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Joint Statement on Liability for Physicians involved in Peer Review Activities

INTRODUCTION

Over the past several years, the Health Care Protection Program (HCPP) and the Canadian Medical Protective Association (CMPA) have consulted in response to questions from health care agencies and physicians seeking clarity around liability protection for physicians who participate in peer review activities. Physicians engaged in review activities for the health authority should feel confident they can look to the HCPP and CMPA for liability protection.

At times reviews are conducted for the purposes of evaluating and undertaking a qualitative assessment of the medical or professional expertise of one or more medical professional(s). The HCPP and CMPA have developed this document in response to questions from health care agencies and physicians about liability protection for physicians who either participate in, or organize and lead such a review, for quality assurance purposes, in which the work of other medical professionals is examined. Peer review activities in this context refer to reviews conducted by physicians from within or external to the hospital, on behalf of the health authority, the scope of which may include systemic or individual accountability issues.

LIABILITY RISKS

The potential for misdiagnosis is an inherent risk in Medicine. When reviewing the work of others, physicians may arrive at a diagnosis that differs from the original one, which subsequently results in allegations of wrongdoing against them. Reviewing and interpreting tests or images differently from the interpretation of the original physician may expose the reviewing physician to the possibility of professional medical liability.

When evaluating the quality of another physician's care, a physician may be required to comment on the accuracy of the initial assessment, the quality of the care provided or the merits of complaints against that physician. In so doing, the reviewing physician may make oral or written statements that are subsequently alleged to be defamatory. Defamation is the act of making a derogatory statement about another individual, which is purported to be untrue.

In establishing and managing a quality assurance process, physicians may perform administrative functions such as establishing criteria for the review, managing the activities of those who participate in it and making administrative decisions related to the results, for example writing disclosure letters to patients or appropriately disseminating risk management “lessons learned”.

RISK MANAGEMENT

Health authorities may necessarily undertake reviews that measure the quality of physician care. Physicians have an interest in participating in these quality assurance activities. Whether conducting and managing the review process or providing medical professional expertise, physicians may incur liability while engaged in a good-faith review of the quality of care provided by their peers.

LIABILITY PROTECTION

HCPP provides Commercial General Liability and Professional Liability to all health authorities in the Province of BC. In addition, coverage is also provided for specified additional liabilities arising from health authority operations. In this context, physicians, interns, residents, dentists and midwives may be covered but only for the performance of administrative duties on behalf of the health authority. HCPP coverage in these circumstances will depend on whether the activity in question was administrative in nature and conducted on behalf of the health authority.

The CMPA determines the extent and scope of its assistance to members on a case-by-case basis. Physicians who are members of CMPA are generally eligible for CMPA assistance with medico-legal difficulties arising from the exercise of their medical professional expertise as part of a quality assurance review. Members' eligibility for CMPA assistance will, to some extent, depend on whether they were providing medical input into the activity that forms the subject of the action. CMPA will also generally provide assistance when a member is alleged to have made a defamatory statement during the provision of a legally or ethically obligatory report or statement to those who have a corresponding duty to receive such reports. Such allegations may arise in the context of medical professional work where one physician reviews and evaluates the work of another.

SUMMARY

HCPP and CMPA each provide protection for physicians within the scope of quality assurance activities undertaken on behalf of the health authority: HCPP for exposure arising out of the administrative activities; and CMPA for exposure arising from the medical expertise.

Ultimately the availability of assistance provided by HCPP or CMPA depends upon defining the circumstances and exact nature of the allegations. Physicians engaged in review activities for the health authority should feel confident they can look to the HCPP or CMPA for liability protection.