avoiding costly litigation

The potential for liability in the hospital setting seems limitless. As well as the perennial problems of medical malpractice, disclosing adverse events to patients and family members, getting informed consent, etc., new areas of concern keep cropping up. The amendments to the *Regulated Health Professions Act* imposing new mandatory reporting obligations, the new obligations for dealing with workplace violence and harassment under Ontario's Bill 168, and the push to extend the freedom of information request legislation into hospitals all have far reaching implications for health care institutions and their staff.

In one information-packed day, this 3rd Annual *Osgoode Professional Development* program will bring you up-to-date with the latest developments, and help you to minimize claims and promote an effective culture of patient safety. An outstanding faculty, comprising leading health law practitioners, risk managers, doctors and ethicists will guide you through the potential problems and pitfalls.

Plus! Don't miss the optional post-conference workshops. These highly interactive sessions provide in-depth analysis of three key areas of hospital liability:

- A. *Charting 101: The Medical Record as Evidence of Proper Care*
- B. *Procurement Law Issues For Health Care Institutions*
- C. *Health Information, Privacy and Security: An Intensive Guide to Your Legal Rights, Duties and Obligations*

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Lonny J. Rosen C.S.
Gardiner Roberts LLP

Pat Fryer
Patricia Fryer & Associates Inc.

Faculty

Dr. Kerry Bowman, University of Toronto
Joint Centre for Bioethics
Lori Borovoy, Risk Management Specialist
Central Community Care Access Centre
Wayne Brynaert, Gowling Lafleur Henderson LLP
(Ottawa)
Dr. David Cameron, Medical Director
Brant Community Healthcare System
and Cameron Health Law Consulting
Denis A. Chamberland, Aird & Berlis LLP
Jeff Curtis, Chief Privacy Officer, Sunnybrook
Health Sciences Centre, Toronto
Kate Dewhirst, Dykeman Dewhirst O'Brien LLP
Mary Jane Dykeman, Dykeman Dewhirst
O'Brien LLP

Michael B. Fraleigh, Fogler, Rubinoff LLP
Bonnie Freedman, Borden Ladner Gervais LLP
Professor Joan Gilmour, Osgoode Hall Law School
Mary Gavel, Chief Privacy/Patient Affairs Officer
Women's College Hospital, Toronto
Patrick J. Hawkins, Borden Ladner Gervais LLP
Kristin L. Taylor, General Counsel, Centre for
Addiction and Mental Health (CAMH)
Polly Stevens, Director, Quality and Risk
Management, SickKids, Toronto
Elyse R. Sunshine, Gardiner Roberts LLP
Michele Warner, Borden Ladner Gervais LLP
Michael Watts, Osler, Hoskin & Harcourt LLP
Philip Wolfenden, Gowling Lafleur Henderson LLP

Agenda

Tuesday, April 6, 2010

8:00 Registration and Continental Breakfast

8:30 Welcome and Introduction from the Chairs

8:35 When Health Law and Labour Law Intersect: Requiring Employees to Work During a Pandemic

Philip Wolfenden, Gowling Lafleur Henderson LLP

- *Occupational Health And Safety Act* (OHSA)– employers' duties and obligations
- Work refusals under the OHSA
- *Employment Standards Act* considerations
- Addressing privacy concerns: tips and tools for managing medical information before, during and after the pandemic
- Human resources considerations – business continuity plans; drafting pandemic policies; educating employees

9:15 Panel – Measurement and Evaluation of Patient Safety: Where and Why Patients Are at Risk

Moderator

Pat Fryer, Patricia Fryer & Associates Inc.

Panellists

**Lori Borovoy, Risk Management Specialist
Central Community Care Access Centre**

**Mary Gavel, Chief Privacy/Patient Affairs Officer
Women's College Hospital, Toronto**

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP

In this session, two health care risk management professionals, one drawn from community care, the other working at Women's College Hospital in Toronto, and an experienced health law practitioner, will focus on where and why patients are most at risk, and what can be done to improve patient care and reduce claims.

10:05 Medical Malpractice Update: The Key Cases Over the Past 12 Months

Michael B. Fraleigh, Fogler, Rubinoff LLP

Michael B. Fraleigh, an experienced medical malpractice lawyer who has represented both health care institutions and patients in this context, highlights the key malpractice cases that have come before the courts in the past year, and their implication for hospitals.

