

## PROCEDURE MANUALS-FOLLOW YOUR OWN POLICIES

*The NDIRF recently resolved a litigated claim involving a person who was incarcerated at a County Correctional Center. The prisoner, a chronic alcoholic with a known arrest history to local law enforcement officers, suffered a severe brain injury resulting from a seizure while he was in jail.*

How can the County be potentially liable for this incident? The answer - when booking the arrestee into the correctional facility the staff did not follow its own policies. Accordingly, the County subjected itself to possible liability simply by not following the procedures it created.

The Correctional Center's written policy says it becomes responsible for the safety and security of inmates. The Policy and Procedures Manual requires a medical clearance prior to incarceration for anyone experiencing drug, alcohol or withdrawal symptoms. Further, any person who indicates he or she is on medication, but does not have that medication with them, needs a medical clearance before being incarcerated.

During the booking process, the inmate in this case was clearly under the influence of alcohol. The inmate also disclosed that he was taking medication to control seizures. These two concerns, as stated earlier, require medical clearance before the inmate is to be admitted to the Correctional Center.

For several reasons, the correctional facility did not follow its own policies and admitted the arrestee without medical clearance. The inmate previously had been booked on several occasions, each time making the same declaration of the need for seizure medication. All previous incarcerations had been without incident. This resulted in the correctional facility staff being relatively confident the medication was not a necessity. The inmate was also a known law violator with a

**...the correctional facility did not follow its own policies and admitted the arrestee without medical clearance...**

severe chronic alcohol condition. Historically, the correctional facility staff was aware of the many detoxification efforts to get the inmate sober – all unsuccessful. In fact, the plaintiff was not allowed admission to local detoxification units for treatment due to his repetitive behavior of being non-compliant. Finally, there was the possibility the inmate was

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declaring the need for this medication just to get free drugs. For these and other reasons, medical clearance was not obtained prior to incarceration.

After incarceration and while alone in his cell, the inmate had a seizure resulting in a serious head injury. The mother of the inmate filed a lawsuit against the County, alleging negligence for failing to provide for the safety and security of her son. The failure of the correctional facility to seek appropriate medical clearance, as directed in its own policy and procedures manual, placed the NDIRF in a poor bargaining position when discussing liability. An inmate must accept personal responsibility for his

behavior, and his comparative fault must be taken into consideration, but it appeared likely the County also would be held partially liable for this incident.

While it is not difficult to understand how this incident occurred, it underscores the necessity that all NDIRF members be aware of and comply with all policies and rules that are typically codified in some type of Policy and Procedure Manual. If written policies are not followed, you may subject your entity to liability for actions that otherwise could be successfully defended. Policies should be periodically reviewed and those policies that are outdated or have no purpose should be revised or deleted. ■

## RISK SERVICES

### THREE NEW VIDEOS!

In an effort to bring you more training resources, we have added three new titles to our Video Lending Library.



- **Work Safety Essentials**
- **Pursuit & Emergency Response**
- **Managing a Mold Crisis**

*Work Safety Essentials:* A 23-minute videotape that covers the basic principles of workplace safety. It is an excellent introduction to such subjects as knowing your workplace, slips, trips and falls, electrical hazards, manual handling and working in confined spaces. It is also an excellent refresher training tape for all individuals. This is part of a “Premium Series” from this vendor that comes with a trainer’s guide and materials if you request them.

*Pursuit and Emergency Response:* This is a 16-minute videotape that is part of a Police Liability Training Series. This vendor has produced some of the most requested videos in our library. It is written by and uses actual law enforcement personnel, not actors. It trains personnel and the department on how to avoid civil liability lawsuits that stem from pursuit and emergency response situations. It includes:

- How to follow department policies and procedures and State laws regarding high-speed pursuits and emergency response.

# RISK SERVICES

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- Determining if a pursuit is appropriate and how to stay in control.
- Situations where high-speed pursuits are not legally defensible.
- If sued, successful pre-trial strategies and tactics; and
- Winning court room behaviors and considerations.



