Risk Avoidance Program Helps Members Manage Risk

by Chuck Schwab, Director of Risk Management; Cara Kowal, Risk Control Coordinator; and Al Smolen, Risk Control Consultant

FOUNDED ON THE SOUND principles of recognizing and managing municipal risk, MMRMA’s Risk Avoidance Program (RAP) continues to be a successful and popular component of our services to members.

MMRMA’s Risk Control Department coordinates the program, and all RAP grant applications are reviewed and decided upon by the Membership Committee at its quarterly meetings. Funded through allocations made by MMRMA’s Board of Directors, the program has helped members significantly reduce risks and liability losses since its inception in 1997. The ever-increasing number of RAP grant applications submitted each quarter gives testimony to the program’s value in the eyes of the membership.

Every area of municipal operations has benefitted from RAP grants over the years. Many of MMRMA’s training programs are funded via RAP grants and, collectively, provide operational information vital to most of our member municipalities’ departments.

The following are just a few of the many solutions to municipal risk that have received RAP funding from MMRMA:

- **Public Services:** Sewer “push cameras” and lift station emergency power sources help protect municipalities from failures of important services.
- **Law Enforcement:** RAP grants have helped fund TASER devices and training; video and audio recording systems for in-vehicle and on-person use; specialized educational courses; and video arraignment equipment.
- **Corrections:** Security systems, Automated External Defibrillators (AEDs), and prisoner restraint systems help reduce the number and severity of claims in corrections facilities.
- **Fire:** Older fire engines (which would be very expensive to replace) and support vehicles have been fitted with retro-reflective markings to safeguard these vehicles and their crews working on or near roadways.
- **Emergency Medical Services:** RAP grants have enabled municipalities to purchase specialized bariatric lifting and management devices, which better protect patients from further injuries during mobilization and transport and help prevent lifting injuries to employees.

MMRMA members are encouraged to investigate the use of RAP grants to minimize risks in their operations. Our website, www.mmrma.org, has RAP guidelines, information about standard RAP grants, and applications. As always, members are encouraged to contact MMRMA’s Risk Control Department at 734 513-0300 for assistance with RAP grants or other questions about our risk control services.

The next deadline for submission of RAP grant proposals is January 31, 2013.
MMRMA Moves More Communications to an Electronic Format

by Michael Rhyner
Executive Director

MMRMA’S RETOOLED WEBSITE marked its second anniversary in September, and we have continued to add features and content since its launch. One of the Board of Directors’ strategic priorities is the effective use of technology in providing services to MMRMA members, and the website is one of the primary vehicles for this initiative.

One aim in upgrading our website was to give it a professional, modern appearance and provide general information about MMRMA to the public, enhancing our brand image and marketing efforts.

The site’s other purpose is to serve as a primary communication vehicle to our membership. Regular “hot topics” and special announcements, as well as other items of interest, appear on the homepage. Visitors to the site can access recent and archived issues of our bimonthly Risk Journal newsletter, Annual Reports to Members, and biweekly National News Roundup.

Quarterly Reports Go Paperless
In November, we launched electronic distribution of our Quarterly Reports to Members using the site’s email function. The eblasts are sent to Member Representatives, who can read the reports on our website by clicking the links in the email and logging in to their user accounts. (Individual Members still receive some financial documents via U.S. mail for the time being.)

Member subscribers have already been receiving the Risk Journal and other MMRMA communications via email; distributing Quarterly Reports electronically is the next step in our ongoing move away from printed and mailed correspondence.

Members Only Content
A wealth of other resources is available to member employees who have set up a username and password at mmrma.org. Model policy and procedure brochures, the Governance Manual, and other valuable information are accessible to logged in users. Committee members can obtain agendas, supporting material, and meeting minutes for the committees on which they serve.

The website also features announcements about upcoming conferences and training sessions. Online registration is now the preferred method of signing up for our Annual Meeting and Risk Management Workshop.

To protect users and to keep MMRMA’s member-related information private, we have developed a system of layered security, enabling member employees to request a user login for access to Members Only materials and registration options appropriate for their needs. Designated Member Representatives enjoy the highest level of access to information, including claims and financial data for their member entity.

Get Connected
We encourage all member employees to request a login. For security reasons, we require that only one person has access to each user account on our website. Please do not share your username and password with anyone!

Your Feedback is Welcome
We are very proud of our progress in moving to electronic communications via mmrma.org, and we appreciate your feedback as we continue to make the most of this powerful tool. There will come a time where the vast majority of information will be provided to members through the website, ensuring timely and cost-effective correspondence and member service.

