





Managing Legal Risks in a Nonprofit Organization:
A Risk Management Webinar - January 4, 2006




Liability Basics

- Tort
- Categories of tortious conduct:
 - intentional conduct
 - negligence
 - strict liability




Important Terms

- Negligence
 - Inadvertence, inattention, thoughtlessness, incompetence
- Gross Negligence
 - more than ordinary negligence but less than recklessness




Additional Terms

- Direct liability
- Vicarious liability
- Duty of care
- Misfeasance
- Nonfeasance




Purpose of Tort Law

- Three goals:
 - To ensure that persons who suffer a loss or harm resulting from another's conduct receive appropriate compensation
 - To make certain that the cost of harm is borne by persons who cause it
 - To encourage members of our society to exercise care




Proving Negligence

- **Duty** - duty to exercise care
- **Negligence** - violation of duty
- **Causation** - connection between action or inaction and resulting harm
- **Damages** - loss or damage




Negligence Nuances

- **Contributory Negligence**
- Alabama, Maryland, North Carolina and Virginia
- **Comparative Negligence**
- the rest



How Far Must You Go?

- Weighing gravity of potential harm against cost of preventive measures of alternative conduct
- The law doesn't require that a nonprofit:
 - take every possible precaution to prevent foreseeable harm
 - curtail every activity in which harm could result
 - exhaust resources to prevent harm



How Far Must You Go?

- Factors to consider:
 - Social value of activity
 - Appropriateness of conduct in question
 - Feasibility of risk-minimizing activity, cost and safety of alternative course of action
 - Whether providing a warning would be sufficient to avoid harm



Board Liability


- Duty of care
- Duty of loyalty
- Duty of obedience




Board Liability

- What's required?
 - Participation
 - Tough questions
 - Review materials
 - Avoid conflicts of interest

- Know what protection is available...
volunteer protection laws



Why do people sue nonprofits?





Claims Against Nonprofits

- Who is suing?
- How common are lawsuits against nonprofits?

- What allegations?
 - Employment Actions
 - Negligent Supervision
 - Abuse (client on client versus caregiver on client)




What can your nonprofit do to *avoid* being sued?

- **Step #1:** Carefully consider *all* commitments
 - contracts you sign - have you read them?
 - promises to employees
 - funding agreements



What can your nonprofit do to *avoid* being sued?

- **Step #2:** Adopt reasonable (practical) policies and procedures, and enforce them consistently




What can your nonprofit do to avoid being sued?

- **Step #3:** Teach your personnel to look for and address obvious hazards
 - loose carpeting
 - manhole cover
 - your premises / premises being used by your nonprofit




What can your nonprofit do to avoid being sued?

- **Step #4:** Obtain legal advice sooner than later...
 - Employment issues
 - Contracts
 - Accidents, injuries



What are the areas of vulnerability?

- Contracts
- Partnerships
- Employment Relationship
- Participant injury
- Automobile




Claims Against Nonprofits

- *Frequency*: Auto, slips and falls
- *Severity*: Abuse
- *Both*: Employment-related claims




What can a nonprofit do to *prepare* for litigation?






Step 1
Respond with compassion




- express concern
- use common courtesy
- offer reasonable assistance
- don't promise to pay




Step 1 *(continued)*


- Take care of *your organization*
 - record information on the injured person(s)
 - document the incident - use an accident form
 - ◆ witnesses
 - ◆ description
 - ◆ photographs



Step 2
Understand the process



- plaintiffs and defendants
- summons
- complaint



Step 2 *(continued)*

- Answer
- Discovery
- Interrogatories
- Requests for production
- Requests for admissions
- Depositions




Litigation & Alternatives


- Jury trial
- Bench trial
- Mediation
- Arbitration



Statutes of Limitation


- Generally 1-7 years
- Special rules for minors






Which court?

- Amount in controversy
- Nature of the claims
- Location of the parties
- Candidates for federal court:
 - out-of-state parties and over \$75,000
 - alleged violation of federal law




Service of Process

- Designate person to accept service of process
- Should you try to avoid service?



Step 3
Establish a file



- Symbolic reason
 - mental preparation
- Practical reason
 - keep materials organized



Step 4
Convene your defense team

- Retained counsel
- Appointed counsel
- Small is best



Step 5
Communicate
with constituencies

- Keep the staff informed
- Keep the board and key volunteers up to date
- Inform donors and supporters as necessary

Step 6
Cooperate with your insurance
company, broker and counsel

- Send materials to the insurer
- What is a reservation of rights letter?
- Retained counsel





Step 7
Mind the clock



- Answer due in 20-30 days
- Extensions may be granted
- Note time and date of service
- Default judgments
 - proof of service + deadline
 - limited time to set aside judgment
 - possibility that coverage will be voided



Step 8 Answer the media

- Designate a media spokesperson
- Make sure everyone knows who is and isn't authorized to speak
- Do not admit wrongdoing
- Never say, "no comment"
- Stay calm and "on message"
- Deliver a positive message
- Show concern and compassion



Step 9 Pursue the best outcome

- Is a "happy ending" possible?
- Consider settlement options and implications
- Monitor the case





Step 10 Incorporate lessons learned

- Take advantage of expert help
- Stay organized
- Remember common sense
- Keep your mission at the forefront





Nonprofit Risk Management Center

- Free technical assistance to nonprofits on risk management, liability and insurance issues
- **www.nonprofitrisk.org**
- Melanie@nonprofitrisk.org

- MyRiskManagementPlan.org
- RiskManagementClassroom.org
- [Nonprofit CARES.org](http://NonprofitCARES.org)
