



**205:
Liability and Risk Management
in Child Welfare Services**

A Training Outline

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**For the
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Training Program**

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205: Liability and Risk Management in Child Welfare Services

An Overview of the Curriculum

Rationale:

Child Welfare professionals are extremely vulnerable to malpractice litigation because of the nature of their work. The goal of protecting children from family members or others charged with their care becomes extremely complicated. Our society cherishes the right to privacy and individual freedom. Interfering with a family's right to raise children exposes Child Welfare workers to increased liability risks. There are no *absolute* guidelines established to determine the appropriate level of government intervention with a family. Workers must exercise good judgment when conducting assessments. If a Child Welfare worker makes a decision to leave a child in a home, and the child is eventually harmed, allegations of malpractice may arise; likewise, allegations or violations of rights may surface if it appears a child is removed without sufficient legal basis.

Children and Youth workers must be trained about liability risks in Child Welfare services. There have been many civil and criminal lawsuits filed against Children and Youth agencies, which have set legal precedence. Analyzing related court cases provides an understanding of the reasons for past malpractice claims. It also helps workers to understand the "*standard of care*" that is expected. There is a strong possibility of prevailing in malpractice litigation if the child welfare worker can prove that he/she practiced within the "*standard of care*" for the profession.

Once the "*standard of care*" is identified, agencies must establish risk management strategies with the goal of limiting exposure to malpractice litigation. Risk management strategies are activities, which are intended to reduce the risk of legal liability. They are often dependent on appropriate documentation of the activities. Many risk management strategies in Children and Youth services are established by laws and corresponding regulations. Caseworkers, supervisors, and administrators in the Child Welfare system have distinct responsibilities, which reduce the risk of liability in their agencies.

The 2 overriding goals of this workshop are: 1) To identify reasons why Children and Youth workers have been sued in the past, and, 2) To develop risk management strategies which may reduce the risk of malpractice litigation in the future.

Competency:

205-2 The Child Welfare Professional understands legal issues which affect Child Welfare practice, and knows how to implement legal requirements into practice. This includes confidentiality, caseworker liability, reasonable efforts, and other requirements.

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An Overview of the Curriculum (continued)

General Learning Objectives:

- To identify reasons for past malpractice litigation in Children and Youth services
- To learn basic legal terms and definitions associated with malpractice litigation
- To identify the 4 elements present when malpractice litigation occurs
- To analyze various civil and criminal court cases involving malpractice litigation
- To understand the concept of vicarious liability in Children and Youth services
- To understand the concept of risk management in Children and Youth services
- To develop risk management strategies in 5 general areas of Child Welfare services:
 1. Assessing the potential for violence
 2. Confidentiality
 3. Continuing education and supervision
 4. Malpractice insurance
 5. Record keeping and documentation
- To examine the participant's current "readiness" for malpractice
- To develop a personal protection plan to guard against future malpractice claims

Length of Workshop:

12 Hours

Materials Needed to Present Workshop:

- Flip charts (1)
- Strips of flip chart paper (Introductory exercise)
- Easel stands (1)
- Color markers
- Name tents
- Overhead projector and screen
- Television and VCR
- Transparencies
- Handouts
- 2 Videos (Sessions 4 and 6)
- Index cards (Session 12)

Target Audience:

This workshop is intended for caseworkers, supervisors or administrators in Children and Youth services. Participants should have taken Core 100 - Child Protective Services: Legal Issues as a pre-requisite. This class would not be recommended for Children and Youth employees who are not certified or have less than 1 year's experience.

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An Overview of the Curriculum (continued)

Expectations of the Trainer:

The trainer should be a Child Welfare professional who has experience as a caseworker, supervisor, or an attorney or paralegal with Child Welfare experience. It would also be preferable for the trainer to have some management experience in Children and Youth services as a county manager, senior supervisor or administrator since the curriculum addresses liability risks at all levels of Child Welfare work.

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Section I: Introduction

Estimated Length of Time:

45 minutes

Learning Objectives:

- Outline the workshop, including the rationale, learning objectives, and agenda
- Introduce the trainer and participants
- Brainstorm why litigation occurs in Child Welfare
- List participant training needs

Method of Presentation:

- Lecture
- Small Group Activity
- Large Group Discussion
- Use of transparencies, handouts, and flip charts

Materials Needed:

- Name tents and markers
- Blank flip chart (trainer use)
- Overhead projector
- Blank strips of flip chart paper (participant use)
- **OH #1: Litigation in Child Welfare Services**
- **HO #1: Litigation in Child Welfare Services**
- **HO #2: Learning Objectives and Competencies**

Resources:

- *Prudent Practice – A Guide for Managing Malpractice Risk*

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Section I: Introduction

Outline of Presentation:

The primary purposes of this section are to: 1) introduce the participants, and 2) conduct an introductory “brainstorming” exercise, which encourages discussion about the reasons for lawsuits against Child Welfare workers.

Seating should be arranged with 4-6 participants at a table. Each table should have name tents, markers, and approximately 10 strips of flip chart paper, each about 4 inches wide. The trainer should also prepare the room by posting 6 strips of flip chart paper at various locations on the wall. Each strip should have 1 of the following written on it: Intake/Investigation, Ongoing Services, Termination of Services, Supervision, Administration, Other. The trainer welcomes everyone, introduces him/herself and then covers the following:

- The rationale for the training
- The rules of the training
- Other “housekeeping” issues
- Conducts a small group exercise to begin brainstorming why litigation occurs in Child Welfare services
- Reviews the learning objectives and competencies for the class
- Develops a class agenda

Step 1:

The trainer welcomes the participants and discusses the 15-minute rule, sign-in sheets, and evaluations. Other “housekeeping” issues, such as breaks and lunch should also be covered.

Step 2:

The trainer introduces him/herself and briefly discusses the rationale for the training. The trainer requests each participant to complete a name tent.

Step 3:

As an introductory exercise, participants are given approximately 10 minutes to introduce themselves to each other at their immediate table. They should share names, current employer, and current job position in the agency, prior experience, and any other pertinent information. After they have spent a few minutes on introductions, they should begin to brainstorm the question, “Why Does Litigation Occur in Child Welfare?”

The trainer may want to write this question in large print on a flip chart. Someone at each table should write their group’s ideas on the strips of flip chart paper on the tables. (1 idea per strip of paper) After all discussion is exhausted, someone from the group should post their table’s responses on the wall under the most relevant agency service

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category already posted, i.e. Intake/Investigation, Ongoing Services, Termination of Services, Supervision, Administration, Other.

Step 4:

The trainer reconvenes the group after 10 – 15 minutes. The trainer asks for 1 table to begin the introductions. Each participant at the table should introduce themselves to the rest of the class. The trainer then asks for a volunteer at the table to discuss their responses to the question that was posed using the posted strips of flip chart paper as a guideline. The trainer then moves to the next table and repeats this process. This process should be followed until all participants have an opportunity to introduce themselves and discuss the results of their small group conversations.

Step 5:

The trainer welcomes the participants again and thanks them for their participation in the introductions. The trainer shows the class **OH #1: Litigation in Child Welfare Services**, and discusses some of the major reasons why litigation has occurred in Child Welfare services, and compares it to their responses already posted on the wall. **HO #1: Litigation in Child Welfare Services** is then distributed which also lists reasons for past Child Welfare litigation. The trainer explains that the 2 major goals of the class are:

1. To improve their knowledge about why malpractice litigation occurs, and
2. To provide them with practical suggestions about how to protect themselves

The trainer should explain that handouts will be provided throughout the class to reinforce key points.

Step 6:

The trainer asks the large group if they have any particular questions, concerns, issues, or needs they would like to discuss in the class. Responses should be recorded on a blank flip chart and posted on the wall as the class agenda, or “What’s In It For Me?” The trainer should attempt to cover the agenda developed by the class during the training. If the trainer does not know the answer, or does not feel qualified to provide information about a particular topic, the class should be informed.

Step 7:

The trainer distributes **HO #2: Learning Objectives and Competencies** and discusses the learning objectives, competencies, and class agenda.

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Alternative Introductory Session

Note: This introductory exercise may be used as an alternative to the previous section. It was developed after the first pilot of this curriculum in November of 2001. The main purpose of this exercise is to stimulate the participants to think about certain Child Welfare standards and requirements. Class members will each be given an index card that has *either* a Child Welfare requirement on it, or the name of a corresponding law, regulation, or other document that helps to establish the *standard of care* in the profession. Participants will do a “matching exercise” in which they locate the class member who has the card that corresponds to theirs. They will then introduce themselves to each other and pool their knowledge to determine the answer to the question on their card. Each pair will then introduce each other to the class and discuss the standard or requirement on their cards.

