

# Liability Issues & Collaborative Practice

## Part I - Negligence & Seven Principles of Team-Based Care

### SEVEN PRINCIPLES OF TEAM-BASED PRACTICE

1. Understand your role and the role of others on your team.
2. Be reliable.
3. Do not accept the assignment of tasks within another profession's scope of practice if you are not competent to perform them and do not assign tasks to others if they are not competent to do them.
4. Do not accept the delegation of controlled acts from another professional unless you are competent to perform them.
5. Get informed consent and keep getting it throughout the client's care for both the procedures and the health professional who will perform the procedures.
6. Use effective communication strategies with your team including timely, legible and comprehensive record keeping.
7. Share responsibility and advocate for your clients.

### NEGLIGENCE & TEAM-BASED CARE

Dietitians have a legal duty to care for clients in a careful and proper way while watching out for their best interests. Dietitians are expected to have a certain level of skill and knowledge in practicing their profession. Negligence implies that a recognized standard of care was not exercised when caring for a client and, as a result, the client was harmed.

While health professionals are permitted to make mistakes, the mistake cannot be so serious as to demonstrate that the dietitian lacks the skill and knowledge to meet the appropriate level of care. Courts will make a finding of negligence when all of the following factors are present:

1. The dietitian owed a "duty of care" to the client in question;
2. The dietitian breached the "standard of care" for his or her profession;
3. The client suffered a loss; and
4. The dietitian's conduct or failure to act was the cause of the loss.<sup>1</sup>

Because a "healthcare team" is not a legal entity, it cannot be sued in an action for negligence. It is the individual health professionals who make up the team who will be sued. In a finding of negligence, the courts go on to apportion the responsibility for the harm amongst the health professionals who are negligent depending on the gravity of the individual's negligence. The "damages" or money owing to the injured person are paid by the negligent team members in accordance with the apportionment. For example, in an award of \$100,000 a physician might be found 80% responsible and therefore required to pay \$80,000 and a nurse and a dietitian both 10% responsible and therefore required to pay \$10,000 each. Given that individuals are responsible in collaborative care, you may well ask: How can I make sure that my clients are not at risk in a team-based practice?

### SEVEN PRINCIPLES OF TEAM-BASED PRACTICE

Be aware that your role as a dietitian and how you communicate is different on a team than in individual practice. In collaborative practice, there are some new and different risks to clients. You can avoid the risks by paying special attention to team dynamics.

Know the role you play within the team, understand how team members work together to care for clients and pay attention to communications. Applying the seven practice principles below will help protect your clients from harm and, at the same time, help protect you from a legal action for negligence.

### **1. Understand your role and the role of others on your team.**

First, review your scope of practice which is defined in the *Dietetics Act, 1991*. The College can clarify the scope of practice in policies, standards or guidelines. For some professions, their practice includes controlled acts as defined by the *Regulated Health Professions Act 1991* (the "RHPA"). Dietitians are not authorized by law to perform any "controlled acts" under the RHPA but it would be a good idea for a dietitian to know them. Other professions can delegate the controlled acts that they are authorized to perform to dietitians, provided that they comply with their professions' regulations about delegations.

Make sure you know your organization's policies and guidelines. Hospitals, clinics and primary care teams should have guidelines, protocols, policies and directives which define the role you and others are expected to play on the team. The courts have found, for example, that where a hospital uses healthcare teams, the hospital administration is responsible for providing policies and guidelines to make sure that the care is administered in a coordinated way and that the team functions cohesively.<sup>2</sup> Facilities can be found negligent for not having policies or, if they have policies, for failing to enforce them when a client is harmed.

In a case of negligence, the courts' examination of conduct will not end with the review of a facility administration's approach to team care. They will examine the team dynamics, the roles each member was supposed to play, and whether each member of the team adhered to the organization's policies and guidelines. If, according to the guidelines or a decision of the team, a particular team member was supposed to do something and did not, he or she will not only be putting the public at risk but may be found negligent.

The responsibilities of some team members may increase by working on a team. For example, a team leader will have to properly fulfill that role in addition to their usual professional responsibilities on the team. In a case of negligence, the courts will consider whether health professionals were negligent in these expanded roles when assessing the conduct of each team member.

### **2. Be Reliable.**

One advantage of collaborative practice for healthcare professionals is that each member of the team can rely on the others to help provide quality care. Each team member can be trusted to do their part. If your role as a dietitian is to perform an assessment of a client's nutrition and nutrition conditions, other members of the team will assume that your assessment has been done and proceed to treat the client accordingly. If it has not been done, and the client is harmed as a result, you will be at the greatest risk of liability because you will have failed to fulfill your role on the team. Your team members should not be expected to check up on you to see that you did your job or that you did it properly before they do their's.

### **3. Do not accept the assignment of tasks if you are not competent to do them and do not assign tasks to others who are not competent to do them.**

Since dietitians do not have any controlled acts, anyone on a healthcare team can legally perform tasks within a dietitian's scope of practice. Conversely, there will be tasks you are legally able to perform within another health professional's scope of practice if they are not controlled acts. This actually creates flexibility on healthcare teams, allowing various members of the team to perform tasks within the scopes of practice of other team members.

However, there are also risks associated with this flexibility. You must be sure that you are competent before performing any task, especially those that are within the scopes of practice of other team members. If you are not, and you do something that harms a client, you may be found liable. Do not do any task that you do not feel competent and comfortable doing.

