

# OFFICE RISK MANAGEMENT SELF – SURVEY

Prepared for you by



**MINNESOTA LAWYERS MUTUAL**

INSURANCE COMPANY

PROTECTING YOUR PRACTICE IS OUR POLICY.™

This survey has been adopted, with permission,  
from a survey titled  
“How Well Do You Manage Your Malpractice  
Risks?” developed by the  
Midwest Medical Insurance Company.



**THIS SELF-SURVEY IS NOT INTENDED TO BE  
LEGAL ADVICE.**

This survey is intended to be advisory only and to assist you in your own risk management efforts. By providing this survey MINNESOTA LAWYERS MUTUAL seeks in the long time to reduce the incidence and severity of claims and enhance the defensibility of claims that do arise. Although the staff of MINNESOTA LAWYERS MUTUAL believes strongly in the effectiveness of good risk management, no guarantee can be given that claims of losses will be avoided if survey recommendations are followed.

## OFFICE RISK MANAGEMENT SELF-SURVEY

### HOW WELL DO YOU MANAGE YOUR MALPRACTICE RISKS?

Failures in administrative risk management systems continue to be a major cause of malpractice claims and expensive claim losses. Inadequate methods of documentation, lax handling of client information, poor client relations, and other administrative factors have resulted in millions of dollars in indemnity payments on claims that should have been preventable.

This risk management self-survey is designed for law office administrators, managers and lawyers involved in law office management to help evaluate potential malpractice risks in your own office. We believe that you will find the time spent to complete it to be very valuable.

#### HOW TO USE THIS SURVEY:

1. The survey questions are all written to elicit a “yes” answer if appropriate risk management mechanisms are in place. Any “no” response should trigger closer analysis of the issue and, probably, remedial action to improve risk management protections.
2. Be as honest, objective and self-critical as possible. The survey is designed to help you identify and begin correcting risk management weakness in your office system, policies and procedures. It will be only as effective in achieving this goal as you allow it to be by analyzing your systems carefully and responding accurately.
3. Many law office administrators and lawyers find that, although there may be risk management policies in place in the office, compliance with the policies is low. If a survey question refers to a policy that has been established in your office, but you are unsure if the policy is being complied with effectively, check with the staff members most directly responsible for implementation of the policy.
4. While the survey addresses many of the risk management issues seen most frequently in malpractice claims, it does not purport to cover all possible problems in law office systems that could lead to lawsuits. Allow the survey to stimulate other questions about areas of concern that may pose additional or unique liability exposures in your own practice.
5. The survey does not attempt to evaluate substantive quality issues. These should be monitored through the appropriate quality assurance procedures in your office.
6. A separate survey is available for individual lawyers to assess their own risk management practices. It is recommended that all lawyers do these personal assessments in conjunction with this administrative survey of office wide systems policies and procedures. This will allow for good coordination of any corrective actions necessary. (Contact the MINNESOTA LAWYERS MUTUAL Member Services Department for copies of the Lawyers Risk Management Self-Survey.)
7. The self-survey is designed for internal use in the law office. However, MINNESOTA LAWYERS MUTUAL Member Services Consultants will be happy to review your results with you and discuss ways of reducing potential liability exposures the survey uncovers. Please feel free to contact the Member Services Department with any questions you may have about the survey.

## I. CLIENT RELATIONS

A large majority of the clients who seek legal assistance to file a malpractice claim do so because they are angry; angry not just because of an adverse outcome, but because of breakdowns in communication, long waits, failure of lawyers or their staff to provide information, or other administration factors that create a perception of lack of care, concern and respect for the client.

Good client relations begin the moment a client has any contact – direct or indirect – with the law office and are dependent on the efforts of every staff member. Everyone – from the administrative and clerical staff to the paralegals and law clerks, to the lawyers – must take responsibility for ensuring that all client encounters are handled professionally and efficiently and create a positive image of the law office.

