



AmTrust North America
An AmTrust Financial Company

Safety Zone

Prevention of Sexual Abuse, Molestation & Misconduct - Best Practices

Of the vast array of exposures that confront an agency, one of the most devastating is sexual abuse, molestation and misconduct. It can occur between staff and clients, volunteers and clients and between clients themselves. It knows no physical or age barriers.

As any other exposure, controls leading toward its prevention and management can be created and implemented. This document presents guidelines and management techniques that can be implemented alongside your agency's standard operating procedures. Such sophisticated activities, performed by a professional agency, can only act in the best interest of service to its clients, which is the ultimate goal of the agency.

Potential Cost & Impact

The short- and long-term emotional and physical effects of sexual misconduct on clients are obvious and devastating. The effects on the organization are less obvious, but extremely devastating nonetheless.

Short-Term Costs

- Investigation expense
- Temporary replacement service expense
- Agency operation without accused employee during investigation
- Expense and burden of filling in for removed staff member
- Legal representation expense
- Punitive financial penalties
- Expense of response counseling to client and/or client's family
- Expense of potential response counseling to employee
- Expense of permanent replacement service to client
- Individual prosecution of supervising and executive management

Long-Term Costs & Impact on Organization

- Loss of funding reimbursement for client involved
- Loss of funding for all programs
- Loss of accreditation
- Impaired reputation
- Negative impact on morale of remaining staff
- Loss of ability to recruit top-notch employees
- Inability to obtain related insurance
- Loss of license to operate
- Loss of contracts to provide services
- Loss of existing and future clients

Sexual Abuse & Molestation Prevention Policy Components

Here is a list of the seven necessary and essential components of a meaningful prevention policy. If any element is missing, the entire prevention effort is compromised.

- Create a statement declaring that the agency is against sexual abuse and molestation.
- Define sexual abuse and molestation so that all who read the statement understand what you are talking about.
- Train staff in prevention and recognition skills.
- If appropriate, train clients in recognition skills.
- Develop and implement prevention rules.
- Develop and implement a reporting system that does not discourage or penalize reporters.
- Develop and implement standardized and consistent consequences.

Management Techniques

As with any general safety issue, the problem needs to be clearly identified. In this case, it is sexual abuse and molestation, including related misconduct.

Executive management must first acknowledge the exposure for it to have credence with lower management, direct-care workers, volunteers, independently contracted service providers and the clients themselves. This acknowledgement is best accomplished through a written statement included in the agency's general mission statement, employee handbook, standard operating procedures, job descriptions and contractual agreements. All recognition and prevention efforts must first be embraced at the top for them to be observed throughout the operation.

Next, the statement, prevention activities and control techniques must be implemented. Implementation must involve written procedures and tangible activities.

Communication, documentation and monitoring are the other key elements of successful implementation.

Prevention Statement

The prevention statement defines the issues specifically and forbids their occurrence.

Definition

Sexual abuse and molestation include any conduct or activity leading to, or resulting in, sexual arousal or gratification of one, or all, of the parties involved. It includes, but is not limited to, inappropriate touching, inappropriate physical contact, titillating or romantic conversations.

Sexual misconduct includes violation of boundaries. Boundaries are the critical issue reflecting the actual underlying intent of a non-erotic action.

Sample Statements

It is the expressed policy of this agency that staff and volunteers shall not engage in sexually oriented activity, including sexual conversations with clients, nor allow such conduct to exist between the clients themselves.

Staff and volunteers shall not develop sexual or intimate social relationships with clients, or the family members of clients, during and following services provided to such clients and their families by the agency.

Staff and volunteers shall not engage in non-erotic activities for which the true intended result is sexual arousal or gratification.

Sample Policies

Any person associated with this agency who violates this policy will be discharged, reported to the proper authorities and prosecuted to the fullest extent of the law.

Sexual abuse, molestation and misconduct are crimes. As mandated reporters, any person associated with this agency who fails to report such activity will be discharged, reported to the proper authorities and prosecuted to the fullest extent of the law.

Preconditions

In order for sexual abuse and molestation to take place, these four preconditions must exist.¹

1. There must be an individual with the inclination to sexually abuse clients.
2. The individual must overcome his or her internal inhibitions.
3. The individual must overcome external barriers in place to protect clients.
4. The individual must overcome the client's resistance to being abused.

Rules

The following rules are prevention techniques.