Estimated Length of Time:

45 minutes

Learning Objectives:

- Outline the workshop, including the rationale, learning objectives, and agenda
- Introduce the trainer and participants
- Brainstorm examples of current standards and guidelines in Child Welfare
- List participant training needs

Method of Presentation:

- Lecture
- Index card matching exercise
- Large group discussion
- Use of transparencies, handouts, and flip charts

Materials Needed:

- Name tents and markers
- Blank flip chart (trainer use)
- Overhead projector
- Index cards with examples of various Child Welfare requirements (1 per card)
- **OH #1: Litigation in Child Welfare Services**
- **HO #1: Litigation in Child Welfare Services**
- **HO #2: Learning Objectives and Competencies**
- **OH #8: Quote**

Resources:

- *Prudent Practice – A Guide for Managing Malpractice Risk*

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Step 1:

Prior to the class, the trainer should prepare one index card for each registered participant. Half of the cards should have a descriptor of a Child Welfare standard or requirement.(1 per card) The other half of the cards should have the source of those standards or requirements (1 per card). Below are some examples: (the trainer may want to number or letter corresponding cards in case participants are unable to locate their “match” based solely on the information on the card)

REQUIREMENT or STANDARD	SOURCE
This standard requires supervisory reviews for every case under investigation every ___ days	Chapter 3490 DPW Regs; Section 3490.61 re: Supervisory review and child contacts
Once an investigation is complete, this standard allows agencies to provide mandated reporters who made a referral these 2 pieces of case information	CPS Law, Section 6340 re: Release of information in confidential reports
This standard establishes conditions that may determine whether an agency needs to make efforts to preserve or reunify a family. As a group, the 5 conditions are called?	ASFA; Juvenile Act, Section 6351 re: Disposition of a dependent child
This standard requires agencies to prepare a written Family Service Plan within ___ days of accepting a family for service	Chapter 3130 Regs; Section 3130.61 re: Family service plans
This standard requires that a written notification be given to parents within ___ hours of taking a child into protective custody	CPS Law; Section 6315 re: Taking a child into protective custody
Information that identifies the subjects of founded or indicated child abuse reports must be expunged when a subject child attains a certain age. This standard sets that age at ___	CPS Law, Section 6338 re: Disposition of founded and indicated reports
When a report of abuse is received, this standard requires that the child be seen _____ if emergency custody is required or has been taken, or if it cannot be determined whether custody is needed. Otherwise, the child must be seen within ___ hours.	CPS Law, Section 6368 re: Investigation of reports
This standard requires new workers to complete a minimum of ___ hours CORE training, and ___ additional hours annually to maintain their certification	Chapter 3490 DPW Regs; Section 3490.312 re: Training program requirements for direct service workers
In order to prevent overcrowding in foster homes, a standard has been established that limits the number of children in the home to ____, including the foster parent’s own children	Chapter 3700 DPW Regs; Section 3700.31 re: Number of children allowed in a foster family home

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This standard requires that caregivers be provided the opportunity for visits on a _____ basis	Chapter 3130DPW Regs; Section 3130.68 re: Visiting and communication policies
This standard requires a worker to complete a risk assessment within ____ days of a child's <i>planned</i> return to the family home	Chapter 3490 DPW Regs; Section 3490.321 re: Standards for risk assessment
According to this provision of the law, a petition for termination of parental rights must be filed when the child is	

Step 2:

The trainer welcomes the participants and discusses the 15-minute rule, sign-in sheets, and evaluations. Other “housekeeping” issues, such as breaks and lunch should also be covered.

Step 3:

The trainer introduces him/herself and briefly discusses the rationale for the training. The trainer requests each participant to complete a name tent.

Step 4:

The trainer displays Overhead #8, which is the following quote from the book, *Prudent Practice – A Guide for Managing Malpractice Risks*:

“In a malpractice suit, the social worker’s practice will be judged on the standard of care established by the profession.”

The “standard of care” in Child Welfare is established through various laws, regulations, bulletins, and agency policies and procedures. We decrease the likelihood of liability for ourselves and our agencies when we assure compliance with the various guidelines that are established by the state and federal government.

Step 5:

The trainer explains the nature of the index card “matching” exercise. Some cards have certain Child Welfare standards or requirements written on them, while others have the *sources* of the standards or requirements. The trainer distributes 1 card to each person. Participants are instructed to read their card, move about the room, and pair with the person who has a corresponding card. They should spend approximately 10 minutes interviewing each other and sharing their names, their current employer and job position, prior experience, and any other interesting information they may want to share with the class. They should also attempt to answer the question(s) written on the standard or requirement card.

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Step 6:

The trainer then asks each pair of participants to introduce each other to the class. After each pair completes their introductions, they should read their index cards and explain the standard (and source) written on their cards. This process continues until all participants have been introduced. The trainer facilitates discussion about the various standards on the cards. These are examples of how the standard of care is established in Child Welfare and are factors that may be examined during litigation.

Step 7:

The trainer welcomes the participants again and thanks them for their participation in the introductions. The trainer shows the class **OH #1: Litigation in Child Welfare Services**, and discusses some of the major reasons why litigation has occurred in Child Welfare services. **HO #1: Litigation in Child Welfare Services** is then distributed, which also lists reasons for past Child Welfare litigation. The trainer explains that the 2 major goals of the class are:

1. To improve their knowledge about why malpractice litigation occurs, and,
2. To provide them with practical suggestions about how to protect themselves

The trainer should explain that handouts will be provided throughout the class to reinforce key points.

Step 8:

The trainer asks the large group if they have any particular questions, concerns, issues, or needs they would like to discuss in the class. Responses should be recorded on a blank flip chart and posted on the wall as the class agenda, or “What’s In It For Me?” The trainer should attempt to cover the agenda developed by the class during the training. If the trainer does not know the answer, or does not feel qualified to provide information about a particular topic, the class should be informed.

Step 9:

The trainer distributes **HO #2: Learning Objectives and Competencies** and discusses the learning objectives, competencies, and class agenda.

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Section II: “Speaking Malprac-Tese”

Estimated Length of Time:

20 minutes

Learning Objective:

- Define 14 terms associated with liability and risk management in Child Welfare Services

Method of Presentation:

- Matching test of terms and definitions
- Large group discussion
- Lecture
- Use of handout

Materials Needed:

- **HO #3: Speaking “Malprac-Tese” Test**

Resources:

- *Prudent Practice – A Guide for Managing Malpractice Risk*
- *Criminal Prosecution of Child Protection Workers*
- *Malpractice Claims Against Social Workers: First Facts*
- *Social Workers And Immunity From Civil Lawsuits*

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Section II: “Speaking Malprac-Tese”

Outline of Presentation:

The primary purpose of this section is to acquaint participants with legal terminology often associated with malpractice litigation.

The trainer explains the need to understand various legal terms associated with malpractice litigation in Child Welfare services, and other important terms related to managing liability risks.

- Take a 14 point test of matching terms and definitions
- Review the answers to the test with the large group

Step 1:

The trainer distributes **HO #3: Speaking “Malprac-Tese”**, and explains that the test contains 14 terms relevant to liability issues in Child Welfare services. The participants are instructed to take the test individually and attempt to match the word to the appropriate definition. Many of the terms are legal in nature. Participants are not expected to know all of the definitions. A test “key” is provided in the handouts for the trainer.

Step 2:

After approximately 10 minutes, or when it appears that most participants have completed the test, the trainer reviews the correct answers with the large group. The trainer should do this by reading each term and asking for volunteers to provide answers. Class members who volunteer answers should be thanked for their participation and, if possible, provided with some small token of appreciation. This will encourage participation and risk taking in future exercises.

Step 3:

The trainer should summarize this section by explaining that Child Welfare workers are vulnerable to civil and criminal litigation for a variety of reasons. Malpractice allegations are made under *tort law*, and can include negligence, misfeasance, malfeasance, nonfeasance, culpable negligence, and vicarious liability. Once we have an understanding of why we can be sued, risk management activities should be implemented to prevent malpractice litigation. Some risk management activities can be accomplished by the individual employee; others should be a result of sound supervisory and administrative policies and procedures. Workers can protect themselves by assuring compliance with all applicable laws and regulations in their day to day work. Day 1 curriculum focuses on helping the class develop a better understanding of why malpractice litigation occurs in Child Welfare services; day 2 focuses on risk management activities which are developed to reduce the risk of malpractice liability. Participants should be instructed to keep their test available as they may need to refer to it during future exercises.

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Section III: The 4 Elements of Malpractice Litigation

Estimated Length of Time:

10 minutes

Learning Objective:

- Explain 4 factors which are usually present when malpractice damages are awarded by the court

Method of Presentation:

- Lecture
- Use of transparency and handout

Materials Needed:

- Overhead projector
- **OH #2: 4 Elements of Malpractice Litigation**
- **HO #4: 4 Elements of Malpractice Litigation**

Resources:

- *Prudent Practice – A Guide to Managing Malpractice Risk*
- *Malpractice Claims Against Social Workers: First Facts*

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Section III: The 4 Elements of Malpractice Litigation

Outline of Presentation:

The primary purpose of this section is to explain 4 criteria the courts examine to determine whether malpractice has occurred.

The trainer explains that a legal finding of negligence and an award of damages for malpractice usually requires the presence of 4 elements.

- Show overhead of 4 elements
- Brief lecture
- Distribute handout summarizing the 4 elements

Step 1:

The trainer shows **OH #2: 4 Elements of Malpractice Litigation**

Step 2:

The trainer lectures briefly about the 4 elements of malpractice litigation that must be present in order for a legal finding to occur. They include: 1) professional duty 2) dereliction of duty 3) measurable harm 4) legal and proximate cause. *Professional duty* means that the worker had an obligation to perform based on a particular law, regulation, or other standard of conduct. Once the court establishes that there was a professional duty to perform, a determination must be made concerning how the worker failed to meet the standard of care, and was therefore *derelict in his/her duty*. *Measurable harm* must have occurred in order for a malpractice claim to be substantiated. This usually happens in the form of physical injury, death, or injuries related to the act in question, such as loss of wages, or mental injuries related to “pain and suffering”. Finally, the court must conclude that *legal and proximate cause* existed, meaning the harm would not have occurred to the client unless the practitioner was negligent.