### EVALUATE YOUR OFFICE ON THESE ISSUES OF CLIENT RELATIONS:

#### A. First Impressions

- \_\_\_\_\_ 1. The law office presents a professional appearance, both inside and out.
- \_\_\_\_\_ 2. The receptionist greets clients promptly, pleasantly and professionally.
- \_\_\_\_\_ 3. The reception room is pleasantly decorated with adequate space and comfortable chairs.
- \_\_\_\_\_ 4. The reception room is visible to the receptionist so that all waiting clients and activity can be monitored.
- \_\_\_\_\_ 5. The reception room contains current reading material of interest to the firm's client population.
- \_\_\_\_\_ 6. All law office staff present a positive, professional image of the firm and treat clients with courtesy and concern.
- \_\_\_\_\_ 7. Personal conversations among staff are conducted out of the hearing of clients.
- \_\_\_\_\_ 8. Staff conduct periodic maintenance and safety inspections of the office facilities.

#### B. Client Information

- \_\_\_\_\_ 1. The law office has written material available to clients explaining the firm's services, appointment procedures, billing procedures and other pertinent administrative aspects of the firm.
- \_\_\_\_\_ 2. The office has a client representative or other administrative person identified to clients as a source of information, problem solving, etc.

### C. Client Feedback and Complaints

- \_\_\_\_\_ 1. The firm conducts periodic surveys to determine the level of client satisfaction with firm services.
- \_\_\_\_\_ 2. The firm has a client complaint procedure that includes mechanisms for documenting, resolving and monitoring all client complaints.
- \_\_\_\_\_ 3. Lawyers are notified of all service-related complaints from clients.
- \_\_\_\_\_ 4. The number and type of client complaints are traced in order to identify and correct recurring problems in the firm.

### D. Waiting Time

- \_\_\_\_\_ 1. The wait for clients to obtain an appointment is reasonable.
- \_\_\_\_\_ 2. The firm has scheduling guidelines to help determine the amount of time necessary to schedule for particular types of appointments, appointments with particular lawyers, etc.
- \_\_\_\_\_ 3. The lawyer sees client with 20 minutes of their appointment time.
- \_\_\_\_\_ 4. Clients are informed and given the opportunity to reschedule if their lawyer is running late.
- \_\_\_\_\_ 5. The firm conducts periodic time studies to monitor waiting time and takes corrective action when unreasonable times are identified.

### E. Telephone Contact

- \_\_\_\_\_ 1. The firm has an adequate number of telephone lines to allow clients to contact the office without delay.
- \_\_\_\_\_ 2. Staff makes a positive, professional impression in answering the telephone.
- \_\_\_\_\_ 3. Staff waits for the caller's permission before placing a call on "hold".
- \_\_\_\_\_ 4. Staff is careful to avoid placing a call on "hold" for an unreasonable length of time.
- \_\_\_\_\_ 5. Callers are told when their calls are being transferred to another extension to avoid any questions about whether they have been disconnected.
- \_\_\_\_\_ 6. Callers are told approximately when their calls will be returned by the lawyers if they are not handled immediately.
- \_\_\_\_\_ 7. Staff is careful not to build a barrier between clients and lawyers by screening calls too aggressively.

### F. Protection/Client Confidentiality

- \_\_\_\_\_ 1. Staff is careful not to discuss confidential client information anyplace it could be overheard by other clients (in the reception room, wash rooms, elevators, hallways, etc.)
- \_\_\_\_\_ 2. Legal questions, including the client's reason for seeing the lawyers, are discussed in private, not where other clients may overhear the conversation.
- \_\_\_\_\_ 3. Billing matters are discussed with clients in private, not where the conversation may be overheard by other clients.
- \_\_\_\_\_ 4. Staff is careful not to disclose confidential client information to anyone other than the client.
- \_\_\_\_\_ 5. Maintaining the confidentiality of client information is a job requirement and staff members are well trained on how to uphold this requirement.