1. Staff should avoid being alone with a client. To prevent this occurrence, always have two staff present with a client. When this is not possible, have one staff present with several clients. When this is not possible, have activities occur in an open-door, well-lit, easily accessible setting. When this is not possible, such as during a closed-door consultation, document the time spent behind closed doors and keep it to a minimum. (Some agencies tape record such meetings to verify content and duration.)
2. Client activities should always occur in well-lit and easily accessible areas. Intimate or secluded settings are to be avoided. Assistance in toileting should be instructional rather than physical assistance. In services where this is not possible, all efforts to maintain modesty should be made. Doors should be left open during assistance.
3. Generally avoid touching clients, especially by initiating contact. Patting clients on the seat as a sign of congratulation or encouragement, as often found in athletics, is forbidden. If a client hugs a staff member, divert the contact so it becomes shoulder-to-shoulder rather than pelvis-to-pelvis.
4. Staff visits to client bedrooms should take place in pairs of staff or staff should address clients from the doorway.
5. Be selective in matching clients with staff. Avoid opposite sex matchups. Staff should recognize when matchups are uncomfortable and report it to management with documentation.
6. Transportation and home visits in individual living programs, etc., are especially subject to misbehavior, as well as misinterpretation or false allegations of behavior. Avoid transporting opposite sex clients alone. Document activities and follow a busy schedule during home visits between single staff and single clients.
7. Do not play games with clients in which clients or staff hide, have unaccounted for periods of time or present opportunities for intimacy.
8. Misconduct includes violation of "boundaries" of proper behavior and client management. Violation of such boundaries includes bringing clients alone into a staff member's home, kissing clients, requesting personal favors from clients and intimating that their successful treatment is dependent on personally pleasing or satisfying the staff member.²
9. No after-hours or "special" relationships during or following the client's involvement with the agency is allowed. This rule applies to families of the client as well.

Prevention Design Concepts

1. Do not inhibit visibility of client areas by covering windows with decorations, paint, etc.
2. Be selective in client/staff/volunteer matchups. Know client histories regarding sexual activity, previous abuse and sexual awareness. Avoid opposite sex matchups in transportation, private counseling, in-home care, etc. Advise staff and volunteers of client histories to prevent placing either in party an unanticipated or undesirable situation.
3. Train and encourage clients to recognize and report sexual misconduct by staff and other clients. Document such instruction.
4. Monitor clients on a follow-up basis to discover sexual misconduct. Document such monitoring.
5. Make the process for documentation and reporting easy to access and understand. This design concept serves both the client and the agency.
6. Offer required in-service prevention training on a scheduled basis and have staff sign that they have received such training.

¹Boy Scouts of America

Background Checks

Despite imperfections, background checks are yet another viable tool to avoid sexual abuse and molestation before it occurs within an agency.

Background checks are invasive by their very nature and can be offensive, as they imply that the word and reputation of the person being checked are under suspicion. These concerns, however, pale in the face of the risk taken by a failure to conduct such checks. Furthermore, it is assumed that the skilled and determined perpetrator can avoid detection if determined to do so, but may be deterred by the threat of a background check.

All staff and volunteers must complete an application. (Applications or background materials of contracted service providers should be obtained and reviewed.) Your agency's employment application should state in **bold** lettering words to this effect:

"It is the intention of this agency to prevent engaging the services of individuals who have a history of sexual abuse, molestation, and misconduct. To this effect, all efforts will be made to discover such histories. Signed completion of this application gives this agency permission to conduct background checks. The applicant is hereby notified such background checks will be vigorously made."

The purpose of conducting background checks is threefold.

1. To learn if the person being checked has a record of perpetrating sexual abuse.
2. To learn if the person being checked has a criminal or poor driving history.
3. Performance of the check itself acts as a deterrent to the potential perpetrator.

The ideal check is multifaceted. It contains a child abuse and neglect report from your state's child welfare department, state police criminal background check, fingerprint check (nearly all fingerprint checks are eventually run through the FBI National Clearinghouse), credit report, motor vehicle record (MVR), mandated posting of convicted offenders residing in the area, and personal references attached to a consistent résumé.

These components have different individual values. One does not preclude the others.

State child welfare department reports only advise if neglect, abuse, or sexual abuse have been reported or suspected. They may not address crimes that do not involve children.

State police criminal background checks advise of crimes committed in the state, but may not address incidents of abuse and neglect in which no charges were filed or no conviction was made.

Fingerprint checks give a broader report. The FBI has records of nearly all fingerprints and can report on a variety of crimes in every state, but may not report local incidents of abuse and neglect in which no charges were filed and no conviction was made.

Credit reports have become increasingly commonplace in that they reveal more than just late payments; they provide a timeline of activity that supports or disputes an applicant's responses.

Motor vehicle records reveal episodes of driving under the influence, and crimes such as auto theft, vehicular homicide, leaving the scene of an accident, etc., All are indicators of a person's character.

Local-area molester lists are provided free of charge by some local police departments and may be available online. These lists are court-mandated advisories of known perpetrators who may not appear on state child welfare department reports.

