

News & Views

Documentation – A Necessary Evil and A Saving Grace

No one can predict if a claim will occur. It is nearly impossible to know the timing and circumstances that may surround a claim. But what we can predict with certainty is that if a claim does occur and a legal action for recovery of damages is initiated, we will need to prepare a defence.

If a claim goes to Court, the main body of evidence in any proceeding is based upon the documents. The defendant must present documentation to prove that the standard of care was met. The plaintiff must challenge the veracity of the documents. Accurate, timely and thorough record keeping is therefore crucial to a successful defence.

Unfortunately, the record keeping is often neglected. For many people, documenting that a procedure has been completed is low on their totem pole of responsibilities. In a busy workplace, there are more pressing demands.

Usually, at the top of the totem pole is completing the procedure. So for the most part, the documentation is dropped, partially completed or left on the “to do” list. The result is incomplete records. It’s difficult, if not sometimes impossible to prove that the standard of care was met when the documentation presented is sketchy, partially completed or not presented because it does not exist.

No one likes to do the paperwork. Perhaps that is because employees don’t fully understand why they should. After all, they completed the procedure so why do they have to record what they just did? The answer may be to fully explain to employees the reasons behind the paperwork and the significance of how the documents can help “down the road”.

For one thing, documentation is evidence that the entity is committed to protecting public safety and meeting its duty of care. It provides evidence that:

- 1) standardized policies or procedures existed and were followed; and
- 2) regular inspections were conducted and necessary maintenance performed.

Secondly, employees may not be able to remember exactly what they did on a particular day a year or more in the past. Over time memories fade, employees leave. Written records are always there.

Incidents are a fact of life. They are unfortunate but they do not necessarily mean that the entity is negligent or liable for the damages. Each and every incident must be assessed on its own merits. Documentation is a crucial element in the assessment. Providing completed documentation in a timely manner ensures that your defence counsel can PROVE that you met the required standard of care.