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Coffee Talk

A Health Industry Seminar Series



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Have You Been Called as a Witness? The Good, the Bad and the Expert Witness

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OVERVIEW

1. Types of Proceedings
2. Witnesses - Hospital is Not a Party
 - Types of Witnesses (Expert vs. Fact)
 - Types of Examinations (Chief vs. Cross)
3. Witnesses - Hospital is a Party
 - Examination for Discovery
4. Managing Risk



1. TYPES OF PROCEEDINGS

1. Civil proceeding
2. Criminal proceeding
3. Administrative tribunal



Civil Proceeding

1. Dispute between private parties where plaintiff seeks monetary award
2. Many causes of action:
 - Negligence (malpractice)
 - Contract dispute
 - Wrongful dismissal
3. Standard of proof is “balance of probabilities”



Criminal Proceeding

1. Action brought on behalf of the Queen/the State in the public interest
2. Relates only to crimes under the Criminal Code
3. No monetary awards
4. Standard of proof is “beyond a reasonable doubt”



Administrative Tribunals

1. Established and granted regulatory powers by specific legislation
2. Panel of “lay people” with specialized expertise
3. Quasi-judicial



Administrative Tribunals - Examples

1. Professional Disciplinary Committees
2. Consent and Capacity Board
3. Human Rights Tribunal of Ontario
4. Coroner's Inquest
5. Health Professions Appeal & Review Board
6. Employment Boards



2. WITNESSES – HOSPITAL IS NOT A PARTY

1. The Hospital is not named as a defendant, but its staff or employees may still be called as witnesses



2(a) Types of Witnesses

1. Fact witness
2. Expert witness



Fact Witness

1. Testify with regards to relevant factual information, not opinions
2. Anyone can be compelled to act as a fact witness



Expert Witness

1. Individuals with specialized knowledge of a particular topic, beyond that of a lay person
2. Testify for their opinion
3. Must be impartial



2(b) Types of Examinations

1. Examination-in-Chief
2. Cross-Examination



Examining a Fact Witness

1. Examination-in-Chief

- Explain the factual background and the specific knowledge that the witness has

2. Cross-Examination

- Attempt to discredit the witness or find gaps in their knowledge of the facts



Examining an Expert Witness

1. Examination-in-Chief

- Qualify the witness as an expert
- Explain expert opinions or conclusions and the basis for them

2. Cross-Examination

- Discredit the witness' qualification as an expert
- Discredit the witness' conclusions



3 WITNESSES – HOSPITAL IS A PARTY

1. The Hospital or its employee(s) may be named as a defendant in an action



Examination for Discovery

1. Occurs before trial
2. All named parties must be examined under oath
3. Transcript becomes evidence at trial
4. Purpose:
 - To learn all the facts (no surprises)
 - To secure admissions



Examination for Discovery

1. Hospital as a defendant
 - Corporate representative must attend
2. Nurse as a defendant
 - Manage risk by ensuring comprehensive charting



4. MANAGING RISK

1. Have a process in place for employees to notify Hospital if they are summonsed or subpoenaed to be a fact witness or approached to be an expert witness
2. Ensure witnesses are properly prepared
3. Have policies and procedures to ensure comprehensive charting, documenting and record keeping



QUESTIONS?

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Thank you!

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