

PROFESSIONAL LIABILITY

Professional liability or malpractice losses are usually costly, dollar settlements or judgments are substantial, and the professional staff is devastated. No other type of claim carries the personal and emotional impact of being accused of or found negligent in the performance of a professional activity.

Negligence is the key concept when examining issues related to liability. As a “rule of thumb”, negligence is the failure to perform the proper standard of care.

There are four considerations necessary to “prove” negligence:

1. a legal duty to act or not act (i.e., fulfill a contract)
2. a “wrong” must be committed (i.e., sexual abuse)
3. the voluntary act of the wrongdoer must be the original cause of injury (i.e., allowing an intoxicated person to drive a motor vehicle)
4. an actual injury or damage to property loss must occur (i.e., death, emotional trauma)

Organizations should consider the following Employment Practices as responsible guidelines for avoiding the risks associated with professional liability or malpractice liability:

- Have the employees been properly screened prior to hire?
- Have the employees been properly trained prior to beginning service? Is professional development an integral part of performance expectations?
- Do employees perform professional activities within the parameters of their license and/or job description? Is their scope of practice adequately described by the job description?
- Who holds accountability for services that are delivered? What supervision is practiced? Are supervisors competent to be supervisors?
- Are supervisors and middle managers held accountable for safety and exposure management?
- Does a substantial amount of off site case management occur? How is that service supervised?
- Do policies and procedures prohibit dual relationships?
- Are bad employees tolerated?

Clinical guidelines and operations also effect the probability of a liability loss. Consider the following:

- What is your niche of service or scope of practice?
- To whom do you provide care? Does the described service niche have a high correlation with your client profile? How does the client profile impact admissions, the care provided, milieu issues and discharges?
- Are admission and discharge boundaries clear?

- Have you recruited and hired staff that can provide high quality care to the clients as described in the client profile?
- Does your organization practice informed consent?
- Are assessments thorough?
- Does clinical documentation reflect accurately the care provided?
- Are client grievances handled expediently?
- Are adverse incidences reported to supervisors, senior staff, the risk management committee, and your insurance agency claims and risk management department immediately? Are adverse incidences trended, tracked and monitored? Do they trigger a review of policies and procedures?
- Has your organization written and implemented a crisis management plan? Do you use the plan?
- How does the organization monitor clients that have terminated service? Are the policies and procedures regarding AMA or premature discharges followed?

Combining solid employment practices and active monitoring of the organization's clinical operations provides a basis for lowering the probability of an allegation of or actual incident of negligence. High quality oversight and supervision performed by competent middle managers and clinical supervisors are primary to the organizational customs necessary to avoid negligent professional behavior. And adding trending and tracking of all adverse incidences, as well as implementing a system of analysis for serious adverse incidences helps assure that an actual event is accidental.