

# REPORTING THE INCIDENT

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At some place in time, the handshake and the nod were sufficient means to “seal the deal,” and to stick to it. Well, that time has seemingly passed due to the increasing trend of Americans who effortlessly use the legal system as a way and a means to resolve their disputes, however large or small. So much so, that reality TV has cashed in on the craze offering viewers a front seat into the courtrooms of these disputes. As we further develop the concept of “entitlement,” or what people are financially entitled to in the event of loss, the process appears out of control. In such an active litigious society, the art of litigation begins to mature in its knowledge and execution, thus resulting in larger settlements, while shaking the foundations of industry in the process.

Meanwhile, the foundations of outdoor adventure and recreation continue to shake amidst the legal and regulatory climate and its many fluctuations. Operational standards are in a constant state of change attempting to keep pace with the various elements which impact them directly: State and Federal statutes, Medical Association mandates, Adventure and Camping Association standards, and case laws, just to name a few. Amidst this circling of “have to’s” and “should of’s,” there is the cornerstone by which all is held in the balance, the “incident.” Once the incident is revealed, the actions of many ensue. Then, all matters of magnification illumine to dissect the how, why, where, when, and who is responsible. And, as stated before, we are a society who has perfected the art of litigation.

So, what is a program director to do to ensure the continuation of their program knowing that an incident may likely occur? Methods of prevention and avoidance will certainly reduce the probability, but not eliminate them all. As such, a blend of prevention, mixed with transference methods such as purchasing insurance coverages, and topped with a well-planned incident reporting system will bode well for the organization’s future.

For the sake of this article, we will focus on the incident reporting process, and perhaps point out some of the critical issues that need to be addressed in your process. Always remember that in reporting any incident, there are certain stakeholders of which you will need to address. A stakeholder, in simple terms, is someone who has any stake in what happened; i.e., your organization, employees, participants, visitors, parents, donors, rented or leased property owners, medical field personnel, emer-

gency services, vendors, and the attorneys who represent them all. Each of these stakeholders will likely be very interested in the content of what appears in your incident reporting and investigation. The old adage that “less is more” does not necessarily apply to incident reporting, as it lends way to inaccurate assumptions.

There are various types of incidents that can occur, and likewise various levels of reporting. The more serious or negligent the incident, the more in-depth reporting and development should be required. For the sake of time, let’s address three basic types of incidents and some sound reporting schemes for each. These include the IBNR, the Reportable Incident, and the Serious Incident.

The first type of incident we’ll call the IBNR, or Incurred But Not Reportable. In other words, an incident occurred but was not severe enough to contact emergency or medical services, local law authorities, or your insurance. It did not produce an injury or damage to property, but under the right circumstances, certainly could have. It is essential to not only report these, but also to track their frequency in order to utilize proper prevention methods. For example, a participant was sent to the hospital after running into a clothes line causing serious injury. Through the investigation, it was discovered that several other participants had done the same previously, only were not injured. Had the program director reported the IBNR’s, then proper prevention methods would have addressed and modified the site in order to reduce the possibility of future injuries. The same thought process applies to all program areas including trails, river crossings, campsites, transportation, ropes and challenge courses, facilities, and many more. Reporting and addressing IBNR’s is the best and most cost efficient way of dealing with more severe incidents, as you are potentially eliminating them through operational and/or structural modifications.

Key components to an IBNR report include name of reporter, location of incident, time of day, weather condition, date, how often does incident occur, level of potential damage to property or body, short description of incident, persons or equipment involved, and a resolution area to address and fix the situation.

The second type of incident we’ll call the Reportable Incident (RI). In other words, an incident occurred that caused either bodily injury or property damage, required a contact to emergency or medical services, local law

authorities, or to your insurance carrier. These incidents may not necessarily be your fault, but do have a financial loss. In reporting such an incident, please keep in mind to address your stakeholders in the reporting process. Emergency and medical services will need to know all of the pertinent medical information, law officials are interested in the same as well as who was present, what were they doing, and how did you respond. Eventually, if serious enough, the courts will want to know how you handled everything from onsite care to supervision to transportation to communication. And, did you follow your own written guidelines in the process, as well as the guidelines available from your specific industry?

The difficulty in reporting and investigating is that we always report in the present with consideration that the information may be utilized for future recollection. Should you be required to produce information pertinent to an incident which happened ten years ago, how well did you develop your reporting in order to explain your case? According to an associate with 25 years in the highway patrol, there are three main areas of which your organization may be challenged: training, supervision, or communication. It is always wise to maintain records of training, personnel files, guidebooks and site photos, as well as any other material used during that specific year in which the incident occurred.

Key components to an RI report include name of reporter, name of participant, date of incident, weather conditions, brief description of incident, supervisors on site, eye witnesses on site, description of care provided, communication to authorities and parents, witness statements, and a log detailing follow-up.

The last type of incident we'll call the Serious Incident (SI). In other words, an incident occurred that caused either bodily injury or property damage that required a

contact to emergency or medical services, local law authorities, or to your insurance carrier. Furthermore, there exists a degree, great or small, of direct fault or negligence as a result of your operations. Such incidents should be held to a higher degree of investigation and reporting as SIs can and often do result in some form of legal process.

In conducting an SI report, keep in mind that the information compiled will likely not be presented until at least a year or more into the future. Some state statutes even allow minor claimants to file within five years after their 18th birthday, which gives a fourteen year old participant roughly nine years in which to file a claim. As such, many things will have changed such as seasonal personnel moving on, old guidebooks outdated and discarded, weather reports forgotten, company protocols changed, and loss or misplaced records. It is crucial in your reporting process that you pay attention to detail so as to enable your reporting to speak back to you should you have to revisit it in the future.

Key components of an SI report will include the same as the RI reports above with additional emphasis placed on witness reports including sketch outlines, site photos, site analysis, and a standard operating procedure analysis. In other words, what do witnesses say we did, what do photos reveal of the area, how did the site contribute to the incident, and did we do what we say we do in our operating policy?

Utilizing these tools to paint an accurate picture of the details of the incident will enable your organization to develop effective prevention methods, as well as to adequately defend your position should you be challenged down the road. As the adventure and recreation industry continues to evolve, the regulatory and legal climate will continue to fluctuate due to its very nature. However, by focusing your efforts on what is within your control will certainly better equip your organization for success.