Step 3:

The trainer distributes and discusses **HO #4: 4 Elements of Malpractice Litigation**, which summarizes the information presented in Step 2.

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Section IV: Dateline: The Elisa Izquierdo Story

Estimated Length of Time:

1.5 hours

Learning Objectives:

- Identify the types of malpractice that may have occurred in the case
- Determine whether the 4 elements of malpractice litigation were present
- Identify malpractice risks at intake/investigation, during ongoing services, and at case closure
- Identify supervisory or administrative malpractice risks
- Discuss the concept of vicarious liability

Method of Presentation:

- Video presentation
- Small group exercise
- Large group discussion
- Use of flip chart
- Lecture
- Use of transparencies and handouts

Materials Needed:

- Dateline video: *Little Girl Lost*
- Television and VCR
- Blank flip chart
- Overhead projector
- **HO #5: Elisa Izquierdo Notes – Poor Child Welfare Practices I Saw in the Video**
- **HO #6: Elisa Izquierdo – Small Group Processing Questions**
- **OH #3: Malpractice Risks at Intake, Ongoing Services, and Termination of Services**
- **HO #7: Malpractice Risks at Intake, Ongoing Services, and Termination of Services**
- **OH #4: 3 Elements to Vicarious Liability**
- **HO #8: Reasons for Vicarious Liability**

Resources:

- Dateline Video: *Little Girl Lost*
- Prudent Practice: A Guide for Managing Malpractice Risk

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Section IV: Dateline: The Elisa Izquierdo Story

Outline of Presentation:

The primary purpose of this section is to analyze an actual case that occurred in New York City, and identify poor practices by the Child Welfare agency which increased the risk of malpractice litigation.

The trainer introduces the video entitled *Little Girl Lost* which aired on NBC's Dateline on 8-30-96, and provides the participants with a brief background of the case.

- Show the video
- Identify poor casework practices at various stages of the case
- Identify possible types of malpractice that occurred
- Discuss the 4 elements of malpractice litigation as they relate to the case
- Identify poor supervisory/administrative practices in the case
- Introduce the concept of "vicarious liability"

Step 1:

The trainer explains to the participants that they will watch a video entitled *Little Girl Lost*, which aired on the NBC Dateline show on 8-30-96. The reporter was Stone Phillips, and the case occurred in New York City. The story is about Elisa Izquierdo, born on 2-11-89, who died on 11-20-95 from abuse and neglect. The video is approximately 40 minutes in length. The primary purpose for watching the video is to analyze the case for possible malpractice risks and to learn from the mistakes that occurred.

(Note: The trainer should preview the video and be thoroughly familiar with it prior to conducting this exercise)

Step 2:

Prior to starting the video, the trainer should distribute **HO #5: Elisa Izquierdo Notes – Poor Child Welfare Practices I Saw in the Video**. Participants should be instructed to use the handout to take notes during the video of any poor practices they observed which may have increased the risk of malpractice for the agency. Their notes will be used in a small group exercise after the video.

Step #3:

Trainer shows the video. (Note: The video is approximately 45 minutes long. If possible, it may be a good strategy to show part of the video before the A.M. break and conclude it after the break.)

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Step #4:

Once the video is concluded, the class is divided into 4-5 small groups. **HO #6: Elisa Izquierdo – Small Group Processing Questions**, is distributed to all participants. One group member at each table should be selected to take notes during the discussions. (As an alternative, if there are 4-5 participants in each small group, each person should select one of the questions, lead the discussion at the table, and record the group's answers on their own handout.) Participants are given approximately 15 minutes to discuss the questions on HO #6 in their small groups and record their answers.

Step #5:

The trainer reconvenes the large group and begins to process the questions. Each small group should be called upon to share their responses to 1 of the 5 questions on HO #6. *The trainer should refer to the flip charts completed during the introductory exercise (which are already posted on the wall) to discuss responses to questions 1 and 5.* Any new responses to questions 1 and 5 not already on the charts should be recorded by the trainer. As the discussion continues, the trainer should also use an additional blank flip chart to record key responses to questions #2, 3, and 4. Discussion should continue until all small groups have had an opportunity to share their responses to at least one of the questions on the handout. After each small group responds to a question, the trainer should ask the remaining groups if they have any comments or additions.

The video should generate much discussion about poor performance by the agency on this case. The groups shouldn't have much trouble identifying questionable casework and/or supervisory practices. Among others, the participants should be able to recognize the following:

- Inappropriate response to referrals
- Inadequate assessment and diagnosis
- Failure to make regular home visits
- Failure to evaluate and make changes to the plan
- Questionable supervision of the caseworker
- Inappropriate assessment of risk when closing the case

Step #6:

The trainer shows **OH #3: Malpractice Risks at Intake, Ongoing Services, and Termination of Services**, and lectures briefly about key malpractice risks during each phase of child welfare service.

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Step #7:

The trainer distributes **HO #7: Malpractice Risks at Intake, Ongoing Services and Termination of Services**, which duplicates the information on OH #3.

Step #8:

The trainer shows **OH #4: 3 Elements to Vicarious Liability**, and lectures briefly about the concept of vicarious liability, explaining why supervisors and administrators are just as liable as caseworkers and other front line staff for the services provided by the agency.

Step #9:

The trainer distributes **HO #8: Reasons for Vicarious Liability**, which provides specific examples of vicarious liability in supervision. The trainer should discuss the list with the participants and elicit feedback. This exercise needs to be summarized by stressing that vulnerability to malpractice litigation effect's all Child Welfare employees from the director and top administrative employees to the caseworkers and other front line staff. Agencies must increase staff awareness of liability risks and work together to improve services in order to protect all employees.

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Section V: “Precedent-Setting” Court Cases

Estimated Length of Time:

1.5 hours

Learning Objectives:

- Increase awareness of malpractice risks through analysis of court cases
- Recognize general areas of risk management in Child Welfare Services
- Identify specific actions to reduce the risk of malpractice litigation

Method of Presentation:

- Participant review of summary of an actual court case
- Small group discussion of court case
- Development of a case summary on a flip chart by small groups
- Presentation of cases by small groups
- Facilitation of discussion by trainer

Materials Needed:

- **HO #9: Barber v. State of Florida**
- **HO #10: DeShaney v. Winnebago Co. Dept. of Social Services**
- **HO #11: Achterhof v. Barry Co. Dept. of Social Services**
- **HO #12: Meyers v. Contra Costa Dept. of Social Services**
- **HO #13: Coverdell v. State of Washington Dept. of Social Services**
- **HO #14: Croft v Westmoreland Co. Children & Youth Services**
- **HO #15: Questions for Analyzing Your Court Case**
- Blank flip chart
- **HO #16: Court Cases: Reasons for Litigation**

Resources:

- **None**

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Section V: “Precedent-Setting” Court Cases

Outline of Presentation:

The primary purpose of this section is to continue analyzing court cases and identifying actual reasons for past lawsuits against Child Welfare workers.

The participants will read a summary of an actual court case in which malpractice litigation occurred, and participate in a small group exercise to analyze the case. At the conclusion of this section, participants will have received information about 4 – 6 different Child Welfare cases which resulted in some type of malpractice litigation.

- Read the court case
- Discuss and analyze the court case in small groups
- Prepare a chart summarizing the case
- Present key concepts of the case to the class using the chart
- Identify the reasons for malpractice litigation
- Summarize how the court ruled in the case
- Identify preventive steps that could be taken

Step 1:

The class is divided into 4-6 small groups. Each group will review a summary of a different court case. The trainer will distribute copies of 1 of the court cases, **HO’s #9 - #14**, to each participant. Members of small group #1 will each receive a copy of HO #9; members of small group #2 will each receive a copy of HO #10, etc. etc. Individuals will have approximately 10 – 15 minutes to read the summary.

Note: The trainer should review the summary of each court case prior to training the class.

Step #2:

The trainer will also distribute a copy of **HO #15: Questions for Analyzing Your Court Case**, to each participant and explain that it can be used for note-taking as the case is reviewed. The questions on HO #15 will also be used as a guideline for small groups to prepare a chart summarizing their case, which will then be posted and presented to the class.

Step #3:

After participants have had approximately 15 minutes to read the summary, small groups should begin discussing and analyzing their court case. The trainer will distribute a sheet of flip chart paper to each small group and request they prepare an analysis of key points of their case. The questions on HO #15 should be addressed on their chart. Groups should be given approximately 15 – 20 minutes to prepare their chart. Charts should be posted on the wall when completed.

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Step #4:

Once all charts are posted, the trainer should ask for a volunteer from each group to summarize their group's case, using the chart as a guideline. After each group concludes their presentation, the trainer should facilitate discussions and emphasize the reasons for malpractice litigation in the case. Discussion should also focus on preventive actions agencies could take to reduce the risk of this particular type of litigation. This process should continue until each group has had an opportunity to present their case. After each group presents, comments, questions and other feedback should be obtained from the other participants.

