Sue Yourself, Before Someone Else Does

Understanding Premise and Security Liability
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WARNING: Cape will not allow wearer to fly
But We Have Security...

- Where is your organization vulnerable?
  - Inadequate security
  - Failure to warn
  - Negligent hiring
  - Negligent retention
  - Negligent supervision
  - Negligent training
  - Negligent ______________
You Should Have...

- What the plaintiff will say:
  - You should have known it was going to happen (foreseeable)
  - You could have…
  - You should have…
  - If you ____________, the incident/injury would have been prevented
Just How Worried Should We Be?

- Northwestern Medicine Delnor Hospital – May 2017
  - Forensic PT overpowered deputy and gets his gun
  - Nurse held hostage, assaulted, raped and life threatened over several hours
  - Settlement of $ 7.2 million to primary victim, $ 650,000 to another nurse, and two other nurses for $ 25,000 each
Elements of Liability

- Duty
  - Special relationship
  - Your organization has a responsibility to protect the patient, patient family, visitor, vendor, etc.
Elements of Liability

- Foreseeable
  - Prior incidents
  - Reasonably likely to occur
Elements of Liability

- Breached your duty
  - Acted improperly or failed to act
    - Fell below the standard of care
    - Did not meet industry standards or guidelines
    - Did not follow your own policies or procedures
  - Acted illegally
Elements of Liability

- “Injury” was a result of the breach of duty
- The injury or fatality was caused by the lack of security, failure to train the Security Officer, failure to have surveillance cameras, etc
Guidelines, Standards and Liability

- The “S” word
- Types and sources of standards
  - Associations
  - Insurance organizations
  - Local regulations (building codes)
  - Your own policies, procedures and manuals
- “Standard of Care”
Minimizing Exposure

- Assess
  - Identify threats and risks
  - Vulnerability to those threats and risks
  - Measure the effectiveness of current countermeasures
  - Determine what countermeasures are lacking or need improvement
Minimizing Exposure

- Organized security structure
  - Responsibilities
  - Accountability
  - Measurement
Minimizing Exposure

- Policies and procedures
  - Written
  - Reflects your *actual* practices
  - Reflects the standard of care
  - Consistent use and application
Minimizing Exposure

• Implement a cohesive, effective plan
  • Policies
  • Physical security
  • Security electronics
  • Security personnel
Minimizing Exposure

- Training and education
  - Staff
    - Optional
    - Mandated by your organization
    - Mandated by regulation
  - Security personnel
    - In-house
    - Contract
- Tenants (MOB, contract providers or vendors, pharmacy, credit union, food service, etc.)
Minimizing Exposure

- Review
  - Establish a review process
  - Monitor program effectiveness
  - Update as indicated
  - Improve
  - Document
Creating Expectations

- What security does the invitee think is being provided?
- What will be the anticipated response?
- Are you over promising?
Spreading the Liability

- Contract services
  - Security personnel
Who’s in Charge Here?

- If using contract security, are you assuming liability you shouldn’t be?
  - Security personnel supervision
  - Your staff directs/controls contracted personnel
  - Control over hiring/termination
  - Post Orders
How Would a Jury View Your Program?

- Prior incidents
- Assess risks
- Addressed those risks
- Responsive
- Document actions
- Monitor program
If an Incident Occurs

- Provide all appropriate response and assistance
  - Emergency medical
  - Police
  - Security
If an Incident Occurs

- Notifications according to policy
  - Internal
    - Security
    - Risk Management
    - Human Resources
  - External
    - Police
    - Governmental (OSHA)
    - JCAHO
If an Incident Occurs

- Take corrective action as appropriate
  - Review policies, practices and procedures
  - Review response to incident
  - Modify as indicated
If an Incident Occurs

- Document
  - Internal written report
  - Witness statements
  - Copies of records
  - Copies of surveillance video images
  - Photographs
  - Police report
If Litigation Occurs

- What will an opposing expert witness be reviewing?
  - Policies and procedures
  - Training material and logs
  - Incident reports (3-5 years)
  - Consultant reports, risk assessments
  - Police calls for service (3-5 years)
  - Security Officer deployment
  - Post Orders
  - Electronic systems, lighting, physical security
  - Video recordings
  - Depositions
  - Perform a site inspection
OK, Don’t Say I Didn’t Warn You...