Conflict of Interest
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Agenda
• CMPA activities and services: what we do and why we do it
• CMPA and occupational physicians: a brief review
• Medico-legal risk situations: reports and IMEs
Canadian Medical Protective Association
Risk Management Services

Review of activities
Trends 2002 - 2011

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Membership

The CMPA represents over 90% of practicing physicians in Canada

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CMPA

- Not an insurance company
- Does not set a limit on the number of legal actions a member can face
- Does not set a limit on the amount of damages to be paid per legal action
- Assists on an occurrence basis rather than a claims made basis

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What can CMPA assist you with?

- Civil legal actions alleging malpractice or negligence
- Criminal proceedings arising from medical care
- Complaints and disciplinary proceedings related to a licensing body

What can CMPA assist you with?

- Human rights and privacy complaints
- Coroner’s or other fatality inquiries
- Inquiries about doctors’ work or conduct in hospital
- Maintenance of privileges
- Provincial or territorial billing agency inquiries
- General advice

CMPA getting the message to you

- Education channels of communication
  - member portal on web site
  - presentations to medical organizations
  - CMPA-organized symposia / regional conferences
  - online learning
  - data to professional bodies
  - all publications now public access
Why do patients sue their Doctors?

Patients and families litigate for a variety of reasons:

- Financial need, financial compensation
- Poor communication. “Does my Doctor care?”
- Disappointment / anger over poor clinical outcomes or unfulfilled expectations

Why patients sue

Patients and families litigate for a variety of reasons:

- Surprise at incidental discovery of important undisclosed details
- To find out what happened
- Because of the uninformed or unfortunate comments of other health care professionals
- To change the system for the better
The most common allegations

This is what patients claim doctors did wrong

• Negligence
• Poor or absent communication
• Absence of informed consent
• Inadequate medical records

Canadian Medical Protective Association
Risk Management Services

Professional Liability for occupational medicine physicians 2007 - 2011

Scope of review

• January 1, 2007 to December 31, 2011
• All contacts with the Association involving Occupational medicine physicians
• 200 medico-legal problems / 160 clinical incidents
Types of cases opened 2007 - 2011

N = 200

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Legal actions

• Closed legal actions
• January 1, 2007 to December 31, 2011
• 5 cases

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Legal outcome - comparison

Legal actions closed 2007 - 2011

Sheets with diagrams and charts showing the distribution of cases by type and outcome.
Risk of a legal action - comparison

Members named

Outcome – College cases
30 closed cases

63% of closed College cases had a favourable member outcome

Other includes limitation and voluntary resignation / retirement

Top three reasons for complaint

1. Sending of reports and language problems 16 complaints
2. Conduct 11 complaints
3. Diagnosis 9 complaints
Case examples

Forms, Medico Legal Reports and IME

• Forms, certificates and medico-legal reports on patients impact greatly on a physician’s time
• CMPA receives many requests for advice regarding the completion of forms and provision of reports
Request for a medico-legal report

“Do I have to do it?”

What is the nature of the request

- Treating physician
  - medical record requests
  - medico-legal report
- Independent medical examiner
- Medical expert

Treating physician

- Report of treating physician
  - professional obligation to prepare report on behalf of patient
  - get request in writing specifying purpose
  - get written authorization to release report to person requesting
  - exception – statutory requirement
Avoid pitfalls with forms

• Ensure your statements are accurate and current
• Be specific about what the patient can and cannot do
• Re fitness to work – have knowledge of the job
• Don’t feel limited by the form

Avoid pitfalls with forms

• Subjective versus objective statements
• ‘I don’t know’ is an acceptable answer
• Keep a copy
• Do not make defamatory or egregious comments

Form completion – special concerns

• Is the patient entitled to a copy of the form that I complete for a third party?
• What is the timeline within which I must complete a form or medico-legal report?
• How long is a patient’s consent valid?
Commenting beyond expertise

- “Ms Y now has an internally scarred abdomen as well as now a damaged psychiatric personality disorder with an unknown prognosis for full recovery.”

Irrelevant, unhelpful commentary

- “Today [patient] tells me she has trust in me, but I know that her trust is fragile and her therapy and prognosis depends on this…
- Human beings with love and kindness, consideration and understanding, have a remarkable ability to heal, and perhaps in this patient’s case, let us hope for this. As [patient] once said to me, “I may have to become spiritual”

Tips on form completion

1. Consent
2. Keep a copy
3. Are your statements accurate and current?
4. Is there a basis for the statement?
5. Fitness to work – have knowledge of the job
6. Do not disclose more than required or consent indicates
Independent Medical Evaluation (IME’s)

- No obligation to provide an expert report or IME
- Personal decision
- Optional

