



Supervisory Negligence

Seven Forms of Deliberate Indifference & How to Avoid Them

~ BY KYLE BRADSHAW

Last month, I introduced a topic that is rarely discussed in communications centers: the need for internal affairs. The purpose of the unit is to protect the public, the agency and the employees, and its duty is to set ethical standards for the organization. This month, I will address issues concerning supervisory negligence, which are best investigated by an internal affairs unit.

Think back to the days when you were sitting in your basic communications certification class. Do you remember that one subject that bored you to tears? Let me guess: legal liability. I teach basic communication officers training classes throughout the country, and during this particular lesson I notice many students get that glazed look in their eyes, specifically when the discussion is about negligence. Negligence is a tort, or a civil wrong, under common law. There are four components of negligence: 1) duty; 2) breach of duty; 3) proximate causation; and 4) damages. Let's take a closer look at each of these.

When a citizen dials 9-1-1, it is the duty of the PSAP to have a representative answer and provide assistance. If you fail to provide this service, you have breached this duty to act. This failure will be judged by the "reasonable man" doctrine. In other words, what would a reasonable person in the same position, performing the same duties, under the same conditions do? An example of breach of duty is not performing the policies and procedures of your agency, directly causing or worsening the citizen's injury due to your actions or inactions. The resulting damages sustained can be financial, or the inability to function at a certain level.

Supervisors are also subject to issues of negligence. Beyond the everyday actions or inactions by subordinates, supervisors

face unique challenges. Supervisory negligence is defined by U.S. Legal as "deliberate indifference," or "the conscious or reckless disregard of the consequences of one's acts or omissions." All too often in administrative interviews, I see supervisors plead their case for how they acted on a perceived egregious act of a subordinate. Yet when I read them the operating guidelines detailing the supervisory actions the situation called for, the truth becomes apparent and they realize their own failure to act. Negligent supervision applies to supervision of employees. There are seven common supervisory negligence issues departments face.

FAILURE TO TRAIN

All employees must be trained to perform their jobs correctly and adequately. Your department is charged with ensuring that this happens. Depending on the size of your agency, training takes place either at a state facility, in a class hosted by multiple partner agencies, through private organizations or in an internal training department. Basic training classes have certain mandates depending on statutory regulations and can be offered through either public or private vendors. But does your agency offer continuing education?

Failure to train results in inadequacies in job performance. Training should be job-relevant; instructors must be qualified; records must be maintained for audit; curriculum must be up-to-date and correct; and learning must be measured. If the student performs inadequately, the supervisor must follow-up with additional training or some corrective action.

FAILURE TO DIRECT

Failing to adequately direct telecommunicators with clear guidance as to how

to perform their duties, through direct supervision or clear and concise policies and procedures, constitutes a failure to direct. This includes the absence of agency policies and procedures, or merely having employees sign off on policies even when they don't understand them. Well-written policies and procedures allow employees to understand how to perform their duties, give supervisors the ability to manage and achieve organizational goals, and enable the department to achieve its mission. Policies must be accurate, address necessary aspects of the job, and be updated with legal aspects that address current standards. Employees must read and understand these policies, and documented notification can assist with employee accountability and audits. To ensure employee understanding, written examinations may also be administered.

You may think it's a relief if your agency does not have certain policies and procedures, but the mere absence of such constitutes an official policy. Training officers may also pass on certain behaviors to their trainees because "that's the way we've always done it," and those behaviors become part of an agency's unofficial policy, even if it does not necessarily conform to current standards. This unofficial policy will be the standard to which you and your agency will be held accountable.

NEGLIGENT ENTRUSTMENT

Negligent entrustment can be a combination of failure to train and failure to supervise. When employees operate communication center equipment, we entrust them to perform these tasks correctly within policies, mandates and statutes. If the operator does not know how to properly utilize the equipment, then the supervisor or department will be deemed negligent.

For example, a new hire may have up to six months to attend a basic communications certification course under statutory law, and during the first few months that trainee works alongside a veteran employee. Up to this point the trainee has done well, mimicking the role of the trainer, but then the trainer leaves the trainee alone just for a second. What could happen? The trainee answers an incoming call and it's a medical emergency. The trainee has never sat for the basic certification class, much less an advanced calltaking class such as EMD. The trainee, in good faith, attempts to give medical advice to the caller, only to worsen the situation. When the trainer left the trainee alone, this constituted deliberate indifference, resulting in a failure to supervise and negligently entrusting the trainee with departmental equipment.

