



Collect pertinent documents

- SOAP notes
- Enrollment documents
- Medical forms
- Course description
- Other information provided to participant
- Incident report form
- Liability release form



Who is involved in an incident?

- Injured party
- Family of injured party
- Organization (instructors, staff, Board, etc.)
- Rescue personnel/medical personnel
- Law enforcement
- Land Managers
- Media
- Insurance Company
- State Agencies
- Other students (in that group and other groups)



Form to track communications:

- Who communicated
- What
- To whom
- When
- How (written, by phone, in person, etc.)
- Any promised follow up
- Attach any materials provided (incident report, description of incident, statements, etc.)

COMMUNICATIONS LOG

This form is intended to track communications with participants, a participant's family, law enforcement, land managers, the media, state agencies, insurance companies, etc. Attach copies of any written materials, correspondence, emails, or other documents given to any party.

Incident: 10/9/09, Levi Westminster Brokeback Mtn
 (Injured party, date, location)

Date of contact: 10/10/09 10:20 a.m.

Staff member communicating with outside party: Mary Abernathy

Method of communications: (circle one)
 Phone call Letter Email In person discussion

If conversation, how long did conversation last? 10 min

Person talked to and affiliation:
 Name: Joe Reporter

- Affiliation: (circle one)
- Injured party
 - Other Participant
 - Family member of participant
 - Family member of another participant
 - Name of other participant: _____
 - Relationship to participant (mother, brother, etc.): _____
 - Law Enforcement
 - Name of Agency: _____
 - Land Manager
 - Name of Agency: _____
 - State agency
 - Name of Agency: _____
 - Insurance representative
 - Company Name: _____
 - Media
 - Name of newspaper, magazine, etc.: Times Herald

Documents given (incident report, description of incident, statements, etc.):

Substance of communication (describe the communications including any pertinent comments by the person, any representations or promises by the staff member, etc.)

- Wants details about incident
- Wants to interview instructor
- 4:00 pm deadline

Follow up to be completed: Told we wld call him back - (919) 555-0104

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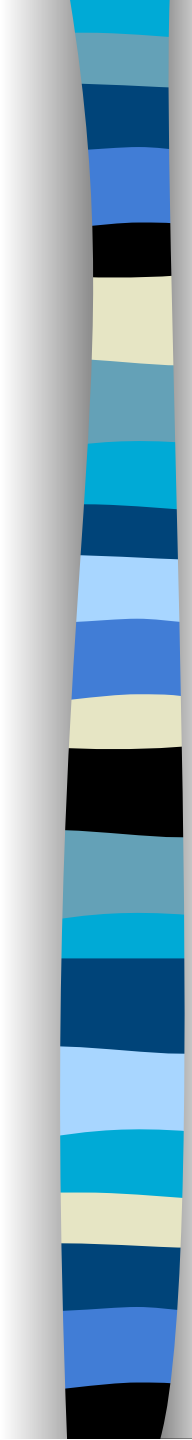
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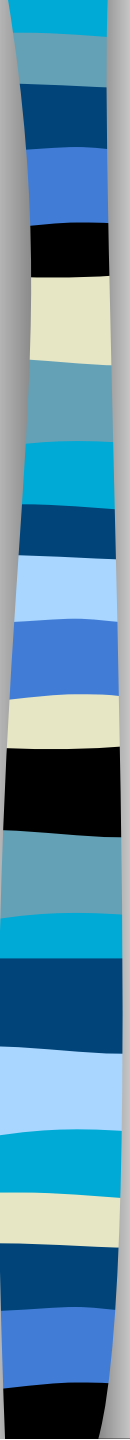
“I really don’t think we are going to have a problem with the family. We are getting along great. The mother has been very appreciative of all we have done for her son.”



Litigation Issues

- False sense of security
- Extended statute of limitations period for minors
- Litigious society
- Don't assume that because you haven't done anything wrong that you won't get sued

“We blew it...”





Discovery

- Must produce documents including email, reports, notes, etc.
- Potential protection by attorney-client privilege
- Potential protection by work product doctrine (limited)



Internal Investigation

- Likely discoverable
- Mea culpa mindset
- Give context, explain what report doing/not doing
- Get attorney involved before an incident to discuss your process



General advice

Assume whatever you say
and whatever you write, will
be heard or read by someone
suing you.



Land Managers

- Review permit, concessionaire's agreements, etc. for reporting requirements after an incident
- Information may be available to public under FOIA
- Information may be used by land manager against you



State Agencies

- Violation of regulations could be negligence per se
- Incident could result in:
 - Penalties from State Agency
 - Loss of license
 - Being required to be licensed
 - New regulations



Criminal investigation

- Charges could be against:
 - Organization
 - Individuals
- Hire counsel
 - Evaluate potential conflicts of interest
- Consider implications of negligence per se



Communications with the family

- The impact of “I’m sorry”
- Provide logistical and financial support
- Give facts/description of what happened
- Take to site?
- Inform doing an investigation
- Follow up with additional information when you have it



Take Home Action Steps

- Create forms to help you track (evidence, statement, communications)
- Identify person in organization responsible for collecting, documenting, and preserving evidence, documenting statements, and collecting pertinent documents (medical form, liability release form, etc.).
- Educate staff about the discoverability of internal communications and the need to be thoughtful about what they say about an incident.
- Confer with an attorney about your incident report process and potential protections