## G. Billing and Collections

- \_\_\_\_\_ 1. Billing policies are explained to clients before services are provided.
- \_\_\_\_\_ 2. Itemized bills are sent to the client on a monthly basis.
- \_\_\_\_\_ 3. The client's lawyer is informed and given the opportunity to review the file before the firm initiates a lawsuit to collect the fee.
- \_\_\_\_\_ 4. The firm follows a consistent, progressive procedure for collecting overdue fees.

## II. COMMUNICATION WITHIN THE LAW OFFICE

As legal practice has become increasingly specialized and complex, the potential for malpractice claims caused by communication failures within firms has grown dramatically. Too many opportunities for communication breakdowns can arise as clients move between different lawyers.

### EVALUATE YOUR FIRM ON THESE ISSUES OF INTERNAL COMMUNICATION:

- \_\_\_\_\_ 1. The firm has a forum for the identification and resolution of client and administrative problems that allow for effective exchange of information between lawyers and staff.
- \_\_\_\_\_ 2. The firm has established policies and procedures on client care and documentation issues.
- \_\_\_\_\_ 3. Firm policies and procedures are periodically reviewed and updated and are included in staff orientation and in-house CLE programs.

## III. FILE MAINTENANCE AND HANDLING

The client file is a critical vehicle of communication in defending legal malpractice claims. Proper maintenance and handling of files is essential to ensure that important information is not lost or overlooked. Appropriate systems for the release and retention of records are necessary to protect the firm against charges of breach of confidentiality and to guarantee that records are available at any time they might become an issue in a lawsuit.

### EVALUATE YOUR FIRM ON THESE ISSUES OF FILE MAINTENANCE AND HANDLING:

#### A. Organization of File Contents

- \_\_\_\_\_ 1. Correspondence and file documentation is immediately placed in the file to protect from loss.
- \_\_\_\_\_ 2. Files are maintained in a specified order that assists in easy retrieval of information.

#### B. Availability of files

- \_\_\_\_\_ 1. The firm has an effective system for tracking the flow of files through the office.
- \_\_\_\_\_ 2. The firm has an effective system for keeping track of files transferred between lawyers and ensuring that files are available.

- \_\_\_\_\_ 3. The firm has a policy against removal of files from the office for nonessential purposes and a sign-out system for any files that must be removed.
- \_\_\_\_\_ 4. The firm has an effective system for ensuring that client information is inserted in client's file in a timely fashion if, for any reason, the file is unavailable when the client is seen.

C. Retention of Client Files

- \_\_\_\_\_ 1. The firm has a policy on the retention of files that assures availability of the file in case of a malpractice claim.
- \_\_\_\_\_ 2. The authorization of the responsible lawyers is required before any file can be destroyed.

**IV. FILE DOCUMENTATION**

The quality of client files is a critical factor in efforts to prevent and control malpractice losses. The record is a primary source of evidence used by the jury in deciding whether a lawyer is liable for malpractice. Incomplete records can be devastating to the defense of the claim; as far as the jury is concerned, "If it's not documented in the file, it probably didn't happen." Careless or inaccurate documentation can also create the impression that the legal advice rendered was less than professional.

**EVALUATE YOUR FIRM ON THESE ISSUES OF FILE DOCUMENTATION:**

A. Consistency

- \_\_\_\_\_ 1. Lawyers and staff follow a consistent documentation format so that everyone involved with the client knows with certainty where all elements of the case are recorded.
- \_\_\_\_\_ 2. Documentation done by different lawyers who may work on the file is well-coordinated so that every lawyer dealing with the client is aware of all other advice given.

B. Completeness

- \_\_\_\_\_ 1. The course of action of each case is documented completely making the reasoning behind the course of action selected clearly evident from the file.
- \_\_\_\_\_ 2. Files include a major problem list to quickly identify the principle legal problems for which the client is being seen.
- \_\_\_\_\_ 3. All telephone calls are documented in the file.
- \_\_\_\_\_ 4. All acts of client noncompliance with legal advice including failed or cancelled appointments are documented in the file.

