



# **WELCOME**

**GINA GAMBARO**

Director of Marketing

# Asking a question is easy!

- About the topic being presented —
  - ❖ Click on the **Q&A** icon at the bottom of your screen
  - ❖ Type your question & hit Enter
  - ❖ Questions will be answered at the program's end, or offline if time runs out
  
- About technical issues or CE credit —
  - ❖ Click on the **Chat** icon at the bottom of your screen
  - ❖ Type your question & hit Enter
  - ❖ Our team will reply to your question right away

# Housekeeping notes

- ▶ This webinar is being recorded for on-demand access later, after the series' conclusion
- ▶ To earn CE, you must attend the entire session
- ▶ **For those sharing a computer**
  - Complete a manual sign-in sheet before the program ends
  - Go to **Chat** to access the link for the sign-in sheet
  - Each participant must complete an evaluation to obtain CE credit
  - Instructions will also be emailed to the program registrant



***LEGAL LANDMINES:  
Risk Management and Liability  
Mitigation***

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# Agenda



WHERE DOES LIABILITY  
COME FROM?



THE MOST COMMON  
LIABILITY RISKS THAT  
COMMUNITIES FACE



WHAT YOU CAN DO NOW

# Liability

## Duty (du·ty) *noun*

1. a moral or legal obligation; a responsibility
2. a task or action that someone is required to perform

A duty can be created by

- statute
- promise or representation
- industry standard

***And, a duty can be difficult to get rid of.....***

# Liability Equation

$$\text{Duty} + \text{Failure to Carry Out Duty} = \text{Liability}$$

# Meet the reasonable person



The “*reasonable person*” is a *hypothetical* individual who approaches *any situation* with the *appropriate amount of caution* and then *sensibly takes action*. It is a standard created to provide courts and juries with an *objective test* that can be used in *deciding whether a person's actions constitute negligence*.



# The Reasonable \_\_\_\_\_?

- ▶ Reasonable *person*
- ▶ Reasonable *administrator*
- ▶ Reasonable *nurse*
- ▶ Reasonable *care aide*
- ▶ Reasonable *doctor*
- ▶ Reasonable *facility*

# What's reasonable?



To comply with your policies.



To meet the industry standard (i.e., what others do).

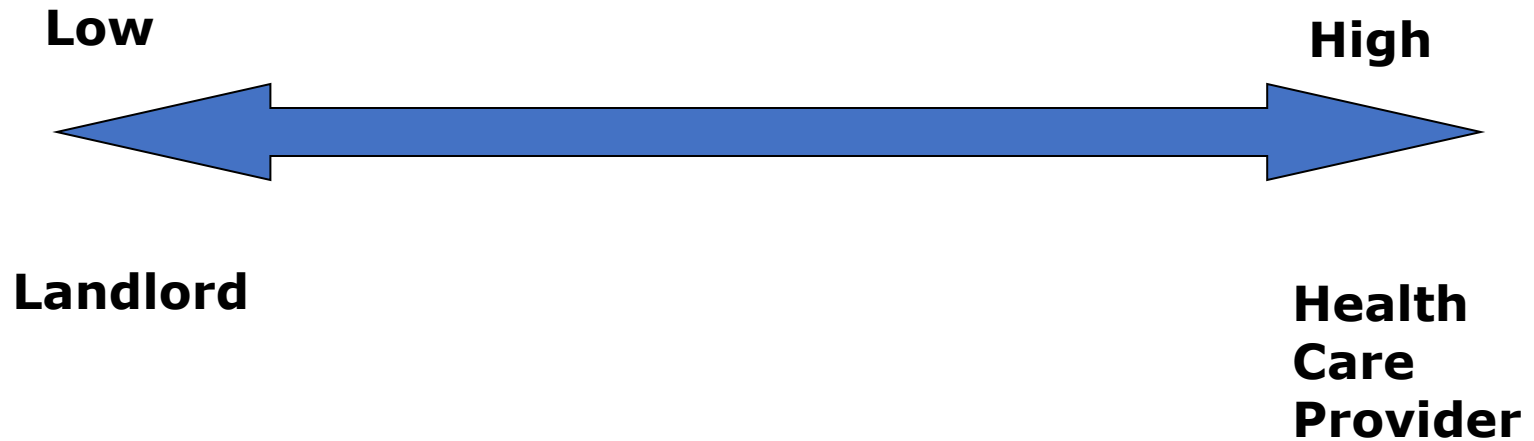


To meet the regulatory requirements.