NEGLIGENT ASSIGNMENT

Public safety agencies can get into trouble by assigning people to positions that they are not qualified to fill. The 9-1-1 field has low retention rates, leaving many open positions to fill. Many departments have mandatory overtime built into the normal work schedule because they do not have enough staff to fill the needed shifts. Overworked, under-paid and under-staffed are all common complaints in the industry; skilled employees are in high demand.

Depending on the retention rate of your department, you might see an employee promoted to a supervisory position simply because they were the only one left with any amount of seniority. Seniority and qualifications, however, are two very different things. An example might be a senior operator assigned to a training position, despite having never attended a train-the-trainer, method of instruction, or instructor trainer course. These courses are crucial for a trainer to understand the principles of adult education, classroom behavior, the fundamentals of a lesson plan and how comprehensive and cognitive behavior are measured. It's incumbent upon the director, supervisors and supervisory training staff to determine if this person actually understands the job well enough to train someone else. If so, then they still need training to understand how to effectively deliver this knowledge to a new hire.

FAILURE TO DISCIPLINE

This should be self-explanatory; if an employee does something wrong, then you discipline. But this is always easier said than done. My experience in internal affairs has shown that supervisors can have great difficulty disciplining employees. One factor is if they do not feel supported by the chain of command. Many employees, if disciplined, want to file some form of complaint that they are being harassed by their supervisor. For the most part, however, this is not the case.

We all make mistakes—subordinates and supervisors alike. Instead of disciplining an action or inaction, we can look at the overall goal of what we are striving to achieve: correcting improper behavior. The actions or inactions of employees constitute a behavior. When the action of the employee is not in accordance with a policy, procedure, mandate or law, the department's goal is to correct the action and change the behavior. An employee's role is to carry out tasks, which they are trained and certified to do, ensuring the department's mission and goals are being accomplished. The role of the supervisor is to engage and lead their staff, ensure that tasks are completed correctly and manage the department's mission.

If employees follow a well-written set of policies and are competently trained to perform their job, then they should not fear being disciplined. If the department has a strong set of policies, then managers should not fear using them to correct behavior. The department should use corrective action progressively and fairly. Looking the other way or treating one individual harsher than others will have negative consequences for the supervisor.

FAILURE TO INVESTIGATE

As I stated last month, it is the job of the internal affairs office to ensure policies and procedures are adhered to through administrative investigations. This ensures that ethical behavior is accomplished for the department by its employees. If your department does not have an internal affairs unit, there must be something else in place to investigate allegations of employee misconduct. In addition, the department must have a system for citizens to voice complaints and for employees to have a grievance process.

NEGLIGENT RETENTION

Have you ever observed a rogue employee who should have been fired long ago and wondered how the agency could have allowed that to happen? The preceding failures can become mountains that make it very difficult for a supervisor or the department to alleviate itself of a problem employee, begetting the cliché: "We bought it, we own it."

A supervisor is charged to investigate allegations of misconduct. If they do not do so, it is deliberate indifference. If there is a violation of policy discovered through the investigation, then intervention must take place with employee-corrective action. Progressive corrective action should begin with written counseling, and then proceed to suspension, demotion and termination. Some acts, such as wanton disregard of policy, require immediate termination.

SUMMARY

When we fail to train, direct, discipline or investigate, or negligently entrust, assign, or retain, it creates deliberate indifference, causing supervisory negligence. As a supervisor, you have a duty to the organization, your subordinates, and the citizens you serve, to ethically adhere to the policies and procedures of your organization, mandates and statutes. As an employee, you have the same duty to perform the tasks in which you have been trained and entrusted to do. Not everything can be avoided, but certain situations can be minimized or defended. Armed with a well-written set of current legal policies, a well-trained staff that is qualified to manage and lead, records that can be audited and proven to meet standards, and an investigatory unit to address allegations of employee misconduct and lead to successful corrective action, your organization will be better equipped to set the example of excellence. **||PSC||**



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