**Managing a Mold Crisis:** First it was asbestos. Now, the indoor air quality issue is mold. If you have ever had to deal with this issue you know how emotionally charged it can get. This 16-minute videotape starts with a bang, opening with a school official being besieged by a screaming parent about the news that their school has mold. What ensues is the school's response to the situation. Everything they do is wrong, making a series of poor decisions leading to intensified media scrutiny, public hysteria and escalating costs. This videotape shows you how to control your costs and public hysteria by the following:

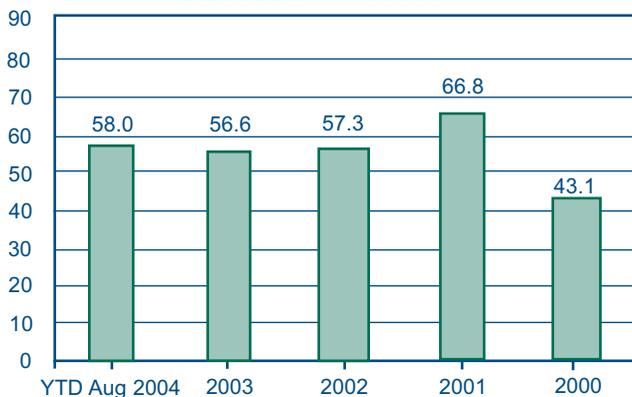
- How to create a mold prevention program, including the steps for planning and establishing a mold prevention program, educating the staff and public, contractor selection and where to find outside help.
- How to establish a responsible and responsive crisis management team that can plan for and anticipate problems ahead of time.
- Developing an effective media and communications program that prevents public hysteria and maintains your credibility with the public to keep their trust.



Our video lending library is a free service to all NDIRF members. There is no limit on the number of titles that you can request. We invite you to check out all of our titles at our website [www.NDIRF.com](http://www.NDIRF.com) . If you don't see a subject on the list that you think we should have available, just let us know. ■

## FINANCIAL INSIGHTS

### OPERATING RATIO



The operating ratio shown above is the sum of NDIRF's loss and expense ratio less the investment income ratio. The operating ratio is a measure of NDIRF's profitability and is the principal determinant of the Fund's financial solvency and stability. A ratio less than 100% means that a company is profitable. As the graph shows, NDIRF's operations have been financially very successful which has allowed the Fund to make a substantial conferment of benefits to its members each year. ■

## FROM THE CEO

The New York Yankees have concluded another year with over 100 victories, their third in a row, and yet the season was described by ownership, fans and media as a struggle. High expectations can be a big hill to climb year after year. Pity the poor Yankees.

Statewide associations who represent North Dakota's political subdivisions also do excellent work, year in and year out, meeting the needs of their members. The most obvious examples of their educational efforts are the annual conferences. Each year these meetings seem to get better, "upping the ante" for the following conference to the point they become hard acts to follow. Perhaps the next big thing for them to achieve would be to attract those board, council or commission members who haven't gotten into the habit of attending.

If you happen to be one who has not yet taken advantage of the annual conference of your association, I urge you to consider it. There is little better way in which to enhance your knowledge, experience and effectiveness as a public official. ■

## STOLEN IDENTITY

Even though you have taken all the preventative steps, you find out your identity has been stolen. What do you do now? The most important thing to remember is **ACT QUICKLY!**

Unfortunately, it may take months to clear your name. However, you should take these basic steps **IMMEDIATELY:**

### File a report with your local police.

It is a crime for an individual to use another individual's identifying numbers (see N.D.C.C. §12.1-23-11). Once the police report is written, request a copy for your records. You may be asked by your bank, credit card companies or other agencies to supply a copy of this report for their files.

### Contact the fraud departments of each of the three major credit bureaus.

Tell them you are an identity theft victim. Request a "fraud alert" be placed on your file as well as a victim's statement asking that creditors call you before opening any new accounts or changing your existing accounts. Order a copy of your credit report from each of the credit bureaus so you can check for other fraudulent accounts.

### Contact the creditors for any accounts that have been tampered with or opened fraudulently.

"Creditors" can include credit card companies, telephone companies, other utilities, banks and other lenders. Ask to speak with someone in the security or fraud department of each creditor, and **follow up**

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*If you feel you have been a victim of identity theft contact: the Office of Attorney General*

*4205 State Street, Dept 125 Bismarck, ND 58502-1054 [www.ag.state.nd.us](http://www.ag.state.nd.us)*

## Mark Your CALENDAR

### **October**

28-30: ND School Board Association  
Annual Convention  
Ramkota, Bismarck

### **December**

9: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck

**with a letter.** Immediately close any accounts that have been tampered with and open new ones with new Personal Identification Numbers (PINs) and passwords.

### File a report with the Attorney General's Office Consumer Protection Division.

The Attorney General's office is North Dakota's clearing house for identity theft. You will be provided with the information and forms you need to document the theft and restore your credit. You can reach the Attorney General's Consumer Protection and Antitrust Division by calling 1-800-472-2600 or you can download the appropriate information and forms at [www.ag.state.nd.us](http://www.ag.state.nd.us). ■

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