

Protecting Vulnerable Clients from Abuse



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This article is an excerpt from a chapter of the Center's soon-to-be-released publication, *Exposed: A Legal Field Guide for Nonprofit Executives*, by Melanie Lockwood Herman and Mark E. Chopko. To pre-order a copy of the book, which will be shipped or available for download in September, [click here](#).

Many community-based nonprofits serve vulnerable populations, from adult daycare centers, to healthcare facilities, athletic clubs, after-school recreation programs and churches to name a few. Experts in the field recognize that vulnerable clients are susceptible to mistreatment by adult family members, caregivers, visitors and others with whom they come into contact. Child protection professionals estimate that an unacceptably high percentage of girls and boys, for example, will be victimized during the course of their minority, usually by someone they know.

A study authorized by the federal No Child Left Behind Act showed that perhaps as many as 10% of public school students are victims of sexual abuse between kindergarten and 12th grade. (Source: Dr. Charol Shakeshaft, *Educator Sexual Misconduct with Students: A Synthesis of Existing Literature on Prevalence*, Planning and Evaluation Service, Office of the Undersecretary, US Department of Education, 2004.) Although the abuse that occurs in nonprofit organizations constitutes only a small percentage of all reported abuse cases, field studies do not give reliable statistics for the nonprofit sector. Nonetheless, the public rightly expects that community-serving organizations have adequate procedures to protect the vulnerable people that they serve, and that they will respond promptly and effectively to any complaints.

In addition, the public expects that abusers will face charges and that any institution that knowingly fails to act in the face of a complaint will be held accountable. In many instances, private institutions will face litigation; by contrast, despite the high incidence of abuse in schools, public institutions are largely immune unless injured persons act quickly, often within 180 days, to initiate a process to protect their rights. The financial impacts themselves are significant. From 1950 to the present, Catholic institutions reported they have paid more than \$2 billion in losses, and the resulting financial disruption has caused the bankruptcy of six dioceses and one religious community in the United States. More than the monetary cost, however, nonprofit institutions that are perceived as having failed to protect vulnerable persons in their care suffer a loss of respect and stature, often accompanied by a decline in contributions. Catholic institutions are not the only ones against which complaints have been raised, but they are certainly the most public. Commentators and pundits have sought to explain or critique the Catholic Church's response.¹ This is as an object lesson to the nonprofit community that it should take seriously its responsibility for vulnerable people in its charge.

Abusers seek out opportunities to abuse in places where there are vulnerable people. Abusers employ subtle and secretive strategies in order to have access to potential victims. No system can be perfect; however, organizations can take reasonable steps to 1) prevent abusers from being employed, 2) educate children and their parents, the sick or the infirm, or other potentially vulnerable populations about abuse, and 3) communicate as openly as possible institutional abhorrence of abuse and our commitment to educate and prevent to the extent possible. When abuse happens, the organizations can respond effectively and timely to 1) remove and report the offender, 2) reach out to the presumed victim, and 3) communicate with interested parties and stakeholders.

Below are some key concepts recognized as best practices.

Have a written policy. The time and attention taken to write organizational policies dealing with prevention and response to abuse are worth it. The worst thing that can happen to an institution is to have a crisis—a complaint of active abuse in the organization—and have administrators scrambling to decide how to respond. This policy should state the organization's commitment to providing a safe environment for those entrusted to its care, while disclosing that no institution is immune and no policy is failsafe. The policy should be both proactive and reactive.

For example, the policy should address issues such as the screening and checking of backgrounds for employees and volunteers and any additional education and training either for staff or for those served. Another issue is what to do when the screen results identify an individual who should be disqualified from working with children. Those persons should be approached privately—perhaps the results are erroneous! But a disqualification that is legitimate has to be enforced. The best screening forms include consent provisions whereby individuals acknowledge in advance that information that suggests that there is a problem can and will be shared with law enforcement or others as necessary and appropriate. That provision alone, in some institutions, has resulted in individuals refusing to complete the screening process and therefore voluntarily disqualifying themselves for work.

Finally, every organization has different needs, resources, services, responsibilities, funding, demographics, etc. So too, each situation of abuse is different. Policies should stress that they are only guidelines, that each situation is different and that these guidelines, for good reasons that are documented, can be departed from in particular circumstances. For example, if a policy requires an automatic suspension on notice of a complaint, what happens if the accuser recants (says the complaint was made up in anger)?

Respond to a complaint. A policy should also outline how a complaint will be dealt with. For example, will any member of the staff respond to a complaint or will a complainant always be directed to a particular trained individual? Will oral or anonymous reports be accepted? What will happen within the institution with respect to reporting to executives or the board? Will reports to law enforcement be made as a matter of course because the staff are mandatory reporters or simply as a matter of practice? Will the organization accept reports from persons who return, sometimes decades later, to say that once, when they were young, they were abused by someone in the institution? What will the institution say to stakeholders and participants about the complaint? Who will deal with the media? What if the first time the organization learns of an incident is because a lawsuit has been filed and the local news would like a statement? All these good questions have good answers that depend on the nature of the institution and the circumstances expected to be faced. Good planning requires that they be thought about before there is a problem, and any policies can be amended as necessary in light of experience gained.

Policies can sometimes be too general or too strict. If they are too general, too much is left to the discretion of individual administrators and problems routinely arise in that similar situations are often given disparate treatment. If they are too strict, they make compliance difficult and cumbersome. It is best to strive for balanced policies administered by trained staff. A well-trained, sensitive, and dedicated staff is really the best device to prevent and respond to abuse.