Case examples
Forms and third party requests

- Before the exam
- Information is the key! Tell the client and the third party requesting the exam:
  - purpose of the exam
  - what it will consist of
  - terms under which it will be conducted
  - consent is required
  - that a report will be provided to the third party and if it is confidential
  - warn if including past information

To avoid problems

1. Ensure thorough understanding of
   - nature of exam
   - terms of conduction
2. Chaperone?
3. Consent of patient obtained by third party
4. Review with patient
   - purpose and scope of exam
   - terms under which it will be done
   - consent

To avoid problems

5. Stop if consent is withdrawn
6. Clarify
   - who is to receive the report
   - who is entitled to a copy
     - provincial statutes
     - College guidelines
7. Inform of any coincidental findings of serious medical problem
Forms and third party requests - Report

- Address to the Third Party
- State the purpose of the report
- State your credentials
- Outline the facts

Forms and third party requests - Report

- Present condition
- Nature of the disability
- Prognosis (don’t guess)
- Any limitations on your ability to answer
- Think carefully about potential future problems

Forms and third party requests - pitfalls

- Avoid debate or comments critical of the patient
  - religious, ethnic, sexual orientation
  - pejorative references
  - socio-economic status
Forms and third party requests - pitfalls

• Use caution
  • in changing the report at the request of:
    - the lawyer
    - the client
  • read and sign the report
  • be succinct

Be wary of…

• The hostile patient
• Flirtatious patient
• Becoming treating doctor for patient
• Jokes
• Trivializing complaints
• Demeaning comments
• Demeaning other professionals

A checklist
Checklist # 1

Be familiar with current legislation and applicable College or other guidelines  


Checklist # 2

Ensure the person undergoing the evaluation understands the reason for the evaluation and your role  
Caveat:  
Avoid becoming a treating physician  
Avoid doing an IME on a former patient  


Checklist # 3

Ensure consent in writing for all aspects of the evaluation and report, including audio and video taping  
Caveat: Avoid clandestine recording  


Checklist # 4

Ensure the client knows who is entitled to the report

Checklist # 5

Maintain your professional decorum at all times ✓

Caveat: Many allegations are of rudeness. Injury may also be alleged due to forceful examinations. ❌

Checklist # 6

Chaperone present during entire evaluation (interpreter as necessary) ✓

Caveat: Do not rely on client's family to fill this role - have gowns available - do not assist in removing clothing - do not move elastics or straps ❌
Inform the client if you discover a coincidental serious problem

The Medical Expert

Expert opinion

- Obligation to act as an expert?
  - No
    - personal decision
    - decline if you have any conflict of interest
  - if you agree
    - ensure you have all relevant documents (pleadings, medical records, transcripts)
Expert opinion

- Medical negligence cases
  - comment on quality of care rendered
  - identify any deficiencies
  - causal relationship between deficiencies and harm

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Expert opinion

- Your opinion will be used by the courts in determining the standard of care
- Your review will be documentary only
- You likely will not examine the patient

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Expert opinion

- Goals
  - to assist the Court
  - to be independent
  - not to be an advocate for either side
  - to provide unbiased opinion
  - limit comments to area of expertise
  - to consider all relevant facts
Expert opinion

"An ethical physician will recognize the responsibility as a witness to assist the court in arriving at a just decision."

Canadian Medical Association
Code of Ethics

Expert opinion

- Discuss fee & manner of payment in advance
  - how many days / hours in court
  - how many days / hours with lawyer preparing
  - time required to:
    - review documents
    - prepare report
- Ask for confirmation of above in writing

Expert opinion

- Establish
  - you will be paid even if your opinion is unfavorable
  - the lawyer will be responsible for payment
  - you will be paid even if the litigation is unsuccessful
Expert opinion

• Cautions
  • decline comment outside your expertise
  • if data unavailable, indicate that your opinion is provisional
  • declare areas of uncertainty
  • state facts or assumptions used
  • include photos, tables, calculations if used
  • if you change your mind, notify immediately

Medico-legal reports

• Format for reports
  • address to lawyer
  • state purpose of report
  • state your credentials
  • enumerate documentation reviewed
  • outline fact situation (history, physical, lab)
  • summary and conclusions

Medico-legal reports

• Summary and conclusions
  • present condition
  • disability
  • cause of disability
  • prognosis
• Expert report only
  • comment on quality of care
Summary

- Be professional, accurate, unbiased, objective
- Discuss request with requesting lawyer
- If any doubt 1-800-267-6522

Summary: staying out of trouble

- Practice according to the standard of care of your area of expertise. Remain up to date
- Communicate well with your patients, their families, your colleagues, and with staff
- Beware of defensive medicine
- Clear indications for what you do
- Document clearly and concisely what you do, your conclusion, your plan
- Never hesitate to ask for help
Summary

• If trouble finds you despite all of the preceding:

• 1-800-267-6522