Step #5:

The trainer concludes this section by distributing **HO #16: Court Cases – Reasons for Litigation**, which summarizes specific reasons for malpractice litigation in each of the court cases. The following key points should be made:

1. All pertinent case information must be shared with the court during a hearing.
2. Child Welfare workers are mandated reporters – suspected abuse must be reported and investigated.
3. There must be reasonable grounds for separating family members.
4. There must be reasonable grounds for stopping or limiting parental visitation.
5. Child Welfare staff must provide for “due process” for clients.

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Section VI: Criminal Prosecution of Child Welfare Workers

Estimated Length of Time:

1 hour

Learning Objectives:

- Provide histories of several cases which resulted in criminal prosecutions of Child Welfare workers
- Discuss possible reasons for increase in criminal prosecutions of Child Welfare workers
- Identify sound casework practices that may protect employees in the event of civil or criminal liability lawsuits
- Provide additional information concerning vicarious liability
- Introduce the concept of Risk Management

Methods of Presentation:

- Lecture
- Use of transparencies and handouts
- Video presentation
- Small group discussion
- Large group discussion

Materials Needed:

- Blank flip chart
- Dateline video: *Protecting Daniel*
- Television and VCR
- **OH #5: (names of several Child Welfare workers who were criminally prosecuted)**
- **OH #6: Reasons for Increased Criminal Prosecutions**
- **HO #17: History of Criminal Prosecutions**
- **OH #7: More Vicarious Liability**
- **HO #18: More Examples of Vicarious Liability**

Resources:

- Dateline Video: *Protecting Daniel*
- Article: Criminal Prosecution of Child Protection Workers
- Prudent Practice: A Guide for Managing Malpractice Risk

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Section VI: Criminal Prosecution of Child Welfare Workers

Outline of Presentation:

The primary purposes for this section are to: 1) examine actual cases which resulted in criminal prosecutions of Child Welfare workers, and 2) to encourage participants to begin thinking about risk management strategies which may protect them from criminal liability.

The trainer presents a brief history of 6 cases which resulted in criminal prosecution of Child Welfare workers. As an example of a criminal prosecution case, the trainer introduces and shows the Dateline video entitled *Protecting Daniel*. The class will analyze the case and determine reasons why the defendant's were found *not guilty*. The trainer will facilitate discussion about risk management practices.

- Use transparencies and handouts to discuss cases which resulted in criminal prosecutions
- Show a video as an example of a case which resulted in criminal prosecutions
- Analyze the case through small group discussion
- Emphasize areas of risk management that may protect employees and agencies
- Provide more information about vicarious liability with transparencies and handouts

Step 1:

The trainer shows **OH #5: (names of Child Welfare workers who were criminally prosecuted)**. For effect, only one name at a time should be shown, and the trainer should pronounce the name as it is displayed. As the names are shown, the trainer asks participants if they know what the individuals have in common. The last name on the list is Margaret Barber, which was one of the cases analyzed in the previous session. After all names have been displayed, the trainer explains they are Child Welfare workers who were criminally prosecuted. The trainer lectures and provides a brief summary of the reasons for each criminal action using **HO #17** as a guide. The participants should be told not to take notes' as this information will be provided to them as a handout.

Step #2:

The trainer uses large group discussion and brainstorms reasons why criminal prosecutions of Child Welfare workers may be on the increase. The trainer may want to write the question at the top of a blank flip chart. Class responses should be recorded on the chart underneath the question. The trainer shows **OH #6: Reasons for Increase of Criminal Prosecutions**, and lectures briefly. The effects of increased drug & alcohol use, criminal activity, and legal mandates to reunify families or terminate parental rights should be discussed. Also, because Children & Youth Services are considered an "entitlement", the demand for services is increasing, resulting in higher caseloads. Finally, there are no clear guidelines concerning when Children & Youth workers have *absolute* vs. *qualified* immunity.

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Step #3:

The trainer distributes **HO #17: History of Criminal Prosecutions**, and allows the participants a few minutes to review the handout. The trainer asks for any final comments or questions before proceeding to step 4.

Step #4:

The trainer introduces the Dateline video entitled *Protecting Daniel*, and provides a brief background of the story. The case occurred in Kentucky in 1994 and involved the death of 3-year-old Daniel Reynolds. Four (4) caseworkers and supervisors involved in the case were eventually charged criminally with *complicity to commit murder* by the local District Attorney. The participants should be instructed to watch the video and make a note of any positives or negatives in how the case was handled.

Step #5:

The trainer shows the video which is approximately 20 minutes in length. (Note: The trainer should watch the video prior to conducting this exercise)

Step #6:

When the video is finished, the trainer directs the participants to discuss the case in their small groups. Half of the small groups should be given the assignment to discuss the case and make a list of reasons why they believed the jury found the defendant's *not guilty*. These groups should focus on what the Child Welfare workers did correctly. The remaining groups should discuss the case and focus on what the workers could have done differently to protect this child. (Some actions may have been taken but just weren't covered in the video) Groups should be given approximately 10 minutes to complete this exercise.

Step#7:

When the small group discussions are complete, the trainer asks for a volunteer from each group to provide only 1 of their responses. The trainer should facilitate discussion and ask the volunteer questions to help clarify their response. Responses should be paraphrased and recorded on a blank flip chart. Half of the chart should be used to record responses from the groups with the first assignment, and half of the chart for the second assignment. The trainer should continue moving from group to group and asking for responses until all discussion is exhausted. The trainer summarizes the exercise by stressing key points on the chart that relate to good risk management practices in agencies. The following key points should be emphasized:

1. The workers attempted to obtain medical back-up regarding the physical injuries and documented their efforts.
2. The workers were able to testify about home visits they made and investigations they conducted when injuries were alleged.
3. "Due process" seems to have been followed when the family was separated.

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Step #8:

The trainer highlights any responses recorded on the flip chart that are related to management and supervision. **OH # 7: More Vicarious Liability** is displayed, and the trainer mentions that a potential for vicarious liability exists in all facets of Child Welfare work including supervision, consultation, training, making referrals, board membership, administration, impaired colleagues and other affiliations. The trainer distributes **HO #18: More Examples of Vicarious Liability**, and lectures briefly about how liability may be incurred in Child Welfare job functions that are not directly related to case management.

(Note: Day #1 should be completed at the close of this exercise. This could vary from class to class depending on a variety of factors. If additional time remains at the conclusion of this section, the trainer should continue with the curriculum by starting the section on Risk Management: Preventing Civil and Criminal Malpractice Litigation. The section of the curriculum entitled Review of Day 1, should always be covered at the beginning of Day 2 as a review of information covered in Day 1.)

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Section VII: Review of Day #1

Estimated Length of Time:

45 minutes

Learning Objectives:

- Welcome the class back to day #2
- Discuss topics covered in day #1
- Take the quiz – *What Have I Learned*, as a review of day #1
- Review the agenda the class developed (WIIFM) at the beginning of day #1 and determine what has been covered to this point in the training
- Review the agenda for day #2

Methods of Presentation:

- Lecture
- True-false, multiple-choice, and completion test
- Large group discussion of test

Materials Needed:

- **HO #19: Quiz: *What Have I Learned?***
- **HO #2: Learning Objectives and Competencies**

Resources:

- Prudent Practice – A Guide for Managing Malpractice Risk
- Criminal Prosecution of Child Protection Workers
- Malpractice Claims Against Social Workers: First Facts
- Social Workers and Immunity From Civil Lawsuits
- Dateline Video: *Little Girl Lost*
- The Legal Liability of Social Workers After DeShaney

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Section VII: Review of Day #1

Outline of Presentation:

The primary purposes of this section are to: 1) welcome participants back to day 2 of the training, and 2) to review information presented in day 1.

The trainer welcomes the participants back to the 2nd day of training. Information covered during day #1 will be briefly discussed by the trainer. Participants will take a quiz to help refresh their memories about what was covered during the first day, and to help them validate what they learned. The trainer will review the learning objectives that have been addressed and the class agenda that was developed at the beginning of day #1. The trainer will discuss what will be covered during day #2.

- Trainer lectures about the major concepts covered during day #1
- Participants will complete a quiz as a review of day #1
- Large group discussion to discuss the answers to the quiz
- Trainer discusses key concepts to be covered during day #2

Step #1:

The trainer welcomes everyone back to day #2. While the participants are getting settled and having refreshments, the trainer will lecture briefly about key concepts that were presented during day #1. The trainer should ask the class to refer to **HO #2: Learning Objectives and Competencies**. The trainer should review the objectives that were covered during day #1.

Step #2:

The trainer should refer the class to the agenda they developed at the beginning of day #1, which should be on a flip chart posted on the wall. The trainer will review the issues listed on the chart covered during day #1, and identify issues that need to be addressed during day #2.

Step #3:

The trainer will discuss the agenda for day #2. The trainer will emphasize that day #1 information was structured to provide them with more insight about why malpractice litigation occurs. Day #2 will provide information about important areas of risk management, and actions agencies and individuals can take to protect themselves from malpractice litigation. The trainer asks if there are any questions, issues, or concerns remaining from day #1 before the next part of the class begins.