10:45 Refreshment Break

11:00 When Things Go Wrong: Critical Incident Reporting, Disclosing Adverse Events and Effectively Managing the Consequences

**Polly Stevens, Director, Quality and Risk Management
SickKids, Toronto**

Patrick J. Hawkins, Borden Ladner Gervais LLP

- The Canadian disclosure guidelines
- Documenting and reporting adverse events
- Best practices in investigating adverse events
- Effective disclosure policies – dos and don'ts
- Effective tips for dealing with the media when disclosing an adverse event
- Involving your insurer in the disclosure process

11:45 Accountability and Collaborative Care: A Medical Liability Perspective

**Wayne Brynaert, Gowling Lafleur Henderson LLP
Ottawa**

- Definition of collaborative care
- Direct liability, vicarious liability and joint and several liability
- Adequate insurance coverage: what's available
- Effective risk management in a collaborative setting

12:15 Luncheon

1:00 Admission and Emergency Treatment: Practical Strategies for Limiting Your Exposure on the Front Line

**Dr. David Cameron, Medical Director
Brant Community Healthcare System, and Cameron
Health Law Consulting**

- Transfer of care from emergency medical staff to hospital staff: when is responsibility transferred?
- Legal risks in an overwhelmed E.R. – what are the key areas of concern?
- Dealing with abusive patients: what are your legal risks if you eject them from the facility?
- Can an overcrowded E.R. refuse patients?
- Dealing with the police
- Staff safety and violent patients: the obligation to provide a safe work environment
- Effective risk management strategies

1:45 Ontario's *Occupational Health and Safety Act*: New Obligations for Dealing with Workplace Violence and Harassment

Michael Watts, Osler, Hoskin & Harcourt LLP

- The key elements of Bill 168
- What are the legal duties of employers, officers, supervisors and directors to manage workplace violence?
- Defining "workplace harassment" and "workplace violence"
- Drafting effective policies for dealing with workplace violence and harassment

2:15 Mandatory Reporting Obligations in a Health Care Setting

Lonny J. Rosen C.S., Gardiner Roberts LLP

- The amendments to the *Regulated Health Professions Act*: assessing the impact of the new reporting requirements
- Who's required to report on behalf of a facility?

Agenda

- When is a health care professional
 - incompetent
 - incapacitated
- What does the College do upon receipt of a report of incompetency or incapacity?

2:45 Hospital Privileges Disputes: An Update

Elyse R. Sunshine, Gardiner Roberts LLP

- Setting the scene: the legal relationship between doctors and hospitals
- Application for privileges – examining the rights and duties of the hospital Board when determining applications for privileges
- Revoking privileges
- Responding to claims involving natural justice, fairness and bias
- The latest cases involving privilege disputes

3:15 Refreshment Break

3:30 The Push to Extend the Freedom of Information Request Legislation into Hospitals: What Would it Mean for Your Organization?

Kate Dewhirst, Dykeman Dewhirst O'Brien LLP

The Ontario Hospitals Association is currently working with the Ontario Government to extend the reach of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") into hospitals. In this session, Kate Dewhirst assesses the far-reaching implications such a move might have on the hospital sector.

- Types of information that may be requested - general records and records relating to the requester's own personal information held by the hospital
- Definition of "record" includes hard and electronic copies of documents, emails, voicemail messages and handwritten notes
- How are requests made?
- What are an organization's response obligations?
- Exemptions from freedom of information requests
- Appeals
- Privacy protection obligations under FIPPA

4:15 The Rise of Health Care Human Rights Challenges

**Professor Joan Gilmour, Osgoode Hall Law School
Dr. Kerry Bowman, University of Toronto Joint Centre for Bioethics**

- The types of challenges that are coming before human rights tribunals and the courts
 - the right to treatment/therapy
 - timely access to health care
- Ethical considerations in the human rights challenge context
- Post-*Chaoulli*: what's happening out there?

5:00 Program Concludes

Workshop A

Charting 101: The Medical Record as Evidence of Proper Care

Wednesday, April 7, 2010 9:00 a.m. - 12:00 p.m.

Kristin L. Taylor, General Counsel, Centre for Addiction and Mental Health (CAMH)

Michele Warner, Borden Ladner Gervais LLP

Creating and dealing with documentation is an integral part of hospital procedure. Accurate charting is key to facilitating good patient care.

Also, documentation is often a vital factor in responding effectively to allegations of negligence and/or professional misconduct.

Don't miss this essential practical session, which will explain how to chart effectively.

- The plaintiff's use of documentation in any legal action
- The defendant's use of documentation in any legal action
- The hospital's duty to ensure proper charting is completed – the need to develop policies and clear standards of acceptable practice
- The types of documents that are relevant: full charts; medication records; schedules; appointment papers; employment files/reviews; hospital policies and procedures, notes and other memoranda
- How to record information accurately and effectively
- What are the typical problem areas in charting?
- The importance of recording at the time of the event
- Recording only what you saw or did
- Avoiding subjective conclusions and assumptions
- Why should you avoid recording the actions of other health care providers?
- The benefits of recording chronologically
- Blanks in the chart – what should you do?
- Late entries – dos and don'ts
- Making corrections to the chart – what to avoid
- "Severing" incorrect information from the chart
- Staff's personal notes
- Charting by exception
- Electronic charting – what are the general requirements?

