

Legal Considerations for Emergency Management Plans

October 31, 2019
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Presenter



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Agenda

- ▶ Emergency Management Plans
- ▶ The Opportunity for Liability
 - ▷ Ordinary Negligence
 - ▷ Potential Scenarios Resulting in Liability
 - ▷ Immunities and Defenses to Liability

The Need for Emergency Management

- ▶ Threats are “on the rise”
 - ▷ Variety of threats
 - ▷ Acknowledged by courts

The Need for Emergency Management

- ▶ Unique challenges faced by campuses
 - ▷ “City within a city”
 - ▷ Large geographic area
 - ▷ Decentralized management
 - ▷ Accessible properties
 - ▷ On-site facilities
 - ▷ Changing student population

The Need for Emergency Management

- ▶ National emergency preparedness mindset
 - ▷ “Shared responsibility”
 - ▷ Includes those in higher education

Key Principles of Emergency Management Planning

- ▶ Supported by senior leadership
- ▶ Developed using a collaborative process
- ▶ Assessment of campus, resources and threats
- ▶ Suits the entire campus community
- ▶ Stresses individual preparedness
- ▶ Meets all applicable laws

Importance of an Emergency Management Plan

- ▶ Mitigate losses
 - ▷ Prevent fatalities and injuries
 - ▷ Reduce damage to property
- ▶ Identify deficiencies
- ▶ Promote safety and awareness
- ▶ Provide assistance to professional responders

Ordinary Negligence

► Definition:

A breach of duty that causes harm.

Duty to Protect

- ▶ College has a **special relationship** with students
 - ▷ Right to control the behavior of those on campus
 - ▷ Adoption of other preventative or protective measures
- ▶ Statutory duty
 - ▷ University of Wisconsin → express duty
 - ▷ Technical colleges → contemplated duty
- ▶ Duty established by common law
 - ▷ *Board of Regents – UW System v. Decker*
 - ▷ Reasonable person standard

Duty to Use Care

▶ District Board

▷ Should discharge its duties...

- ▶ in good faith

- ▶ with the degree of diligence, care and skill which an ordinarily prudent person would exercise under the same circumstances

▷ ***What would a reasonable board do?***

- ▶ Many colleges have adopted emergency management plans

Breach of Duty and Cause

▶ Breach

- ▷ Failure to protect
- ▷ Failure to act as a reasonable board

▶ Cause

- ▷ The breach must cause the injury
- ▷ Either direct or indirect cause
- ▷ Foreseeability: reasonable board would have known that injuries were likely to occur under the same circumstances.

Potential Liability Scenario #1

- ▶ **Adopting a plan...in name only**
- ▶ Potential problems:
 - ▷ Students, faculty, and staff rely on a plan that doesn't exist
 - ▷ Plan is never carried out
 - ▷ Unmitigated loss

Potential Liability Scenario #2

- ▶ **Adopting a plan...with inadequate training or resources**
- ▶ **Potential problems:**
 - ▷ Poorly trained volunteers cause further injuries
 - ▷ Lack of coordination leads to confusion or delay of professional responders
 - ▷ Resources cannot sustain the level of support needed and fail

Potential Liability Scenario #3

- ▶ **Adopting a plan...that is outdated**
- ▶ Potential problems:
 - ▷ Outdated resources no longer function
 - ▷ Techniques proved ineffective by modern testing remain in place

Establishing Negligence

- ▶ 1) Duty established by common law
- ▶ 2) Scenarios
 - ▷ represent possible breaches of duty
 - ▷ bring about easily foreseeable harm
- ▶ 3) Scenarios would likely result in injuries, property damage or other harm

Immunities and Defenses

- ▶ Existing WCTC emergency procedures
 - ▷ Text alerts
 - ▷ beacons
 - ▷ speakers
 - ▷ desktop override
 - ▷ hallway monitors
 - ▷ panic buttons
 - ▷ evacuation maps

- ▶ *Adequate in light of foreseeable harms?*

Immunities and Defenses

▶ Wisconsin Statute

▷ Good Samaritan Statute

- ▶ Render emergency care
- ▶ At the scene of the emergency
- ▶ In good faith

▷ Statute of Limitations

- ▶ Bars claims for personal injuries against governmental entities
- ▶ Filed 3 years after event giving rise to the injury

Immunities and Defenses

▶ Federal Statute

▷ Volunteer Protection Act

- ▶ Unpaid volunteer
- ▶ Acting within the scope of his or her responsibilities
- ▶ While performing services for a governmental entity

Waivers of Immunity

- ▶ Insurance

- ▶ Other waivers

 - ▷ Willful or criminal misconduct

 - ▷ Gross negligence

 - ▷ Reckless misconduct

 - ▷ Conscious, flagrant indifference to the rights or safety of others

Bottom Line

▶ Emergency Management Plans

▷ Likely does not increase liability

- ▶ Various statutory protections from ordinary negligence

- ▶ Take steps to control the remaining risk of intentional torts, gross negligence

▷ Protect against increasing threats to campuses

▷ Answer the call of government agencies for a “shared responsibility” for campus safety

Bottom Line

- ▶ However, the adoption of the Emergency Management Plan **must not** create the opportunity for liability
 - ▶ Plan in name only
 - ▶ Inadequate training or resources
 - ▶ Outdated policy
- ▶ Plan, prepare and practice to the fullest extent possible