Personal references are subject to prejudice in favor of the applicant. However, follow up discussion often allows the reference to reveal his true feelings and he can respond to specific areas of interest not addressed in the generic letter of reference. Résumés should match what the reference says and can be used in the same fashion as a letter of recommendation.

While some checks are more appropriate than others in certain instances, the general concept is that the most intensive checking should be performed based on the exposure.

Ranking of Component Combinations

Far above average and ideal in most circumstances

State child welfare department report, state police criminal background check, FBI-generated fingerprint check, MVR, personal references with résumé, credit report

Above average and commonplace

State child welfare department report, state police criminal background check, FBI-generated fingerprint check

Average and used when a state child welfare department relationship does not exist

State police criminal background check and/or FBI-generated fingerprint check (fingerprinting is commonplace for youth coaches, etc.)

Slightly below average

State police criminal background check only

Below average

Use of personal references with no official checking process

Far below average

Résumé only

Note: Numerous private companies provide a mixture of the ideal background checks. Also, checks can be performed on various Internet sites. The quality of these is untested, but it is a helpful tool to consider.

Training

Staff should be advised at the time of hire of the sexual misconduct definition, prevention statement and agency policy including sanctions.

Staff should be advised of prevention techniques and rules that apply during regular daily operations, including boundary violations that define misconduct. Training should occur on an ongoing basis through frequent, scheduled and required in-service training. Staff presenters and recipients should sign that they have received such information.

Staff should receive specific instruction on how to recognize that sexual misconduct has taken place.

Staff should receive specific instruction on how to respond to sexual abuse, molestation and misconduct incidents as regards reporting procedures, obligations and communication techniques.

Monitoring

1. Staff, volunteers and independent contractors will be monitored frequently and regularly to learn of client statements or actions leading to accusations of sexual abuse, molestation and misconduct. Such monitoring will be documented.
2. Clients will be monitored frequently and regularly to learn of staff and program activities leading toward, or concealing existing, sexual abuse, molestation and misconduct. Intent and the crossing of boundaries will be included. Such monitoring will be documented.
3. Supervisory staff will specifically address sexual abuse, molestation and misconduct in daily management tasks and in employee performance evaluations. Such monitoring will be documented.
4. Management will keep formal records of preventive training offered and attended. (A spreadsheet format listing training titles along one border and staff names along the other, with the coinciding cross point marked by date attended is an effective method.)

5. Reports of suspicious intent or crossing of boundaries, even if reported conversationally, must be documented to include persons involved, the supervisor, and the time and place of the occurrence.

Monitoring through Medical Exams

Routine physical examinations are a prevention tool. Regular medical examinations should include noting the physical symptoms of sexual activity. For non-promiscuous children, such symptoms may be indicative of abuse. Staff knowledge that such examinations are routinely conducted may inhibit abusive behavior. Physicians and nurses, of course, must also know their duty to report signs of child abuse. Medical indicators of sexual abuse include:³

Bruises in the area of the external genitalia, vagina or anal regions.

Bleeding from external genitalia, vagina or anal regions.

Swollen or red cervix, vulva or perineum; positive tests for gonococcus or spermatozoa.

Pregnancy and venereal disease—for example, a gonorrheal infection—in children occurring at any body site, except the eyes, are nearly always telltale indicators that the affected child has been a victim of sexual assault.

False Accusations & Allegations

Sometimes clients who are being sexually abused and molested outside of agency programs will accuse program staff and volunteers of being the perpetrators, as clients wish to bring attention to the problem, but are afraid to accuse the true perpetrator. They do so because they know the agency will address the problem, and this may result in resolution of the problem without having to name the true offender.

Keys to prevention are:

Thoroughly learn the client's background.

Keep documented records of this background.

Advise staff of such backgrounds.

Use the aforementioned prevention techniques, especially in regard to opposite sex matchups and multiple staff assignments.

Report and document client activities suspected of leading to false accusations.

Know and inform all staff of the symptoms of existing abuse taking place off site. An example of these symptoms appears in the Symptoms in Children section.

Symptoms in Children

An aid in prevention is knowledge of the client's knowledge. Here is a list of symptoms of sexual abuse and molestation by age. Use this list as a tool in assessing your clients as you design their participation in your services.

Symptoms by Age

Preschool

- knows inappropriate slang language for body parts
- does aggressive and offensive things to other children
- focuses on own genitalia

School-age

- above items, plus ...
- bladder infections
- fondles themselves or others

³Robert D. Bloom, Ph.D

extreme anger because child doesn't know how to deal with feelings caused by abuse
sleepy due to being awakened during the night or afraid to sleep at night

Junior High School

above items, plus ...

drug and alcohol abuse

acting significantly older than actual age (e.g., in girls, use of makeup)

knows too much about sex

in girls, takes over mother's role as a result of misconceived maturity

Immediate Reporting & Response

If sexual abuse, molestation or misconduct are suspected or discovered, the following steps must be taken. All such steps must be documented.