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Day II

Step #4:

The trainer distributes **HO #19, *What Have I Learned?***, and gives the class approximately 10 – 15 minutes to answer the questions. The quiz is for individual use and is designed to help them review what they learned during day #1.

Step #5:

After it appears everyone has completed the test, the trainer facilitates a large group discussion to review the quiz. Each question is read by the trainer, who then asks for a volunteer to provide an answer. In certain instances, groups of participants may respond to the question immediately after it is read. This process continues until each question on the quiz has been discussed. The trainer facilitates discussion of the questions and challenges the participants to explain their answers. Whenever possible, the trainer should refer participants back to the curriculum presented during day #1. A “key” to the quiz is provided as part of HO #19 for the trainer.

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Section VIII: Risk Management: Preventing Civil and Criminal Malpractice Litigation

Estimated Length of Time:

15 minutes

Learning Objectives:

- Discuss the concept of Risk Management as a philosophy to prevent litigation
- Introduce 5 important areas of risk management in child welfare work

Methods of Presentation:

- Use of transparencies and handouts
- Lecture
- Blank flip chart

Materials Needed:

- Blank flip chart
- Overhead projector
- **OH #8: (quote)**
- **HO #20: Risk Management in Child Welfare Services**
- **OH #9: 5 Important Areas of Child Welfare Risk Management**

Resource:

- Prudent Practice: A Guide for Managing Malpractice Risk

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Section VIII: Risk Management: Preventing Civil and Criminal Malpractice Litigation

Outline of Presentation:

The primary purpose of this section is to define the concept of risk management and identify 5 areas of child welfare practice which should be targeted for risk management policies.

The trainer discusses the concept of risk management. Agencies and employees must improve their knowledge of liability law, develop an understanding of malpractice, and identify actions that need to be taken to improve performance and prevent litigation. Risk management is the practice of identifying practices or activities that have the potential to lead to legal liability. The trainer explains that the remainder of the class will focus on risk management in 5 general areas of child welfare work. They include assessing the potential for violence, confidentiality, continuing education and supervision, record keeping, and malpractice insurance. The trainer needs to emphasize that other areas of potential legal liability exist which will not be covered in the class due to time restraints.

- Provide a more detailed explanation of risk management as a means to preventing malpractice litigation
- Introduce 5 potential areas of risk management in child welfare

Step #1:

The trainer shows **OH #8**, which is a quote from Prudent Practice: A Guide for Managing Malpractice Risk. The trainer explains that if malpractice litigation occurs, the employee's performance will be judged on the standards established in the profession. The participants should be challenged to brainstorm what establishes the "standard of care" in child welfare practice. Responses should be recorded on a blank flip chart and may include examples such as various laws and regulations, agency policies and procedures, bulletins, special transmittals, state standards, etc.

Step #2:

The trainer distributes **HO #20: Risk Management in Child Welfare Services**, and briefly discusses the information on the handout. The trainer should emphasize that risk management is a philosophy that must permeate the entire agency. Administrators, managers, caseworkers, clerical, fiscal, and other support staff have a role and must be informed and invested.

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Step #3:

The trainer shows **OH #9: 5 Important Areas of Child Welfare Risk Management**, and lectures briefly about the relevance of each topic.

- Many lawsuits occur after a child is seriously injured or killed and the agency has had involvement with the family. Staff need to be better informed about potential indicators of violence and apply the knowledge when assessing families. Certain factors on the PA Model Risk Assessment may provide indicators of the potential for violence in the case.
- Violating confidentiality is another area ripe for litigation in child welfare services. Staff must be aware of the numerous laws and regulations that establish guidelines for releasing information. Computerization presents new confidentiality challenges for administrators and managers.
- Most counties have malpractice insurance policies that protect employees when litigation occurs. Employees may not even be aware of the type of policy in their county, or what protections it affords. Also, what should an employee do (or not do) in the event they are accused of malpractice?
- Many malpractice claims attack the training and education of the employee, or the supervisory practices in the agency. Employees can protect themselves by taking advantage of training programs being offered and by keeping abreast of current standards in the profession. Supervisors must understand their role and the concept of vicarious liability.
- Finally, accurate documentation in case records is the employee's best protection against malpractice litigation. The business record is the proof that the "standard of care" has been met by the worker. Computerization should eventually standardize the documentation process in Pennsylvania.

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Section IX: Malpractice “Self – Readiness” Inventory

Estimated Length of Time:

20 minutes

Learning Objectives:

- Participants will evaluate their own level of readiness for allegations of malpractice through completion of an inventory

Method of Presentation:

- Lecture
- Participants complete a “self – readiness” inventory

Materials Needed:

- **HO #21: Malpractice “Self – Readiness” Inventory**

Resource:

- Prudent Practice: A Guide for Managing Malpractice Risk

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Section IX: Malpractice “Self – Readiness” Inventory

Outline of Presentation:

The primary purpose of this section is to have participants examine their own background, training, work habits, and knowledge, and begin to identify areas where improvements could be made to protect themselves from malpractice litigation.

The trainer distributes the inventory and directs the participants to answer as many questions as they can. The questions are formulated to help participants analyze how prepared they are for possible malpractice litigation. Each question is related to an area of risk management which could protect them in the event of malpractice allegations. The inventory is for personal use. The trainer explains that the instrument will be used later in the day to assist in developing a personal risk management action plan.

- Introduce and distribute the “self – readiness” inventory
- Participants answer the questions on the inventory

Step #1:

The trainer distributes **HO #21: Malpractice “Self – Readiness” Inventory**, and lectures briefly about the purpose of the exercise. Participants are given approximately 15 minutes to complete the instrument. The trainer explains that the inventory is for personal use only, and that the main purpose is to help them identify potential areas of liability and think about steps they could take to protect themselves.

Step #2:

After approximately 15 minutes have elapsed, the trainer terminates the exercise. Participants are instructed to keep their inventory available as they will be referring to it later in the class. The trainer should not discuss the inventory with the participants at this time.

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Section X: Risk Management: The Importance of Assessing Potentially Dangerous Clients

Estimated Length of Time:

1.5 hours

Learning Objectives:

- Learn 3 major responsibilities when assessing a potentially dangerous client
- Identify risk factors which may help predict if a client is potentially dangerous
- Develop questions for gathering information to complete an appropriate risk assessment
- Understand 3 criteria courts use when determining malpractice negligence in cases of suicide
- Learn 10 high risk groups for suicide
- Develop behavioral and verbal warning signs of suicide

Methods of Presentation:

- Use of transparencies and handouts
- Lecture
- Case study
- Small group work
- Large group discussion and brainstorming

Materials Needed:

- Blank flip chart
- Overhead projector
- **OH #10: Assessing Potentially Dangerous Clients**
- **HO #22: Melinda's Case, Part I**
- **HO #23: Melinda's Case, Part II**
- **HO #24: Blank PA Model Risk Factor Matrix**
- **HO #25: Checklist for Determining Potentially Violent People**
- **HO #26: Risk Assessment Interviewing Guide**
- **HO #27: Melinda's Case, Part III**
- **OH #11: 3 Criteria for Suicide Related Litigation**
- **HO #28: High Risk Groups for Suicide**
- **OH #12: High Risk Groups for Suicide**
- **HO #29: Warning Signs for Suicide**

Resources:

- Prudent Practice: A Guide for Managing Malpractice Risk
- PA Model Risk Assessment Reference Manual

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Section X: Risk Management: The Importance of Assessing Potentially Dangerous Clients

Outline of Presentation:

The primary purpose of this section is to develop risk management strategies to recognize a potentially violent client.

The risk of malpractice litigation increases dramatically when a child is injured or dies, and a child welfare agency is involved with the family. The risk of liability may also increase if there is a past history with an agency. Many of the cases reviewed in this training involved the serious injury or death of a child which triggered some type of litigation. The performance of child welfare agencies will continue to be scrutinized when tragedies occur. Children, Youth and Families Bulletin #3490-00-01, which took effect on January 1, 2001, establishes very detailed guidelines for reviewing the circumstances when a child dies. Child welfare agencies exist to protect children and prevent child deaths. Therefore, a sound risk management policy would be directed at training staff to recognize the characteristics of potentially violent people in the hopes of preventing serious abuse. The primary method for assessing cases is the PA Model Risk Assessment, which is also required by state regulation. Certain risk factors may help predict the likelihood of violence by the adults in the home. Accurate information must be gathered in order to complete the risk assessment appropriately, identify risks, and prepare the safety and treatment plans. Since adolescents are a high risk group for suicide, child welfare employees must also be knowledgeable of the warning signs.

- Use of overhead and lecture about 3 responsibilities for assessing potentially dangerous clients
- Review a case and rate risk factors of a PA Model Risk Assessment
- Identify risk factors which may be the best predictors of violent people
- Develop questions staff could use to gather information to complete the risk assessment appropriately
- Identify possible behavioral and verbal warning signs of suicide

Step #1:

The trainer shows **OH #10: 3 Responsibilities in Assessing Potentially Dangerous Clients**, and lectures briefly on why it is important to gather *detailed* information about their clients during an assessment. The extent of intervention by the agency must be based on accurate information and must match the level of risk. Gathering background information is the key to making sound case decisions, which protects the agency when questions of liability arise.