Dealing with victims and the wider community. There is much sensitivity in the community about how best to deal with those who have been abused. Knowledgeable institutions encourage victims to come forward and often communicate through hotlines, the Internet, brochures, and other devices that signal that the institution is

open to receiving a report. This kind of education not only eliminates suspicion but raises confidence that the institution cares and understands the need for effective action.

Experience shows that a large majority of those bringing forward complaints about abuse are acting with some basis in fact. Policies should therefore be written and implemented with the expectation that the person is telling the truth, not circulating a lie. Most presumed victims want to hear an apology and an assurance that the accused will not be in a position to hurt another person. The simple words “I am so sorry” are powerful, but yet are resisted by some, sometimes on advice of counsel, because they don’t want to do anything that can be taken as admitting liability. That is the negative impact of litigation if it chills people from doing the right thing. The policies of the organization should stress that presumed victims will be treated with sensitivity and respect. Words of apology convey sympathy and acknowledgment for what is being said, and not an admission that the organization has done anything for which it is legally liable.

Likewise, a requested assurance that the accused will not be allowed to hurt another person can be responded to with an indication that, according to policies, reports will be made and they will be followed-up. What will also need to happen is some experienced intervention with reconciliation and healing, for complaints are often lightning strikes to a community that will react to this news with varying degrees of belief and their own senses of betrayal or anger.

Communication strategies. The easiest case to manage in the public domain is one in which law enforcement arrests a member of the organization’s staff and the arrest is captured by the local television news. Most situations are not so neat or clean and the organization must think through how much information it is prepared to put in the public domain for the accuser and the accused. If the incident has already been disclosed, the organization is in position of reacting and responding. The organization must demonstrate that it is open and responding to very bad news. Such openness must be tempered by the fact that there may be private details of the situation or concerning the individuals that do not belong in the public eye. A key consideration is whether the identities of the accuser and the accused have been or will be made public, by the organization, by law enforcement or by other means.

Having a designated spokesperson is an enormous help. Members of the staff or the board can defer to that person. As a media “first responder,” the contact cannot say “no comment,” unless specifically forbidden by law enforcement to discuss it. In that instance, the response recites the fact—“law enforcement asked us not to comment.” Every response should note that the organization is committed to child safety, that it has a policy which is being followed, that the matter is under review (or the organization is cooperating with law enforcement), that not all details can be made public at this time (out of concern for privacy), and that further statements will be made as appropriate. Thereafter, consider how much and what might be said to stakeholders—those served, the board, donors, etc. Follow the advice of media specialists—if you have bad news, *you* share it first. Remember, in some situations, the perception of a cover-up can be worse than the crime. The organization depends on trust—and the process to preserve and recover trust begins immediately.

Prevention. It’s not a pipe dream. True—no system is foolproof but there are things an organization can do to enhance its ability to prevent abuse, starting with screening and checking the backgrounds of employees and volunteers. This process occurs at entry into the organization but it should be updated regularly. If an organization has indicated on its employment or screening forms that information showing an individual committed abuse will be shared, the applicant/prospective volunteer is on notice that the next employer will be told the truth about the person. There is some anecdotal information that having public policies on the issue of sharing and reporting information in the interest of public safety dissuade questionable persons from seeking employment or volunteer status.

Another preventative policy is education. If a school, daycare center, or church teaches those it serves about the signs of abuse or “good touch-bad touch,” that process raises awareness. There are some reports that the resulting awareness has caused reports of “grooming” and other boundary violations that may be a precursor to abuse. From the perspective of organizational information, much can be learned from these complaints of precursor events or recent abuse: who is the accused and how did he/she come to be associated with the organization? How did the complainant know what to report and to whom? What kind of media or other follow-up occurred? In other words, an organization can learn what worked and what did not, so as to do better in a

next incident and adjust policies as needed.

Litigation. Despite your best efforts, your organization is sued. In many instances, litigation follows a complaint to the organization but in a surprising number of instances the first notice that an organization receives is in litigation. Most of those lawsuits are filed by adult survivors of abuse. How the organization responds is still important.

Even if the allegation is for misconduct that is decades old and the first notice is litigation, treat the matter internally as a complaint. Do not ignore it as “litigation.” Put into action the organization’s response plan. At a minimum, the communications plan must be implemented. It may even be the case that the accused still works or volunteers for the agency. In that case the organization, as discussed above, may need to follow its entire plan, from reporting, to notification of the board and insurers, to temporary suspension of the accused pending investigation, and on to follow-up.

Whatever policy exists should be followed. If there is good reason to deviate from it, that deviation should be documented. If the accused is being removed under the policy, stress that the removal is not a presumption of guilt but a standard procedure. If the person accused will be restored to a position, a similar announcement should occur. Speculation and rumors hurt; the organization’s management of information and perception of openness are vital.

Conclusion

Every organization that has potential exposure can be a model of preparedness. The measures identified in this article are very straightforward and within the grasp of every nonprofit. Resource materials and expert advice are readily available. The process of implementing these measures provides an opportunity to involve stakeholders and has beneficial effects in the morale and sense of benevolent purpose of the organization.

1 L. Martin Nussbaum, Changing the Rules, Am., May 15, 2006, at 13, available [here](#) (documenting that in 2002, newspapers “published 728 stories in January, 1,095 in February and 2,961 in March [about abuse only in the Church]. By April 2002, these papers were publishing a new story every nine minutes, 160 every day, 4,791 for the month. By year-end, American papers provided their readers over 21,000 stories of sexual abuse by Catholic priests.”).

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