TO REQUEST YOUR PERSONAL login, click on Member Login at the top right corner of the site, then on the green Request a Login link.

Fill out the form with your contact information. Most requests are fulfilled within two business days, and you will receive an email notification, including your username and password, when your request has been approved.

If you need help creating a login, please contact Tamara Christie or Kim Michael at 734 513-0300. For assistance with training registrations, transcripts, and certificates, contact Cara Kowal at the same number.

If other employees in your entity would like to access the Members Only area, please encourage them to request their own login.
The Michigan Appeals Court ruled that local ordinances allowing police to require minors to submit to a preliminary breath test (PBT) without first obtaining a warrant are unconstitutional.

A person less than 21 years of age who refuses to submit to a preliminary chemical breath analysis...is responsible for a civil infraction and may be ordered to pay a civil fine of not more than $100.

It was undisputed that no search warrant for the PBT had been procured.

Challenging his Minor in Possession charge, Chowdhury argued in district court that his PBT results should be suppressed because the ordinance permitted an unconstitutional warrantless search. In support of this argument, Chowdhury cited two decisions by Judge Lawson of the United States District Court for the Eastern District, wherein a nearly identical ordinance and state statute were found to be unconstitutional.

The district court judge in Chowdhury's case agreed and found the ordinance that the officers used to administer his PBT to be unconstitutional. The city attorney appealed the case to the Oakland County Circuit Court and then to the Michigan Court of Appeals.

The Michigan Court of Appeals agreed with Judge Lawson's opinions and found the municipal ordinance to be unconstitutional on its face, warranting suppression of Chowdhury's PBT results and giving rise to a Fourth Amendment violation. The Court did not find persuasive the city's argument that exigent circumstances existed justifying the warrantless search, specifically that securing search warrants for the PBT of each partygoer would have presented the risk that the alcohol would have dissipated by the time the PBT was actually performed.

Change is Slow
The Chowdhury decision should drastically affect the way police departments investigate Minor in Possession charges. However, many municipalities across the state still carry an ordinance like the one ruled unconstitutional in Chowdhury.

The consequences of operating under such an ordinance are two-fold. First, many solid Minor in Possession prosecutions will be lost when the defendant is successful in suppressing the PBT result that was obtained without a warrant. Second, because administering a PBT to a minor without a search warrant constitutes a technical violation of the minor’s Fourth Amendment rights, civil litigation may arise.

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While, in most cases, the actual damages to the minor may not be significant, in an action brought pursuant to 42 U.S.C. §1983, a plaintiff who prevails at trial is entitled to attorney's fees. These actions can get very expensive, so it is extremely important that, if a member still has a Minor in Possession ordinance similar to that in Chowdhury, the municipality’s attorney be contacted immediately for advice on how to revise the ordinance to comply with the law.

Minor in Possession of Alcohol Charge Still Viable

Many departments and police officers feel that obtaining a warrant before administering a PBT is not a viable option because of the time involved, and contemplate whether they will have to stop charging Minors in Possession in their municipality altogether.

The answer is no, but the officers’ job in establishing this crime is more difficult now. Officers need to rely on alternative means to demonstrate the probable cause necessary to charge a Minor in Possession of Alcohol, without the objective “rubber stamp” of the PBT.

It is important to remember that there is no threshold amount of alcohol the officer must establish to have probable cause for believing a subject is a Minor in Possession; any amount is sufficient.

Since Chowdhury, it is essential for officers to note things like the odor of intoxicants, slurred speech, glassy eyes, and impaired motor skills, and to use these observations, as opposed to the PBT (assuming a warrant for administering a PBT is not procured), to establish probable cause.

It is also noteworthy that the Chowdhury holding does not apply to a suspected minor in possession of alcohol who is operating a motor vehicle. There is implied consent for a PBT under those circumstances, and a warrant is not necessary. Officers suspecting that a minor is in possession of alcohol while operating a motor vehicle may still administer the PBT as they did before Chowdhury.

Consequently, the court found that Chowdhury did not give consent for administration of the PBT.

Growing Pains

There will most certainly be growing pains for police departments in the wake of Chowdhury. However, officers who are well trained in observing signs of alcohol consumption, in writing thorough and specific police reports articulating these observations, and in testifying competently in court during evidentiary hearings and trials will have little difficulty establishing the necessary components of the crime of Minor in Possession of Alcohol without the PBT.