Step #2:

The class is divided into 4-6 small groups. **HO #22: Melinda's Case, Part I**, is distributed to the participants. The trainer explains this is an actual case, which occurred

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over 15 years ago in Westmoreland County. Participants are instructed to read the limited case information provided and discuss the 2 questions listed at the end of the page in their small groups. Participants should only be given about 5 - 10 minutes to complete this exercise. It will be very difficult for the groups to know how to proceed on the case since limited information is provided. Groups will probably be discussing question #2 more than question #1.

Step #3:

The trainer then distributes **HO #23: Melinda's Case, Part II, and HO #24: A PA Model Risk Factor Matrix**. The participants are instructed to read the additional information, discuss it in their small groups, and work together to complete the 3 questions listed at the end of the case. The trainer should briefly explain the 3 questions so the participants understand the expectations. Groups should first identify who should be rated on the matrix. Then, using the Risk Factor Matrix, groups should assign the highest rating for each risk factor. Groups should then select 5 of the risk factors which seem to be most predictive of violence. Finally, participants should discuss the 5 risk factors they selected, and compose 1-2 questions that a caseworker could ask a client in order to gather the necessary information to rate the factor. There is no need to complete the Risk Assessment Summary Narrative for this exercise. Groups should be able to rate the factors relatively quickly based on the additional case information provided.

Step #4:

The trainer should also prepare a flip chart ahead of time with a grid listing the 15 risk factors, and columns for 4 –6 groups to record their responses. The flip chart should resemble the risk factor matrix when complete. After it appears that work on all 3 questions has been completed, a representative from each group should be invited to use a marker and record the ratings for their group in the appropriate column on the flip chart.

Step #5:

After all groups have recorded their responses on the pre-done flip chart, the trainer should ask for feedback about question #1, regarding who should have been rated on this case. Participants should have agreed on rating mother, father, paramour and the 5 children. The trainer should then facilitate discussion by comparing the ratings of the groups on the chart and highlighting areas of major agreement or disagreement. Based on the case information provided, there should (hopefully) not be major areas of disagreement among the groups. Many of the ratings should be Moderate or High, especially for the paramour. Participants should be given an opportunity to discuss and debate their ratings.

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Step #6:

Once discussion about the ratings has concluded, the trainer asks for feedback about question #2 regarding which risk factors may have been the best predictors of violent behavior in the case. As the groups respond, the trainer should circle or highlight the risk factors on the flip chart in the front of the room. The trainer then distributes **HO #25: Checklist for Determining Potentially Violent People**, and discusses the 7 factors listed on the handout. The trainer asks the participants if they can correlate any of the characteristics to the risk factors on the PA Model Risk Assessment. The 7 characteristics would basically be captured in the Risk Assessment as follows:

- | | |
|--|---------------------------|
| 1. Previous violent behavior | Risk Factor #12 |
| 2. Male 18-30 | Caretaker/HHM/Perpetrator |
| 3. Anti-social behavior in childhood | Risk Factor #10 |
| 4. Self-destructive behavior/Substance abuse | Risk Factor #8 |
| 5. Lower educational attainment | Risk Factor #5 |
| 6. Residing in troubled communities | Risk Factors 13 or 15 |
| 7. Hx of neglect, abuse etc | Risk Factor #10 |

The trainer reminds the participants that risk assessment, if done correctly, is an instrument designed to help predict the likelihood of abuse or neglect. It is also a regulatory requirement. Agencies desiring to develop sound risk management policies for liability protection should assure that caseworkers are trained in its use and that supervisors review them on a regular basis.

Step #7:

The trainer then asks for feedback regarding question #3. Each group should be asked to share one risk factor they selected, and 1 relevant question they developed, that a caseworker could use to gather information about the factor. As the groups respond, the trainer should paraphrase their questions and record them on a blank flip chart. Other groups should have an opportunity to share their responses if they selected the same risk factor and developed a different question. This process should continue until all responses have been recorded.

Step #8:

The trainer then distributes **HO #26: Risk Assessment Interviewing Guide**, and allows the class to review and compare it to the responses they developed which were recorded on the flip chart. Some questions should be very similar. Participants may want to write additional questions the class developed on this guide. The trainer should note that the questions may be a good interviewing guideline for inexperienced caseworkers, or caseworkers who have difficulty completing the risk assessment correctly because they don't obtain enough information from the client. (This particular section of the training could also be used as a "transfer of learning" exercise. All questions developed by the class could be summarized and sent to participants at a later date.)

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Step #9:

The trainer must conclude this exercise by providing the class with a brief summary of the actual events of Melinda's case. **HO #27: Melinda's Case, Part III**, should be distributed. Participants should review the results of the case and be given a chance to ask questions or make comments. The trainer is not insinuating that if a risk assessment had been done on this case 15 years ago that Melinda's death would have been prevented.

However, research shows that there is some predictive validity to risk assessment. It may offer some protection to an agency if malpractice litigation occurs. (A defense is that the instrument is required, a certain risk rating was determined, and an appropriate plan was developed based on identified risks)

Step #10:

The trainer continues the discussion regarding the need to assess the potential for violence as a risk management strategy by displaying **OH #11: 3 Criteria for Suicide Related Litigation**. The trainer lectures briefly on the 3 criteria courts have reviewed when determining an agency's culpability if suicide occurs.

Step #11:

The trainer displays **OH #12: High Risk Groups for Suicide**. Since adolescents are the first group listed, we need to be aware of the warning signs. **HO #28: High Risk Groups for Suicide** is also distributed. The trainer draws attention to the statistics quoted on the bottom of the handout indicating the marked increase in suicide rates for this group.

Step #12:

Depending on class size, the participants should again be divided into 4-6 small groups. The trainer should give each group a sheet of flip chart paper and have them list as many indicators of suicide as they can remember. Indicators may include depressive symptoms such as eating disorders, or other verbal and behavioral warnings. Groups should be given approximately 10 minutes to complete their chart and post it on the wall. (If the class is behind schedule, the trainer may opt to exclude this exercise and proceed to the next step, distribute the handout, and cover it with a brief lecture)

Step #13:

After all charts are posted, a representative from each group should briefly discuss their group's list. The trainer concludes this section by distributing and reviewing **HO #29: Suicidal Warning Sign Checklist**.

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Section XI: Risk Management: The Importance of Confidentiality

Estimated Length of Time:

1 hour

Learning Objectives:

- Familiarize participants with confidentiality guidelines in the NASW Code of Ethics, The Child Protective Services Law, Department of Public Welfare Regulations, and Children, Youth and Families Bulletins
- Identify circumstances when it *is* appropriate to release child abuse or neglect information
- Identify circumstances when it is *not* appropriate to release child abuse or neglect information

Methods of Presentation:

- Use of transparencies and handouts
- Case vignettes related to confidentiality
- Large and small group discussion
- Video excerpt

Materials Needed:

- Overhead projector
- Television and VCR
- Video: *Professional Choices – Ethics at Work*
- **OH #13: 7 Reasons to Ensure Confidentiality**
- **OH #14: The Federal Privacy Act of 1974**
- **OH #15: Sources of Child Welfare Confidentiality Guidelines**
- **HO #30: Section 6340 of the Child Protective Services Law**
- **HO #31: Chapter 3490 of DPW Regulations, Sections 3490.91 to 3490.95, and sections 3490.101 to 3490.105a.**
- **HO #32: Chapter 3130 of DPW Regulations, Sections 3130.44 to 3130.46.**
- **HO #33: Chapter 3680 of DPW Regulations, Sections 3680.31 to 3680.35**
- **HO #34: Children, Youth and Families Bulletin #00-99-01**
- **HO #35: NASW Code of Ethics, Sections 1.07 and 1.08**
- **HO #36: Questions of Confidentiality**
- **HO #37: Do's and Don'ts of Confidentiality**

Resources:

- NASW Code of Ethics
- The Child Protective Services Law
- Department of Public Welfare Regulations: Chapters 3490, 3130, and 3680
- Children, Youth and Families Bulletin #00-99-01
- Article: Risk Management Through Client Access to Case Records
- Article: Confidentiality and Managed Care: Ethical and Legal Concerns

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- Article: Some Models for Dealing with Confidentiality and Informed Consent
- Confidentiality and Privacy in Social Work – A Guide to the Law for Practitioners and Students
- Confidentiality in Social Work – Issues and Principles
- Prudent Practice: A Guide for Managing Malpractice Risk
- Confidentiality in Child Welfare Law

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Section XI: Risk Management: The Importance of Confidentiality

Outline of Presentation:

The primary purpose of this section is to acquaint the participants with major child welfare confidentiality provisions in the law and regulations.

Confidentiality is the obligation of a child welfare worker *not* to reveal information about a family that is obtained during the course of practice. The risk of liability malpractice increases if a family's right to privacy and confidentiality is violated. Child welfare agencies must establish clear risk management policies which govern the release of information from their files. Staff must be familiar with the confidentiality provisions of the laws and regulations governing child welfare practice. They must be trained on when it is appropriate to release information, and should be able to cite legal statutes or ethical reasons for breaching confidentiality. Finally, child welfare employees must be aware of the possibility of inadvertently violating confidentiality due to technological advances such as computers, voice mail, and fax machines.

