

DEALING WITH OUTSIDE CONTRACTORS

Slip and fall incidents are among the most frequent adverse events reported by NS HOPA Subscribing Members. The cost to the program in financial terms, as well as the human resource cost to our Subscribing Members to investigate and respond to these claims, is significant.

One proven method of reducing the number of falls, as well as the cost of responding to falls, is to implement a well-planned strategy of property maintenance, which may include hiring qualified and conscientious companies or sole proprietors to provide snow removal services.

In selecting your service provider, it is critical to choose one who is mindful of the unique needs of a healthcare facility, which is often open 24-hours a day, and whose visitors are often in some measure of distress or ill health. Courts can hold these facilities to a high standard to make their premises safe for those attending.

Even after carefully selecting a contractor, you will still have an obligation to make sure their performance meets the expected standard, and to take corrective measures if it does not.

Carefully worded contracts with these service providers allow all parties to understand their respective roles and demonstrate your commitment to keeping your premises safe.

Key Elements of the Contract

All arrangements with your contractor should be clearly spelled out in writing. Important details include:

- Which areas fall within the scope of the contractor's work, including any delineation between access roads, parking lots, sidewalks, stairs or other areas to be maintained by your own staff;
- What weather conditions trigger the contractor to attend the property;
- How soon after a weather event must the property be cleared;
- What areas are to be prioritized after a weather event;
- Whether the contractor is required to inspect the property in the absence of a weather event and, if so, how often;
- How quickly the contractor must respond if called to attend; and
- What logs are required to be kept by the contractor?

Detailed logs maintained both by your own staff and your contractor can be the most critical items in defending a slip and fall claim. By the time a lawsuit is filed, it may be several years after the fact. Logs

will help the workers involved refresh their memories and also demonstrate to the Court your commitment to a systematic maintenance regime. This crucial evidence will help minimize financial loss and preserve the reputation of your organization.

We've attached some sample logs which you may wish to modify as necessary and adopt for use by your own staff, as well as provide to your contractor to complete and submit periodically.

Regardless of the format of the log that is used, at a minimum you should require your contractor to record the date and time of each action, the names of the workers who attended your property, the weather conditions, the condition of the property, and all steps that were taken to tend to the property.

Insurance Coverage

One of the most critical components of these contractual arrangements is the insurance carried by the contractor. Your contract should require that the contractor provide you with proof of liability insurance in the form of a Certificate of Insurance, which states:

- The name of the insurance company
- The policy number
- All required extensions
- The effective dates of the policy
- The types and amount of coverage

An example of suggested wording:

The contractor, at its expense, shall obtain prior to commencement of the work, and shall keep in force until the work is completed, the following insurance coverage:

- *Comprehensive General Liability Insurance on an occurrence basis, with the following extensions: Standard Non-Owned Automobile Coverage (include standard contractual liability endorsement); Contractual Liability; Contingent Employers' Liability; and Owners' and Contractors' Protective Insurance Coverage*
- *Standard Automobile Insurance*
- *Workers' Compensation Coverage*

*These policies will be written with inclusive limits of not less than \$5M and will add **[the NS HOPA Subscribing Member]** as an additional insured with respect to liability arising out of the operations of the contractor in connection with this contract and will contain a cross-liability clause, a severability of interests clause, and will be primary and will not call into contribution any other insurance available to **[the NS HOPA Subscribing Member]**. Coverage shall be placed with a reputable insurer that is satisfactory to **[the NS HOPA Subscribing Member]** and licensed to conduct business in Nova Scotia.*

Indemnification

A second critical component of your contract is the requirement that the contractor indemnify you in the event of a claim that arises because of their work, including assuming the defence of any action in which you are named as a defendant as a result of the contractor's work.

An example of suggested wording:

The contractor shall indemnify [the NS HOPA Subscribing Member] from and against all claims, losses, suits actions, proceedings, damages and costs, including any legal costs, arising out of or related to, or resulting from the contractor's activities or those of the contractor's agents or employees, under the Agreement, including the contractor's omissions, improper acts, or delays in executing the work.

The contractor shall assume the defence of [the NS HOPA Subscribing Member] with respect to all claims, suits, actions, and proceedings arising out of, or related to, or resulting from the contractor's activities or those of the contractor's agents or employees under the Agreement, including the contractor's omissions, improper acts or delays in executing the work.

The benefits of a carefully drafted contract became apparent in a recent claim involving an NS HOPA Subscribing Member. The NS HOPA Subscribing Member, located in a small community, entered into a contract with a small business operator in that community for snow removal services. The contract required the contractor to have the NS HOPA Subscribing Member made an additional insured under its policy. When a visitor reported falling in the parking lot, and went on to file a lawsuit, the contractor's insurance company stepped in to take over the defence of the NS HOPA Subscribing Member. The result is that the cost associated with defending the claim will rest with the party who had assumed responsibility for maintaining the property, and not the health care system.

Summary

Careful selection of a contractor, maintenance of detailed logs, and careful documentation of your contractual arrangements, are vital components of a risk management strategy that reduces the chance of injury to those attending your premises, and places responsibility for those risks upon those who have been contracted to keep your premises safe.

If you have questions, or would like additional information please contact:

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