

# Industry Guidelines



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17 August 2011

## Do they pose an increased legal risk to practitioners?

Practitioners will be aware that recently biosecurity guidelines were published by the AVA. Following the publication of these guidelines some members raised concerns about the legal consequences flowing and whether this created additional legal risk.

As a result the views of Paul Baker of Meridian Lawyers and principal lawyer to Guild Insurance Limited were sought and this article has been prepared to assist practitioners in being in a more informed position about the merits attaching to the utilisation of guidelines in certain circumstances.

It is fair to say that the thinking of defence lawyers and insurers has changed dramatically over the past 10-15 years in the context of whether guidelines heightened the risk of legal liability attaching in circumstances where a practitioner did not adhere to the recommendations of professional peers and/or an industry body. The view that was held was that any published guidelines would form the basis of exhibit one in legal proceedings against a professional where it was felt there had been a failure to comply with the recommendations stipulated in such guidelines.

In my view the use of guidelines does not in fact in reality heighten the risk of a legal liability attaching to a practitioner. Why? First of all guidelines and suggested standards of treatment or care essentially mirror the standard of care peers expect a professional to comply

with in the particular circumstances. As such if legal proceedings arise oral evidence is generally called from a peer practitioner of good repute at the hearing and his or her opinion is sought as to whether the defendant practitioner complied with the standard which would be reasonably expected in the circumstances. Therefore guidelines are effectively a written version of that oral opinion.

The AVA in more recent years has implemented a range of risk management tools (for example in the equine field these have included pre-purchase inspection and other examination forms) and the aim of this approach has been to enhance the standard of professional practice and to put in place protocols and procedures to assist a practitioner in reducing the risk of being sued.

The use of guidelines therefore meets this objective and can be categorised as an effective risk management tool. Importantly, the content and scope of the recommendations contained within the guidelines must be reasonable and accurate and compliance with those recommendations is of fundamental importance. To this end there is no use peers prophesising a certain practice approach if in reality that is not achievable. It is also important that the guidelines be monitored on an ongoing basis and if appropriate they be amended and updated to reflect new technology, practice methods or peer opinion.

It is also critical that any guidelines are the subject of appropriate preparation and consideration and that suitable review and sign-off arrangements are in place. Consultation with senior practitioners is also important so as to ensure that the guidelines are not only workable but reflect what peers consider are an appropriate set of parameters in the circumstances.

While guidelines may seek to be utilised by plaintiff lawyers in litigation a failure to adhere to them on the part of the practitioner may not necessarily be fatal to the defence. Guidelines are not a mandated legal standard but it is fair to say generally they reflect what is expected of a practitioner in the particular circumstances. From a profession perspective guidelines can often avoid the intervention by Government through the implementation of Regulations which are mandatory from a compliance perspective and compel strict adherence.

Finally, a number of professional industry bodies have in recent years introduced a vast array of guidelines to assist their members in the performance of their professional practice and in response to what is recognised as ensuring the protection of the public at large. This reflects the current thinking on a broader level whereby practitioners are encouraged to embrace such an initiative rather than be fearful of the legal consequences.

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