

INVESTIGATIONS INTO SERIOUS INCIDENTS – PART I

NARPA

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INVESTIGATIONS INTO SERIOUS INCIDENTS

- EVERYTHING CAN BE CONSIDERED AN INVESTIGATION
- Variance
 - Type of evidence collected and analyzed
 - Entity responsible for the primary investigation
 - Regulations governing the program/setting



INVESTIGATIONS INTO SERIOUS INCIDENTS

Stakeholders are generally interested in:

- Allegations involving rights
- Abuse/neglect including restraint/seclusion
- Deaths



PRIMARY VS SECONDARY

What's the difference?

Primary:

- Performed by entity with statutory authority
- 1st on site
- Primary role in collecting & preserving evidence



SECONDARY INVESTIGATIONS

Typically is a review of a primary investigation

- Focus on quality of investigation
- Compliance with regulations/standards
- Compliance with training



SECONDARY INVESTIGATIONS

- Check thoroughness of the investigation
- Check analysis of evidence
 - (pictures, diagrams, statements)
- Agree with determination rendered?
- Are additional allegations of abuse/neglect or rights violations correctly identified and noted in the report?



WHY PERFORM SECONDARY INVESTIGATIONS?

QUALITY ASSURANCE

- Identification of trends & patterns
- Identification of compliance issues
- Identification of policy/training issues
- Identification of rights issues



TOOLS TO EVALUATE PRIMARY INVESTIGATIONS

KNOW THE:

LAWS & REGULATIONS

- Governing rights, medication, restraint & abuse investigations of the setting or service.

COP for hospitals: Restraint =

any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body or head freely;

or a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the person's freedom of movement **and is not a standard treatment or dosage for the patient's condition.**

TRAINING

- familiarity with the investigatory training
- familiarity with the de-escalation and physical techniques used by the entity

INITIATION

- Operationalize what is meant by **initiation of the investigation**
- Is it at the time of the report?
- Is it when evidence is collected?



SECURING THE SCENE

- When initiated?
- By whom?
- Injuries addressed? (emotional/physical)
- Safety of alleged victim/evidence
- Evidence secured (documents, testimony and video tapes)



WITNESSES

How identified?

- Use of building plan or diagram of the scene?
- Consider the location of the incident and did it occur in a “public” area
- Are all witnesses interviewed or only staff?



WITNESS STATEMENTS

The devil is in the details!!!!



There is a difference between taking a statement and conducting an interview!!!

DISPOSITION

- Was a disposition reached?

Possible dispositions:

Confirmed

Unconfirmed

Inconclusive

Unfounded

- Inconclusive does not mean it didn't happen!



VIOLATIONS MOST LIKELY INVOLVE COMPLIANCE ISSUES

- Restraint - did the behavior meet the definition of behavioral emergency???
- Imminent harm to self or others
and
- Restraint or seclusion authorized as last resort
(less restrictive measures were ineffective)



TYPICAL COMPLIANCE ISSUES

- Use of restraint or seclusion.
Cannot be used for discipline, retaliation or punishment!
- Orders specify behaviors that were of risk of harm
Could others back away and be safe?
- Seclusion- Is it ever justified?
Use for self injury?????



POTENTIAL COMPLIANCE ISSUES

- Care - safety, bathroom and water
(generally seclusion or mechanical restraint)
- Release criteria
as soon as the threat is removed
unconscious or asleep
- Debriefing - Did it occur? With whom?



TECHNIQUES TO AVOID USE OF RESTRAINT

Staff members - how are they communicating?

Its not what you say, its how you say it.

Are they inciting an incident by their verbal or non-verbal behavior?

Lets eat grandma

vs Let's eat, grandma

Woman without her man is nothing!

Woman, without her, man is nothing!

TECHNIQUES TO AVOIDING USE OF RESTRAINT

ROLE MODEL APPROPRIATE BEHAVIORS

ELEMENTS: body language, space, tone of voice

DO NOT INCITE!

BACK OFF AND SHUT UP!

ALTERNATIVES TO R/S

- DEVELOP A CULTURE OF SAFETY & TRUST
- PROVIDE TRAUMA INFORMED SERVICES
- SUPPORT THE DEVELOPMENT & USE OF A

DE-ESCALATION PREFERENCE TOOL

www.mass.gov/eohhs/docs/dmh/rsi/safety-tool-for-kids

USE OF RESOURCES

- Limited resources require a screening of cases to be challenged, determine out of the issues identified, how should they be addressed?
- Consider how to handle issues that fail to rise to the level of litigation.

RESOLUTIONS

- You will find compliance issues in many cases.

Is the issue sufficient for litigation?

- Identifying patterns in practice issues have resulted in changes in policies and development of best practices.



CORRECTIVE ACTION

NOT EVERY ISSUE WILL RESULT IN LITIGATION

- Disciplinary action
- Restitution
- Training
- Policy changes
- Programmatic changes
- Referral to law enforcement, licensure entities
- Media attention



INVESTIGATIONS INTO SERIOUS INCIDENTS

- THANK YOU FOR YOUR PARTICIPATION
- PLEASE RETURN FOR PART II OF THIS PRESENTATION
- THE CONCEPTS TAUGHT IN PART I OF THIS PRESENTATION WILL BE APPLIED TO AN ACTUAL INVESTIGATION.