



PROFESSIONAL LIABILITY BULLETIN

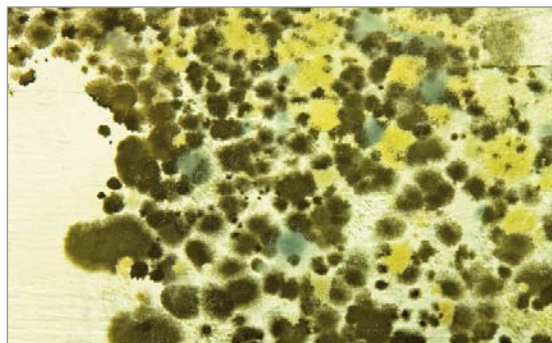
Managing the Professional Liabilities of Mold Assessments

Mold is one of the oldest and most prolific organisms on the planet. Under normal circumstances, mold is not an issue; however, when conditions are right, mold growth is amplified exponentially, which can lead to real problems: property damage, health effects, cost overruns and schedule delays. When performing mold assessments and possibly providing oversight of the remediation, many factors can impact your professional liability exposures. Controlling these exposures will help reduce your liability and set realistic expectations for your client.

There is an exhaustive list of causes for mold related claims. Some of the more popular scenarios include lack of timely response, incomplete investigation, lack of follow up to recommendations, misinterpretation of sample results, inadequate oversight of the remediation, and poor remediation methodology. These shortcomings may:

- cause a reoccurrence of mold growth
- result in lack of fulfillment of potentially unrealistic expectations
- be perceived as a lack of knowledge or not performing to a reasonable standard of care

Your liabilities begin with the initial client contact. By not addressing the client's concerns in a timely fashion, there is a possibility of a claim for non-action. This was the basis of the famous multi-million dollar case where the Ballard family was initially awarded \$32 million, which was ultimately



reduced to \$4 million, but due to further appeals resulted in a confidential settlement. Just one example of how not having mold coverage can be costly to your business.

In order to control some of these exposures, use your proposal to set expectations for yourself and the client. Detail the services you intend to provide and those services you do not intend to provide. Ensure the following are addressed:

- Are the client's expectations obtainable?
- How much damage is acceptable in order to evaluate the wall cavities?
- How much effort is required to reach difficult areas?
- What type of sampling will be performed, if any?
- Is the client expecting oversight of the remediation, if necessary?
- Will a post-remediation assessment be performed?
- Is a certification that the building is clean and free of mold expected by the client?

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- Does the client possess a clear understanding of the proposed services?
- Is the contract unambiguous and fair?

A key component of conducting the assessment is the need to identify the source of the moisture. This is the prime component of mold growth that can be controlled. Thoroughly document the investigation utilizing photographs, instrument readings, and written notes. This is imperative given the growth rate of most molds and the possibility of reoccurrence. Have an owner's representative verify the locations of your samples, photographs, and observations.

The assessment report should detail what was and what was not done. Include language indicating that the results are a point in time and not necessarily representative of the entire building. In the report, clearly state that this report is solely for the client's use and only to be used in its entirety. If there is a need for additional investigation or the client reduced or limited your intended scope of work, state so in the report. Utilize your knowledge of the inherent liabilities associated with Phase I Environmental Site Assessments and address these risks accordingly.

Current guidelines indicate that if mold is visible or if there is an odor, there is no need to sample. Should sampling be desired in order to identify mold types and concentrations, there are several easy and reliable methods available; however, there are also negatives with each method. Interpretations of sample results can be risky at best and each situation must be evaluated separately. For example, concentrations of airborne mold at a manufacturing facility will be higher and more varied in type than those found in a pediatric Intense Care Unit but both can be at acceptable levels. Generally, indoor airborne molds should be less concentrated and of the same type as those found outdoors when sampled at the same time.

If on site during the remediation, ensure that the source of the excess moisture has been eliminated, that corrective measure recommendations are followed, and that additional areas of mold growth are reported. Verify before you complete the project that the water has not returned. Keeping the client informed about the remediation progress and any deviations from the original scope of work will allow for quick resolutions and a trusting relationship. If oversight is not part of your scope of work, clearly communicate that to the client in your proposal. If post remediation sampling and inspection services are provided, ensure that the client clearly understands that this is only a snapshot of the existing conditions and that there are no guarantees relating to future mold growth. Claims have arisen when post remediation inspections conclude that the space is "suitable for occupancy" or "guaranteed mold-free", only to have mold growth reappear at a later date.

Refer to readily available guidelines, such as those published by the New York City Department of Health and Mental Hygiene or the USEPA to ensure contractors are using suitable methods for

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remediating surfaces covered with mold growth. While not all possible methods are described in these documents, they do provide useful background information on which to make an evaluation of other suggested methods.

In summary, ensure that your scope of services is definitive, the client has a clear understanding of your role and responsibilities, source of excess moisture is identified and eliminated, and that reasonable clean up guidelines are followed. Although there are no federal or state regulations controlling mold remediation, some states are considering regulating firms involved with mold assessments and remediation, so keep up with legislation in your geographic areas. Understand that an assessment is a picture in time; and finally, speed and thoroughness of response are critical to keeping a small problem from becoming a costly, unmanageable and litigious situation.

The information contained herein is intended for informational purposes only and does not constitute legal advice. For legal advice, seek the services of a competent attorney. Any descriptions of insurance provisions are general overviews only.

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