- Use of transparency to explain 7 reasons for ensuring confidentiality
- Use of transparencies to provide information about the Federal Privacy Act of 1974 and primary sources of confidentiality guidelines in child welfare services
- Provide handouts with excerpts from relevant confidentiality sources
- Conduct an exercise during which participants discuss several questions related to confidentiality
- Show an excerpt from a video
- Discuss the do's and don'ts of confidentiality using a handout as a guideline

Step#1:

The trainer displays **OH #13: 7 Reasons for Ensuring Confidentiality**, and lectures briefly about the importance of protecting the confidentiality of families and children. The fundamental "right to privacy" is at the root of confidentiality. It protects disclosure of potentially embarrassing information such as histories of mental illness or marital problems. It may also prevent the dissemination of information about families and children that could increase the likelihood of discrimination or harm against them if the information is unproven or inaccurate. An example of this might include false reports of child abuse. Maintaining strict confidentiality may protect personal and family security, especially in cases of domestic violence. It could also protect job security when information such as mental health treatment has no relation to job performance, but disclosure could jeopardize the individual's job position or ability to find employment. Client confidence in confidentiality policies may be an incentive for families to participate in services designed to help them.

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Step #2:

The trainer displays **OH #14: Confidentiality – The Federal Privacy Act of 1974**, and lectures briefly about its background and key requirements of the act. The Federal Privacy Act was sparked by “Watergate” and pertains to federally funded and administered programs. It generally stipulates that individuals for whom records are being maintained have the right to:

- Know what records are being maintained
- Know how the records are used
- Know who the records are being released to (informed consent)
- Access their records

Step #3:

The trainer then shows **OH #15: Sources for Child Welfare Confidentiality Guidelines**, and lectures briefly about the following documents that provide basic guidelines for confidentiality in child welfare services:

- The Child Protective Services Law
- Department of Public Welfare Regulations
- Children, Youth and Families Bulletins
- The NASW Code of Ethics

This section of the training focuses on the most *relevant* legal and regulatory guidelines concerning confidentiality for children and youth workers. It focuses on rules governing the release of child welfare records, and is certainly *not* a comprehensive listing of references for confidentiality questions. The child welfare worker may interact with a variety of different systems on certain cases. Confidentiality is further defined by the rules and regulations of other systems such as Mental Health, Drug and Alcohol, or the Medical Professions. Participants should be instructed to always discuss *case specific* confidentiality questions with their supervisor or agency solicitor. However, many recurring confidentiality issues in child welfare practice can be addressed by having knowledge of applicable laws and regulations. The state’s Child Protective Services Law is the main legislation dealing with issues pertaining to child abuse. Various Department of Public Welfare Regulations, and Children, Youth and Families Bulletins assist in providing clarifications about the law. Finally, The NASW Code of Ethics is intended to serve as a guide to the everyday professional conduct of social workers.

Step #4:

The trainer then distributes **Handouts #30 - #35** as listed below, and lectures briefly about the subject matter of each document. The trainer should *not* attempt to explain each handout in detail. Participants should be encouraged to read the material and keep it for future reference. The handouts are *key excerpts* from certain sections of the documents listed in step #3, and provide general guidelines for issues pertaining to confidentiality in child welfare services.

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HO #30: The Child Protective Services Law:

1. Section 6340 – *Release of information in confidential reports.*

HO #31: Chapter 3490 of the Department of Public Welfare Regulations – *Child Protective Services*

1. Section 3490.91 – *Persons to whom child abuse information shall be made Available.*
2. Section 3490.92 – *Requests by and referrals to law enforcement.*
3. Section 3490.93 – *Requests by designated county officials.*
4. Section 3490.94 – **Release of the identity of a person who made a report of suspected child abuse.**
5. Section 3490.95 – *Release of information to required reporters.*
6. Section 3490.101 – *Sanctions.*
7. Section 3490.102 – *Criminal liability for breach of confidentiality.*
8. Section 3490.103 – *Non-abuse reports received by the county agency or Other public agency from Childline.*
9. Section 3490.104 – *Release of information to a subject of a report.*
10. Section 3490.105 – *Request by the subject of a founded or indicated report for expunction or amendment of an abuse report, when the report was received by Childline prior to July 1, 1995.*
11. Section 3490.105a.- *Request by a perpetrator to amend or expunge an indicated report of child abuse received by Childline after July 1, 1995.*

HO #32: Chapter 3130 of Department of Public Welfare Regulations – *Administration of County Children and Youth Social Service Programs:*

1. Section 3130.44 – *Confidentiality of family case records.*
2. Section 3130.45 – *Permanent documents.*
3. Section 3130.46 – *Child placement registration index.*

HO #33: Chapter 3680 of Department of Public Welfare Regulations – *Administration and Operation of a Children and Youth Social Service Agency:*

1. Section 3680.31 – *Personnel records.*
2. Section 3680.32 – *Client records.*
3. Section 3680.33 – *Maintenance and retention of client records.*
4. Section 3680.34 – *Confidentiality of client records.*
5. Section 3680.35 – *Release of information in client records.*

HO #34: Children, Youth and Families Bulletin #00-99-01 – Annual *Bulletin Update (Bulletins listed below should be mentioned)*

1. #00-97-11 re: *Megan’s Law, Providing Information Regarding Sexually Violent Offenders*
2. #3490-96-01 re: *Act 151 Amendments*
3. #3490-95-02 re: *Amendments to the CPSL Effective July 1, 1995*

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4. #3350-89-01 re: *Adoption Records Disclosure Procedures Act*
5. #3490-87-02 re: *Policy Clarification of the CPSL and Regulations*
6. #3490-87-03 re: *Sharing Child Abuse Information Among DPW Offices*
7. #99-85-28 re: *Providing Copies of Child Abuse Reports*
8. #99-84-20 re: *Release of Child Abuse Information to the Media*

- Note: This may *not* be a complete list of all Children, Youth and Families Bulletins that pertain to the subject of confidentiality. A copy of any bulletin in this list can be obtained by contacting Ms. Sue Tunis, Bulletin Coordinator, Office of Children, Youth and Families, P.O. Box 2675, Harrisburg, Pa. 17105-2675. The telephone number is 717-787-4756. Also, at the time this curriculum was being written, a listing of all bulletins was being entered into the Internet.

HO #35: National Association of Social Workers Code of Ethics

1. Section 1.07 – *Privacy and Confidentiality.*
2. Section 1.08 – *Access to Records.*

Step #5:

The trainer then distributes **HO #36: Questions of Confidentiality**. Participants are divided into 4-6 small groups, and given approximately 15 minutes to discuss the case scenarios in their small groups and decide how they would proceed. Groups should be challenged to use handouts 30 – 35 and identify sections of the laws or regulations that might apply to each case.

Step #6:

When it appears that groups have finished their discussions, the trainer should proceed by reading the first question and asking for a volunteer to share the conclusions reached by their group. The trainer should continue in this manner until all questions have been thoroughly discussed. Each small group should be required to take the lead in discussing 1 of the questions. This exercise has been designed for the participants to relate the information received about confidentiality to actual case scenarios. It will also provide them with practice at finding sections of the laws and regulations to help answer confidentiality questions.

Step #7:

To conclude this section, the trainer shows an excerpt from the video entitled *Professional Choices: Ethics at Work*. The video clip is very brief and addresses situations in which unintentional violations of confidentiality may occur. In general, workers must be careful about talking about cases in the office or in public; they must also be careful with case records, and with the use of fax machines, voice mail, and computers. **HO #37: Do's and Don'ts of Confidentiality**, should be distributed and discussed to conclude this section.

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SECTION XII: RISK MANAGEMENT: THE IMPORTANCE OF CONTINUING EDUCATION AND SUPERVISION, MALPRACTICE INSURANCE, AND CASE DOCUMENTATION

Estimated Length of Time:

1 hour

Learning Objectives:

- Identify agency barriers to documenting case records
- Learn 4 reasons why effective case documentation may protect you if malpractice litigation occurs
- Learn 9 questions to ask to develop a better understanding of malpractice insurance
- Differentiate the 2 types of malpractice insurance
- Understand actions that should be taken when malpractice allegations are made
- Identify 8 preventive actions to take when referring clients to other service providers
- Discuss the benefits to a program of continuing education as a means of protection against malpractice litigation
- Define the concept of “impaired colleague”
- Identify 5 actions that should be taken to help an impaired colleagues

Methods of Presentation:

- Use of a “questions rotation” exercise
- Small group “brainstorming” of specific questions
- Large group discussion of all questions
- Use of transparencies and handouts
- Use of flip chart

Materials Needed:

- 6 – 5”x8” index cards with pre-done questions typed on the cards
- 6 – envelopes for index cards
- Overhead projector
- Flip chart
- **HO #38: 6 Questions for “Question Rotation” Exercise**
- **HO #39: The Importance of Records in Risk Management**
- **HO #40: Malpractice Complaint Checklist**
- **HO #41: 9 Questions to Ask About Malpractice Insurance**
- **HO #42: Tips for Preventing Malpractice Litigation**
- **OH #16: Why C&Y Workers See Record-Keeping as Irrelevant**
- **OH #17: Do’s and Don’ts of Responding to a Malpractice Complaint**
- **OH #18: 2 Types of Malpractice Insurance**
- **OH #19: Preventing Malpractice When Referring**
- **OH #20: Preventing Malpractice Through Continuing Education**
- **OH #21: Preventing Malpractice By Impaired Colleagues**

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Resources:

Prudent Practice – A Guide for Managing Malpractice Risk

Article: Risk Management Through Client Access to Case Records

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SECTION XII: RISK MANAGEMENT: THE IMPORTANCE OF CONTINUING EDUCATION AND SUPERVISION, MALPRACTICE INSURANCE, AND CASE DOCUMENTATION

Outline of Presentation:

The primary purpose of this section is to generate discussion about continuing education and supervision, malpractice insurance, and case recording in child welfare services. As a result of the exercise, participants should learn additional risk management activities to protect themselves from malpractice litigation.