It is interesting that even though dietitians do not have any controlled acts, it is professional misconduct for them to assign their "dietetic functions" or acts within their scope of practice to professionals who are not competent to perform them. This means that you also need to be careful about assigning tasks within your scope of practice to others.

#### **4. Do not accept the delegation of controlled acts if you are not competent to do them.**

One or more controlled acts may be delegated to you by another health professional on the team. When you accept a delegation, be sure that you are competent to perform the controlled act and that the person delegating to you is legally entitled to do so. Even though delegation procedures and responsibilities should be clearly defined in the team's policies, do not perform a controlled act if you have any doubts of your authority or ability to perform it.<sup>3</sup>

#### **5. Get informed consent and keep getting it throughout the client's care for both the procedure and the health professional who will perform the procedure.**

This is an aspect of consent which is specific to team-based practices. Not only do the members of the team need to understand their roles but, in addition to obtaining informed consent about a particular procedure, they need to make sure that clients understand who will be doing what with respect to their care.

Clients have a right to know what procedure will be administered to them and its risks as well as which team member will be performing the task. Sometimes clients cannot tell the difference between the various medical professionals treating them. A particular client might not consent to a dietetic intern conducting an assessment but would not object to a Registered Dietitian performing it. If there was a problem with the assessment, the dietitian would most likely be found liable for both failing to ensure that informed consent had been obtained and failing to properly supervise the intern.

Be sure that you or another member of the team has obtained informed consent which includes the procedure

and the professional designation of the person who will be performing the procedure before treating a client. This may be included in consent to a treatment plan such that one member of the team can obtain the client's consent to the entire plan which will be delivered by various members of the team.

Remember that informed consent is ongoing. You and/or other team members will need to confirm consent as the client's care evolves. To avoid putting your client at risk, it is better to repeat yourself and get too much informed consent rather than too little.

#### **6. Use effective communication strategies with your team including timely, legible and comprehensive record keeping.**

Good communication is a cornerstone to teamwork. Without strong communication health professionals are putting their clients' well-being at risk and, in turn, themselves at risk from actions in negligence. Medical records in team-based care are the key source of information-sharing about a client.

While good record keeping is also required of dietitians practising on their own, the need for updated records is much greater in a team-based practice. Entries must be made promptly, legibly and comprehensively so that any team member consulting the record can trust that the client's status and progress are up-to-date. All relevant information must be recorded. If you are late making an entry in your own records or fail to record critical information, it is unlikely to be too problematic since you are the only one relying on the information and will hopefully remember significant issues or problems. But if you fail to record a significant finding or problem in the client's chart in a team-based practice, such as a problem with a feeding tube or an adverse reaction to food, the other members of the team will not be aware of critical information and, if the client suffers harm, you may be found responsible for it.

Also, when you meet with one or more members of your team to convey information about a client, remember to

document details of these discussions in the client's medical record.

### 7. Share the responsibility for your clients and advocate for them.

What if you cannot do your job properly? There may be occasions when you do not have enough resources to perform your responsibilities. For example, you may not have enough time to conduct assessments or follow-ups for all clients as requested because there are other higher priority clients who need your attention. In your duty of care for your clients, it is absolutely critical in these situations that you explain the problem to the other team members, your team leader or to the facility administration. You should also make a note in the clients' medical record. When the team and administration know about a problem, they share responsibility for fixing it. If you keep the

problem to yourself, your clients may suffer and you may put yourself at risk of being sued for negligence. Where possible, advocate for your clients and participate in problem solving to find solutions for the most effective and efficient client care possible.

*If you have comments or questions about liability and your practice, please call the College. Your questions or concerns may serve as a basis for future résumé articles or FAQs.*

1. Conference Board of Canada, "Liability Risks in Interdisciplinary Care", April 2007, pp.8 and 9.
2. Lachambre v. Nair [1989] 2 W.W.R. 749 (Sask. Q.B.) as cited in Conference Board of Canada, "Liability Risks in Interdisciplinary Care", April 2007, p.19.
3. Federation of Health Regulated Professions of Ontario, "An Interprofessional Guide on the Use of Orders, Directives and Delegation for Regulated Health Professionals in Ontario". <http://mdguide.regulatedhealthprofessions.on.ca/why/default.asp>

## The JKAT Pilot A Success!

We would like to extend a warm thank you to the Registered Dietitians (RDs) who participated in the *Jurisprudence Knowledge and Assessment Tool* (JKAT) pilot project. JKAT is an education and assessment tool designed to help RDs improve their knowledge about the laws affecting the profession and assess their application of them. The College's mandate is to protect the public as well as to support RDs in Ontario. CDO accomplishes this by ensuring that the profession operates within its scope of practice and provides ethical and high quality services that best serve the public in Ontario. The College wishes to enhance the knowledge for all RDs in Ontario; it is in this spirit that the JKAT was developed.

### PILOT

Three different versions of the JKAT were piloted from March 2 to April 25, 2007 with a group of 151 RDs:

1. A JKAT with general questions for RDs who do not work with clients for individual nutrition intervention, do not oversee the work of these RDs or teach RDs.
2. A second version with more applied questions about the laws, professional standards and guidelines as they pertain to client/patient care for RDs who work in hospitals, long term care, home care, community health centers, public health departments, and other sectors where they see clients for individual nutrition intervention.