Michele Warner is an associate at Borden Ladner Gervais LLP and is involved in representing hospitals and healthcare providers in proceedings before the courts and a variety of administrative tribunals. Her practice also involves providing legal advice to hospitals and healthcare providers concerning policies, risk management and compliance.

Kristin L. Taylor is the General Counsel for the Centre for Addiction and Mental Health. She is a frequent speaker on health law issues. Prior to joining CAMH, she was a partner at Borden Ladner Gervais LLP. Her practice focused on health law litigation, risk management and hospital management issues.

Agenda

Workshop B

Procurement Law Issues For Health Care Institutions

Wednesday, April 7, 2010 9:00 a.m. - 12:00 p.m.

Denis A. Chamberland, Aird & Berlis LLP

Each year, hospitals purchase millions of dollars in goods and services. Unlike private contracts, procurements by health care institutions are subject to special rules, duties and restrictions. In this session, Denis Chamberland will explain how your organization can make the right procurement decisions and at the right time.

- Planning your procurement and getting started:
 - opting in or out of Contract A
 - drafting in a Contract A setting
 - drafting outside a Contract A setting
- Procuring for capital equipment:
 - what if acceptance testing fails?
 - risk mitigation strategies
- Procuring for information technology:
 - negotiations / best and final offers
 - handling intellectual property issues
- Procuring for long-term services:
 - incenting supplier performance (without threatening termination)
 - governance mechanisms that work
 - handling contract extensions
- Ontario's new supply chain guidelines

Denis A. Chamberland is a commercial lawyer with Aird & Berlis LLP. Mr. Chamberland works with private sector and public sector organizations, including health care organizations. Recent health care projects include representing one of Canada's largest hospitals in negotiating the terms of an agreement to acquire a cyclotron. Mr. Chamberland has also recently represented one of Toronto's largest hospitals on a \$700 million design-build-finance-maintain project for the construction of a new hospital.

Workshop C

Health Information, Privacy and Security: An Intensive Guide to Your Legal Rights, Duties and Obligations

Wednesday, April 7, 2010 1:00 p.m. - 4:00 p.m.

Jeff Curtis, Chief Privacy Officer, Sunnybrook Health Sciences Centre, Toronto

Bonnie Freedman, Borden Ladner Gervais LLP

As we move inexorably towards a greater integration and sharing of patient health care information, keeping up-to-date with privacy laws and the latest privacy strategies remains essential. In this in-depth session,

two experts in the field, Jeff Curtis, Chief Privacy Officer at Sunnybrook Health Sciences Centre, and Bonnie Freedman, a lawyer at Borden Ladner Gervais LLP will provide you with answers to your most pressing privacy questions.

- Overview of the law relating to the privacy of health information
- What is confidential information?
- Nurses and other staff as "agents" of health information custodians
- Is the obligation to maintain confidentiality indefinite?
- When can you refuse to give a patient access to his or her information?
- What are the situations where consent to disclose information is not required?
- Disclosure to investigators – College, Public Guardian, Coroner
- Disclosure where the patient is the victim of a crime – e.g. spousal abuse
- Disclosure of confidential information where the patient is an accused offender
- Police at the bedside? Is there a duty to disclose information to the police?
- What is the circle of care?
- Hospital information sharing agreements
- Privacy challenges in the wider health care community
- Privacy, public health and pandemic planning: overcoming the challenges
- Handling privacy breaches
- Working within the legal framework: how do you get your transactions done
- Electronic information: how to deal effectively with the challenges posed by new technology

Jeff Curtis is the Chief Privacy Officer for Sunnybrook Health Sciences Centre in Toronto. Jeff also advises on Strategic Planning, Board Governance and Information Technology related planning and risk management activities at the hospital. Jeff is currently also the Chief Privacy and Security Officer for the Hospital Diagnostic Repository Services (HDIRS) project in Ontario, which operates a diagnostic imaging repository for 35 hospitals across 4 LHINS. Jeff has worked in the Information Technology sector for the past 19 years, and began his career as an Economist in Toronto. Jeff has an undergraduate degree in Economics and an MBA from the University of Toronto and is a Certified Information Systems Security Professional.

Bonnie Freedman is a lawyer at Borden Ladner Gervais LLP. Bonnie's practice focuses on health, privacy and access and not-for-profit law. She provides advice to a broad range of clients in the health care sector, including hospitals, clinics, governments and government agencies, health professionals and their associations. She is a frequent speaker and writer on health law and privacy issues.

Registration

Do you have the
knowledge and skills
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Dates & Times

Tuesday, April 6, 2010 – 8:30 a.m. - 5:00 p.m. EDT/EST

Optional Workshops: Wednesday, April 7, 2010

Workshops A & B: 9:00 a.m. - 12:00 p.m.; Workshop C: 1:00 p.m. - 4:00 p.m.

Please arrive a half hour early at the conference for sign-in and material pick-up.

Dress is business casual.

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