Department of Public Welfare Regulations now establish certification requirements for all direct service child welfare workers and supervisors. A continuing program of education serves to decrease liability by verifying the employee was adequately trained to do the job. Workers should complete Individual Training Needs Assessments annually and establish a plan to meet training needs as a risk management activity. Ongoing supervision is also a critical risk management activity. Appropriate supervision provides an employee with an unbiased opinion of their work, expertise in new or difficult situations, and assistance in determining an appropriate diagnosis and treatment plan. Case documentation that reflects continuous supervisory review reduces malpractice risks. Record keeping is evidence that practice occurred in accordance with legal and other requirements. Lack of competent documentation undermines the employee's legal defense. Protecting children from family members is an extremely difficult job. Child welfare workers are very vulnerable to malpractice claims due to the nature of their work. Malpractice liability coverage is a necessity. Most employees are covered by some type of malpractice insurance in their county and workers should be educated about the exclusions and limits of those policies.

- Conduct a "questions rotation" exercise during which participants have an opportunity to brainstorm a variety of questions pertaining to malpractice liability
- Use of various transparencies and handouts to emphasize key points after each question is discussed

Step #1:

The class should be divided into 4-6 small groups. The trainer should begin the exercise by giving 1 envelope to each table. (See handout #38 for a list of the 6 questions) Participants should be instructed to read the question on the index card in the envelope and discuss it with their group. One person in the group should take notes about their discussion, and be prepared to verbally present the results to the class at the conclusion of the exercise. After 3-5 minutes have elapsed, the trainer will rotate envelopes among the tables so each group has a new question to discuss. A different group member should take notes for each question. The trainer will continue to rotate the envelopes among the tables until each group has seen and discussed the questions in all envelopes.

*Note: Trainers should refrain from giving the small groups all the questions at once as

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a handout. The rotation process contributes to the “texture” of the exercise by creating some anticipation about questions they haven’t seen.

Step #2:

When it appears that groups have concluded discussions on their final question, the trainer should call upon one table and ask for feedback on *Question #1*. The trainer should use a flip chart to record their feedback about agency barriers to case recording, and any ideas to deal with the barriers. *As a matter of procedure, the trainer should always ask for feedback from the rest of the class once the selected group has concluded their responses.* The trainer then displays **OH #16: Why C&Y Workers See Record Keeping as Irrelevant**, and discusses each of the 3 reasons listed. **HO #39: The Importance of Record Keeping in Risk Management**, is distributed next and the trainer lectures briefly about how appropriate records and documentation may protect the agency and employee when malpractice claims arise.

Step #3:

A different group should be consulted about *Question #2*. Employees should know how to respond if they are accused of malpractice. After discussion is finished, the trainer should display **OH #17: Do’s and Don’ts of Responding to a Malpractice Complaint**, and distribute **HO #40: Malpractice Complaint Checklist**. Each suggestion on the handout should be emphasized by the trainer, and the participants should be invited to record any other relevant recommendations from the class on the handout.

Step #4:

Question #3 is designed to stimulate thinking about malpractice insurance coverage. A different group should be asked for feedback about this question. Participants may not even know whether their agency has an insurance policy. If they do know, they probably aren’t aware of its provisions. After the selected group has provided feedback, the trainer should display **OH #18: 2 Types of Malpractice Insurance**, and lecture briefly about the difference. The trainer concludes discussion on this question by distributing **HO #41: 9 Questions to Ask About Malpractice Insurance**, and challenges participants to use it as a guideline to learn more about their agency’s insurance policy.

*Note: In preparation for the class and if applicable, the trainer should use the handout to find out about their own agency’s insurance policy and be prepared to share the results with the class.

Step #5:

Purchasing services for families from private agencies may increase the risk of vicarious liability. Child welfare agencies are responsible for selecting competent and properly credentialed agencies which practice ethically and legally. *Question #4* is intended to

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elicit suggestions for reducing the risk of malpractice claims when contracting for services with private agencies. Once all feedback has been given by the participants, the trainer should display **OH #18: Preventing Malpractice When Referring**. Each suggestion on the handout should be briefly discussed by the trainer. Additional recommendations given by the participants should be added to the list.

Step #6:

A common tactic in malpractice litigation is for an attorney to attack the credentials and education of the workers involved. An important risk management strategy for every child welfare employee is to participate in a continuing education program. *Question #5* is designed to have participants discuss actions they can take to stay current about best practice in the field of child welfare, and develop an understanding of how this may protect them against malpractice allegations. The trainer should display **OH #20: Preventing Malpractice Through Continuing Education** to complete processing of this question.

Step#7:

The final topic in this section addresses the sensitive issue of “impaired colleagues”.

Professional impairment includes interference in professional functioning that is reflected in one or more of the following ways:

- (1) an inability and/or unwillingness to acquire and integrate professional standards into one’s repertoire of professional behavior
- (2) an inability to acquire professional skills in order to reach an acceptable level of competency, and
- (3) an inability to control personal stress, psychological dysfunction, and/or excessive emotional reactions that interfere with professional functioning (Lamb et al., 1987, p.598)

Question #6 requests participants to examine the problem of dealing with child welfare workers who are not getting the job done appropriately, and the associated malpractice risks for the agency. Some participants may believe this is strictly a supervisory problem; the trainer should try to convey that it is an agency problem. In some instances coworkers and supervisors are actually “enablers” of incompetent and unethical behavior. Sections 2.09 (Impairment of Colleagues), 2.10 (Incompetence of Colleagues) and 2.11 (Unethical Conduct of Colleagues) of the NASW Code of Ethics provides some guidelines for social workers.

When discussion of this topic is exhausted, the trainer should distribute **HO #42: Tips for Preventing Malpractice Litigation**. The handout lists practical risk management strategies in the areas of making referrals for services, continuing education, and dealing with impaired colleagues.

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Section XIII: My Personal Liability Protection Plan

Estimated Length of Time:

30 minutes

Learning Objectives:

- Develop a personalized risk management action plan

Methods of Presentation:

Use of a handout

Participants complete a personalized risk management plan

Large group discussion

Materials Needed:

HO #43: My Personal Liability Protection Plan

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Section XIII: My Personal Liability Protection Plan

Outline of Presentation:

The primary purpose of this section is for the participants to complete a personal liability protection plan. The plan should be based on material that was covered during the class, and should include practical steps the participant can take upon returning to their respective agencies to protect themselves in the event of malpractice litigation.

The 2 overriding goals of the class which were discussed in the introductory session on day 1 were:

1. To improve participant's knowledge about why malpractice litigation occurs, and
2. To provide participants with practical suggestions about how to protect themselves from malpractice litigation

The final session will be a time for participants to think about the material that was presented during the class and develop a personal liability protection plan. The plan should help the participant identify their strengths, which should include examples of current performance that may be a protection in the event of malpractice litigation. The plan should also identify potential problem areas, and should include concrete action steps to make improvements. **Handout #43: My Personal Liability Protection Plan** will be used as a guideline to complete this activity. Participants should also be instructed to refer to **Handout #21: Malpractice Self-Readiness Inventory**, which was completed earlier in the day. When all participants have completed their plan, the trainer should go around the room and ask each person to share 1 strength and 1 action step they will take as a result of the class to protect themselves from malpractice litigation.

- Distribute and explain the plan
- Refer participants to the "malpractice inventory" previously completed
- Each participant shares key parts of their plan

Step 1:

The trainer distributes **HO #43: My Personal Liability Protection Plan**, and explains that each participant should use it as a guideline to complete their own action plan. The trainer should also refer the class to **HO #21: Malpractice Self-Readiness Inventory**, and suggest that it be reviewed before completing their plan. Participants should be given approximately 15 – 20 minutes to complete this exercise.

Note: The trainer could allow participants to simply take their plan with them when the class is finished. As an alternative, the trainer could provide stamped envelopes and instruct participants to write the name and address of their immediate supervisor on the envelope. Action plans would then be mailed back to their agencies and participants

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would be instructed to discuss their plan with their supervisor once received. This would enhance “transfer of learning” for the class.

Step 2:

Once everyone has completed their plan, the trainer should go around the room and allow each participant to verbally share 1 strength and 1 action step with the class. The trainer should listen carefully to the comments and provide feedback if necessary. Each participant should be able to state the actions they are going to take in behavioral terms. The trainer should also ask for feedback from other class members as participants share their thoughts. The trainer should encourage participants to return to their agencies and implement their plan.

Step 3:

Once all discussion about the personal protection plans has concluded, participants should complete an evaluation of the class. After all evaluations are complete, the trainer should ask the class to review the competency, learning objectives, and the class agenda on the flip chart that was developed on day 1. Final comments, questions, or feedback should then be taken.

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