***And, to do these things consistently***

# Liability – 0 - Meter



## Keep in Mind

Hindsight is always 20/20.

If you didn't document, it wasn't done.

Can't count on immunity from state or federal authorities.

# Every Dog Gets One Bite

- ▶ Once you know that your dog bites, you need to take action
  - What if you **know** that a resident is exhibiting a behavior?
  - What happens if you have **heard** that a caregiver has done something wrong?
  - What if you **suspect** that staff are using social media to post about the facility and residents?

Standard is what you “**knew or should have known**”

- ▶ There are benefits to a zero tolerance policy.
- ▶ You can't ignore a dog that growls all the time.



# Causes of liability

- ▶ Human error
- ▶ Failure to follow a care plan/physician orders
- ▶ Failure to assess and/or document same
- ▶ Failure to document care
- ▶ Failure to follow policies / making exceptions
- ▶ Failure to address warning signs
- ▶ Failing to listen to that “little voice”
- ▶ Failure to fire poor staff
- ▶ Hiring the wrong staff
- ▶ Admitting the wrong resident

# Causes of liability

- ▶ People
- ▶ People
- ▶ People
- ▶ People



# Where claims come from

## *Where do claims come from?*

- ▶ The family
- ▶ The resident
- ▶ Your staff

## *The basis for these claims come from:*

- ▶ Your staff
- ▶ The care they deliver
- ▶ Your policies
- ▶ Your response to events/information



- ▶ Identify and address risks proactively
- ▶ Prevent the bad act from happening.
- ▶ Minimize the community's liability when the bad thing happens
- ▶ Implement lessons learned for further improvement



# The Power of Prevention

Avoiding  
the risk

- Don't hire
- Fire
- Don't admit
- Discharge
- Follow your policies
- Be consistent

# Smart Admissions

## Look for the warning signs

- Multiple prior placements
- Difficult family
- Arguments within the family
- Complaints about the prior placement, doctor, hospital care
- Something just doesn't seem right
- Story just doesn't add up



# Smart Hiring/Firing



- ▶ Pay attention to warning signs
- ▶ Attitude means more than skills
- ▶ Do not ignore warning signs
- ▶ Do not ignore your gut
- ▶ Establish bright lines that can't be crossed

# Mandatory Training Lessons



No exceptions to bright line rules



If you aren't sure, ask



If you see anything that makes you uneasy, tell someone



Failure to report is as bad as or even worse than the mistake/issue itself



If you need help or support, ask



Communication is key

# Bright lines with staff

**Abuse**

**Transferring  
resident correctly**

**Getting angry with  
residents**

**Handling  
residents roughly**

**Failure to follow  
service plans**

**Failure to  
communicate  
(Doctors, other  
staff, reporting)**

# Most Common Problems With Documentation

- ▶ Non-existent
  
- ▶ The reality / documentation gap
  - Speculation
  - Best case scenario driven
  - “No one will read this, right?”
  - No one does read it.



# Plaintiffs' Attorneys Are Looking for ONE Thing

*What did your community  
do or fail to do  
that  
caused  
a resident to be  
injured or die?*



# Policies

- ▶ Required by law.
- ▶ Provide guidance to staff.
  - Create consistency in practice.
  - Communicates expectations.
  - Remove the chance for error.
  - Promotes compliance.
- ▶ Rules of the road.
- ▶ Sets the standard of care you will live up to.



# Biggest Problems with Policies

Too elaborate.

Too strict.

Too many.

Contrary to practice.

Too secret.