1. All agency staff members must report immediately by phone or in person to their supervisor any suspected sexual activity, misconduct or relationship of another employee or volunteer in violation of this policy.
2. Any employee who is suspected of, or reported as, engaging in sexual activity, misconduct or relationships with a service recipient should be immediately suspended with pay, if applicable, pending the outcome of an investigation into allegations of abuse.
3. Any suspicion of child abuse of any kind should be immediately reported to the state child welfare department. Most state offices have an in-state toll-free hotline.
4. The supervisor should interview the service recipient and/or family members of the service recipient regarding the allegations. If necessary, the supervisor should recommend and obtain any necessary resources to fully investigate the allegations, including medical or psychological evaluations.
5. The service recipient should be reassigned to either the supervisor or a senior caseworker.
6. The executive director should notify the insurance carrier of the allegations and seek advice in immediate handling of the matter.

The executive director should also notify the agency's corporate counsel for legal advice and counsel regarding the handling of the matter.

Investigation

Reporter to complete sexual abuse, molestation and misconduct incident form at once.

Supervisor and executive management to review incident form at once.

Time is of the essence. Urgency and immediacy are implicit.

Incident form should include:

- Name and title of reporter
- Name, address, age and sex of client
- Name of client's program
- Description of incident/activity/misconduct
- How misconduct was discovered
- Where and when misconduct took place
- Knowledge of multiple episodes of misconduct activity
- Names of witnesses
- Names of collaborating persons
- A specific complaint from client, or client's family, with details of time, place, persons involved and the activity itself

- Description of physical injury and any medical response treatment

Determine who will interview client and family.

Determine who will interview accused staff person and reporter.

All sessions must be heavily documented and witnessed.

Monitor the client and family, include positive support.

Keep in touch with accused staff member to confirm whereabouts and response activities that are detrimental and unauthorized by the agency.

Results of investigation must:

- Prove or disprove allegation of misconduct.
- If proven, lead to immediate termination, immediate filing of charges and assistance in prosecution.
- Establish and implement preventive procedures to eliminate a reoccurrence of the event.

Supervisor's Response

Upon learning of, suspecting or observing sexual misconduct, the supervisor must:

1. Immediately report the knowledge, suspicion, allegation or observation to executive management verbally and in written form on the sexual misconduct incident form.
2. As mandated reporters, supervisors must report the incident to the state's child welfare and protection agency abuse hotline, or elder abuse hotline, or Department of Human Services and the police.
3. Failure to perform prompt and appropriate reporting is an additional misconduct resulting in additional layers of liability independent of the original incident.
4. Reporting duties by executive management should include the aforementioned plus the agency's legal counsel and the agency's liability insurance carrier.
5. Supervisors should take an active role in the investigation process.
6. Supervisors must implement and monitor disassociation of the client from the alleged perpetrator, the situation and the circumstances under which the misconduct arose.
7. Employee handbook and agency operating standards must clearly and specifically state exact procedures regarding to whom to report an allegation, how to report, how to obtain and complete an incident report, how to respond to staff against whom an allegation is made, how to respond to client involved in an allegation, procedures regarding reassignment or suspension of staff, reassignment and monitoring of client, and agency relationship to client's family and peers.

Executive management should communicate to appropriate staff the existence of the incident, steps being taken in response, and who should speak to the press, general public, other agencies, etc.

Documentation & Recordkeeping

Records are a durable account of what has happened. Courts may place more trust in records than in eyewitnesses. This may be true because documentation is an immediate response, while eyewitness accounts may be told long after the event is fresh in the observer's memory. The record can be the agency's tool in defending against charges of malpractice and misconduct. In addition to background material, treatment plan, record of treatment interventions, progress notes, critical incident reports and other routine information, the record should contain documentation of all unusual events, especially as relates to sexual misconduct.⁴

This Handbook advises documentation of numerous events and training. In addition to the aforementioned, documentation should include:

1. Logging out and in when a client is removed from an activity center, including the purpose of the removal and the off-site location involved.
2. Note the names of any witnesses to unusual or suspicious events.
3. An incident report including names involved and the time, date and place of occurrence.

For additional information and resources on this topic and other safety and risk management subjects be sure to visit the Loss Control section on our website:

<https://www.amtrustgroup.com/small-business-insurance/claims/prevention>

⁴Robert D. Bloom, Ph.D.

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