Foreseeable Harm

Here's what can happen when a nonprofit ignores this crucial issue.

BY MELANIE L. HERMAN

Many nonprofit managers see liability lurking around every corner. They avoid activities for fear of being held liable. Yet not every accident victim sues, nor does every accident impose liability on the organization. How can you predict whether you'll be found liable? One of the main issues is foreseeability of harm. This case file shows how important this concept is.

The Case

We Refer is a faith-based nonprofit organization that refers people to affordable housing.[1] While many clients interact with We Refer by telephone, a growing number come to the organization's office to speak to a counselor, who provides information and helps complete the paperwork for various housing programs.

During the past five years, the average age of visitors to the organization's office has climbed. On a typical day, more than half the clients who visit We Refer are seniors. We Refer tries to keep pace with its changing clientele. For example, We Refer has reprinted some of its materials in larger type, and one of its counselors used to work for the Area Agency on Aging.

One day an 80-year-old client arrived for a meeting with a counselor. While waiting for her appointment, she visited the organization's restroom. She fell on the steps going into the restroom, suffering a fractured hip. Her medical bills totaled $45,000, and she must now use a walker.

The Investigation

We Refer's insurance provider inspected the premises and discovered that the steps going into the ladies' room were unmarked. After the accident, We Refer posted a sign advising of the steps.

The insurer also obtained the medical records, including narrative reports from the client's physician. These records allowed the insurer to evaluate the client's injuries.

The Outcome

The insurer determined that the steps to the restroom constituted a hazard which the organization could have foreseen. The case was settled for $95,000.

Loss Prevention Analysis

Don't spend time worrying about remote risks while failing to pay attention to foreseeable harm—injuries you could reasonably expect given your facility, clientele, and activities. If your organization provides services to the elderly, for example, you can expect some clients to have trouble reading small type and negotiating uneven surfaces. Thus, you should take precautions to prevent foreseeable accidents caused by trips over loose carpeting, slips on wet floors, or failure to see poorly placed or hard-to-read signs. On the other hand, you wouldn't be expected to foresee falls resulting from unknown medical conditions or from clients wearing roller blades.

Risk Management Strategies

To reduce the likelihood of costly claims, follow these steps:

1. **Examine your facilities** from your clients' perspective, and identify potential hazards. If you can't put yourself in the shoes of a child, senior, or person with a disability, ask clients that fit these profiles to help you conduct your inspection.

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Not every potential hazard requires an expensive fix.

2. If an accident occurs on your premises, work with your insurance provider to review the circumstances. Pinpoint ways you can prevent recurrences. For example, you may need to change your signs, furniture placement, or ways of entering and exiting. Simple changes, such as adding lighting or using bright paint to mark hazards, can often make a big difference. Not every potential hazard requires an expensive fix.

3. Never ignore accidents on your premises, even when you're not facing a claim. The first person injured at your facility may decide not to sue. But failure to correct the hazard could prove costly if someone else is hurt in the same way and brings an action against you.

4. Ask key staff, such as those providing maintenance, counseling, and other services in your facility, to help identify hazards and propose solutions. Don't limit the process to members of the management team, who may be less familiar with day-to-day activities.

5. Don't assume that your landlord is responsible for keeping your facility free from hazards. In the case of We Refer, the nonprofit was a tenant–not the owner of its facility. According to the lease, however, We Refer was responsible for addressing dangerous conditions. Such lease agreements are common, since tenants are usually better able to recognize hazards specific to their activities.

6. Strive to achieve a client-friendly, ADA-compliant environment.[2] As a religious organization, We Refer is exempt from the ADA's Title III requirements for public accommodations. However, making low-cost changes, such as adding railings and ramps leading to bathrooms, can yield important benefits, including the goodwill of clients and other stakeholders. Whether or not required by law, complying with the Americans with Disabilities Act is a smart risk-management strategy.

7. Find middle ground between a cavalier attitude and paranoia that every client is a potential plaintiff. Focus on identifying harm that is foreseeable. Take reasonable precautions to minimize the likelihood that anyone could be injured while receiving services from your nonprofit. After all, serving clients safely is good business for any nonprofit. ■

Risk Management Resources

Volunteer Liability and Risk Management
(Society for Nonprofit Organizations, www.snpo.org)

Nonprofit Risk Management Center
(www.nonprofitrisk.org)

GE/Westport Insurance
(www.insurenonprofits.com)

Nonprofits' United Vehicle Insurance Pool
(www.nonprofitsunited.com)

Alliance of Nonprofits for Insurance
(www.insurancefornonprofits.org)

Footnotes

[1]The name of this organization is fictional, but the factual description of the claim is based on an actual claim at the Nonprofits' Insurance Alliance of California (NIAC).

[2]For more on complying with the ADA (Americans with Disabilities Act), see *Volunteer Liability and Risk Management* and *Law and Taxation, Leadership Series,* available from the Society's Resource Center, 800-424-7367, www.snpo.org.

This column is dedicated to helping readers understand typical claims filed against nonprofit organizations and the risk management steps that could have made a difference in each instance. The scenarios featured in this column are adapted from actual claims files at the Nonprofits' Insurance Alliance of California (NIAC) and the Alliance of Nonprofits for Insurance, Risk Retention Group (ANI-RRG). NIAC and ANI-RRG are part of a group of 501(c)(3) insurers owned and governed by nonprofits. For more information, visit www.insurancefornonprofits.org or call 800-359-6422.

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