## Policy Do's

**Clear.**

**One policy for an issue.**

**To the point – what is the take away?**

**Easy to carry out. If staff can't tell you the policy when you ask they probably aren't carrying it out.**

**Shared with residents and families as appropriate.**

**Known by everyone (or at least everyone who should know).**

# Common Liability Risks

Abuse

Falls

Elopement

Wounds

# Top Four Errors with Abuse

- 
1. Staff fail to identify an incident or allegation of abuse.

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  2. Staff fail to report an allegation of abuse.

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  3. Once a report has been made, staff are not suspended pending investigation.

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  4. Failure to conduct a thorough investigation & dig deeper.

# Three Golden Rules

1

Treat every allegation as if it were true and as if it were abuse.

2

Treat every allegation as if it were true and as if it were abuse.

3

Treat every allegation as if it were true and as if it were abuse.

# Policy and Training Foundation

1. You anything that you see or hear about that makes you feel .
2. You will something like this . . . . . but ***you will be disciplined if you fail to do so.***

# Resident abuse by staff

► Make sure that your Staff:

- Are trained comprehensively and often on the *unique care needs* of residents
- Understand how to *step away from frustrating situations*
- *Report anything* they hear or see that makes them *uneasy*
- Know that *management cares*, but also know that management is watching



# Falls

Deviations from the care plan / inappropriate transfer are impossible to defend

## After a fall

- Documented Investigation / Root Cause Analysis
- New interventions to prevent similar fall (or document that all interventions are in place)
- Anticipate future falls and address in the care plan
- Consider clinical issues and follow-up
- Update the care plan to show that this process was completed after a fall
- Train the staff on any care plan updates
- ***Wash, rinse & repeat for each different fall***

# Lost Residents / Elopement

How do you monitor residents in the building?

If a resident is lost have a checklist:

Head count.

Search team.

Notification.

Alarm check.

Investigation of cause.

How often do you check your door alarms?

Can door alarms be disabled?

Drills – do staff know what to do?

# Medication Errors

- ▶ Residents are unable to self-identify
- ▶ Residents need medication assistance/administration
- ▶ Residents may be unable to communicate adverse effect



# Wounds

- ▶ Train staff to and skin changes
- ▶ for each new skin change
- ▶ Get a at the outset to discuss the “why”
- ▶ treatment interventions & pressure relief
- ▶ on nutrition, medication and other clinical components
- ▶ Periodic notes and input from clinicians discussing the “”

***Key is to have contemporaneous documentation  
explaining unavoidable skin breakdown***

# What You Can Do Now



# What You Can Do Now... *to get ready*

- Perform a self-assessment
- Identify areas of risk
- Review your survey performance
- Assess your in-service and training topics
- Look critically at your QA
- Consider pre-emptive audits
- Mock survey



# What You Can Do Now... *to respond*



Gather all documentation



Preserve documents and materials involved



Make a timeline



Review your policies



Start re-training



If necessary, notify your insurance carrier and get your legal counsel involved.

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# Q & A

# About CE credit

## Administrator credit

This program has been approved for one clock hour of continuing education credit by the National Continuing Education Review Services (NCERS) of the National Association of Long-Term Care Administrator Boards (NAB).

Approval #20241018-1-A966868-DL

## Nursing credit

This program has been approved for one clock hour of continuing education credit by The Illinois Board of Nursing, an approved sponsor of continuing education by the Illinois Department of Professional Regulation.

## Obtaining CE credit

- ▶ Complete the evaluation at the conclusion of this program:
  - In your web browser
  - Also emailed immediately following this program
- ▶ For those sharing a computer to view the webinar:
  - Submit your sign-in sheet to the email address listed on the form
  - Each participant will then be emailed a link to the evaluation
  - Each person must complete an evaluation to receive CE credit
- ▶ Certificates should be **emailed in the next 30 days**

Want more CE after this?

Check out our on-demand courses or  
look for our upcoming webinars:

**Nov:** *Global Approaches to Dementia*

**Dec:** *2024 Forecast: What Should be on Your Radar to Set Yourself Up for Success*

**Jan:** *Using Neurolinguistic Programming to Positively Affect Your Outcomes*

**Feb:** *How Pharmacy Can Affect your Bottom Line*

**THANK YOU!**