C. Legibility

- \_\_\_\_\_ 1. All entries in the file are legible.
- \_\_\_\_\_ 2. The lawyers dictate the majority of narrative entries in the file.

D. Accuracy

- \_\_\_\_\_ 1. Lawyers routinely proofread their dictation.
- \_\_\_\_\_ 2. Transcriptionists are instructed to bring any questions about dictation to the lawyer as soon as possible and never to guess at what was intended in unclear passages.
- \_\_\_\_\_ 3. Staff is instructed that files should never be filed until any blanks in transcription have been filled in by the lawyer.

E. Timeliness

- \_\_\_\_\_ 1. All dictation and other file entries are completed in a timely fashion by lawyers.
- \_\_\_\_\_ 2. All transcription of case information is completed in a timely fashion.

F. Objectivity

- \_\_\_\_\_ 1. All entries in the file are objectively stated, avoiding subjective or disparaging comments about clients.
- \_\_\_\_\_ 2. Criticism of other lawyers, sarcasm and the airing of grievances are avoided in the file by lawyers and staff.

G. Monitoring of Files

- \_\_\_\_\_ 1. The firm conducts periodic reviews of files to ensure that all documentation is consistent, complete, legible, accurate, timely and objective.

**V. FOLLOW-UP SYSTEMS**

The underlying cause of many malpractice claims is the failure of lawyers and staff to implement or consistently comply with systems to follow up on important information. Legal professionals face almost certain liability if client data that is, or should be known to them is overlooked or “falls through the cracks” and an injury occurs as a result.

**EVALUATE YOUR FIRM ON THESE FOLLOW-UP SYSTEMS:**

- \_\_\_\_\_ 1. Each lawyer maintains a “tickler system” which allows for follow-up on files.
- \_\_\_\_\_ 2. All client information received from outside the law office (correspondence, pleadings, etc.) is reviewed and initialed by the lawyer before being filed in client’s file.
- \_\_\_\_\_ 3. An effective system is in place to ensure that the lawyers review all in-house memos before they are filed in the client file.
- \_\_\_\_\_ 4. An effective system is in place to ensure that another of the firm’s attorneys review all pertinent client information received while client’s primary lawyer is unavailable is reviewed by another of the firm’s attorneys.
- \_\_\_\_\_ 5. Lawyers are informed whenever a client cancels or misses an appointment so they may determine if follow-up with the client is indicated.

## **VI. CONSENT**

Many questions arise regarding the type and extent of consent that must be obtained prior to embarking on a course of action. Frequently, these questions address the issues of informed consent and authorization to go forward with a certain course of action.

### **EVALUATE YOUR FIRM ON THESE ISSUES OF CONSENT:**

- \_\_\_\_\_ 1. The firm's lawyers routinely document their informed consent discussions with clients.
- \_\_\_\_\_ 2. Lawyers routinely document any educational discussions with clients about current or proposed courses of action.
- \_\_\_\_\_ 3. The firm's lawyers and staff routinely document any adjunct educational materials given client.

## **VII. CLAIM HANDLING**

Appropriate response to legal actions is essential to minimize the impact malpractice claims and lawsuits may have on lawyers and law firms.

### **EVALUATE YOUR FIRM ON THESE ISSUES OF CLAIM HANDLING:**

- \_\_\_\_\_ 1. Staff is aware of the importance of reporting to our insurance carrier (through appropriate administrative channels) all lawsuits, claims and incidents.
- \_\_\_\_\_ 2. All communication with our insurance carrier and defense attorneys is kept in a separate correspondence file and is not filed in the client file.
- \_\_\_\_\_ 3. No references to communication with our insurance carrier or defense counsel are placed in client file.
- \_\_\_\_\_ 4. In the case of a claim or lawsuit, the client's files are kept in a safe place to prevent loss or alteration.
- \_\_\_\_\_ 5. All lawyers and staff are aware that claims or lawsuits involving the firm or the firm's lawyers should not be discussed with anyone other than a representative of our insurance carrier or the defense attorney.

# NOTES

