

Sue Yourself, Before Someone Else Does

Understanding Premise and Security Liability

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WARNING: Cape will not allow wearer to fly



WARNING

DO NOT STAND ON TOP OF THE LADDER

ALWAYS FACE LADDER USE BOTH HANDS CLIMB SLOWLY

CAUTION

ENSURE LADDER IS FULLY OPEN AND LOCKED BEFORE CLIMBING

DANGER

DO NOT OVERREACH

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CAUTION

FALLING HAZARD

LADDER SAFETY!

Before using the ladder installed on this container read and understand all operating instructions and warning labels concerning its use.

- Do not use this ladder if the container is not level
- Do not use this ladder if surfaces are not clean and free of dirt, oils, greases, road film, water, or any other material that may cause slipping, loss of grip, or loss of secure use
- When using this ladder always maintain 3 points of contact to ladder and handrails
- Never carry an object or load that could cause you to lose your balance

Improper use may result in injury from slipping or falling.

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DO NOT PAINT OVER THIS LABEL. REPLACE IF LOST OR DAMAGED

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...



Thank you



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