

LAWYER 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.

LAWYER RISK MANAGEMENT SELF-SURVEY

HOW WELL DO YOU MANAGE YOUR MALPRACTICE RISKS?

Risk management breakdowns continue to be a major cause of malpractice claims. Inadequate methods of documentation, poor client relations and other administrative factors have resulted in indemnity payments of claims that should have been preventable.

This risk management self-survey is designed for lawyers to help evaluate potential malpractice risks in your own practice. 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 practice. It will be only as effective in achieving this goal as you allow it to be by analyzing your practice carefully and responding accurately.
3. 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 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.
4. The survey does not attempt to evaluate substantive law being practice by your firm. This should be monitored through the appropriate quality assurance mechanisms in your firm.
5. A separate survey is available for administrators and lawyers to assess office-wide liability risks. It is recommended that lawyers do this personal assessment 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 Office Risk Management Self-Survey.)
6. The self-survey is designed for your personal use. 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

Many 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 communications, long waits, attorney's failure to provide information or administrative factors that create a perception of lack of care, concern and respect for the client.

Good client relations – particularly open communication and rapport – are the best defenses against the filing of malpractice claims.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF CLIENT RELATIONS:

- _____ 1. I maintain adequate office hours to allow my clients to obtain appointments without unreasonable delays.
- _____ 2. I ask new clients how they would like to be addressed by me and the office staff.
- _____ 3. I listen closely to clients explanations, questions and concerns about their case without interrupting unnecessarily.
- _____ 4. As appropriate, I sit down when I am talking with clients in the office so they do not feel as though I am trying to “rush off” to somewhere else.
- _____ 5. I am aware of my nonverbal communication patterns and attempt to correct any patterns that may create inaccurate client perceptions of me.
- _____ 6. I make sure I am notified of all client complaints concerning the legal work done on their behalf.
- _____ 7. I communicate directly with any clients who have complained about the legal work done on their behalf and attempt to resolve their complaints.
- _____ 8. I have developed realistic scheduling guidelines for various types of appointments to avoid back-ups and long waits for my clients.
- _____ 9. I keep support staff notified if I am running behind schedule so that they can inform my clients.
- _____ 10. It is likely my client view me as:
 - a. Caring and concerned.
 - b. Familiar with their case.
 - c. A good listener.
 - d. Approachable, non-threatening.
 - e. Willing to spend adequate time with them.

II. COMMUNICATION WITHIN THE LAW OFFICE

As the practice of law has become increasingly complex, the potential for malpractice claims caused by communication failures within the law office has grown dramatically.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF INTERNAL COMMUNICATION:

- _____ 1. I participate in regular meetings with office administration and staff to help identify and resolve problems that may have an impact on my clients.
- _____ 2. I comply with all established office policies and procedures.
- _____ 3. I treat the office staff and other lawyers with respect.

III. FILE MAINTENANCE AND HANDLING

The client file is a critical vehicle of communication, both in handling cases and defending malpractice claims. Proper maintenance and handling of the file is essential to ensure that important information is not lost or overlooked. Appropriate systems for the release of files are necessary to protect against charges of breach of confidentiality.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF FILE MAINTENANCE AND HANDLING:

- _____ 1. I maintain my files in an organized fashion so that pertinent information can be easily retrieved.
- _____ 2. I avoid removing files from the office for nonessential purposes (i.e., I complete my documentation in a timely fashion in the office.)
- _____ 3. When I must remove files from the office, I return them before the start of the next business day.
- _____ 4. I “keep files moving”, without letting them pile up on my desk.
- _____ 5. I review all requests for release of client files that indicate there might be cause for client dissatisfaction or a potential malpractice claim.

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, "It it's not documented in the file, it probably didn't happen." Careless or inaccurate documentation can also create the impression that the legal service rendered was less than professional.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF FILE DOCUMENTATION:

- _____ 1. I follow a consistent format for my files so that pertinent information can be easily located by me.
- _____ 2. I maintain complete documentation of legal advice given to my clients.
- _____ 3. In particular, my documentation of each client visit includes (where pertinent):
 - a. Client's stated reason for visit and my actions in response to that reason.
 - b. My assessment of the information obtained.
 - c. Advice and instructions given to the client.
- _____ 4. I maintain an up-to-date Major Problem list.
- _____ 5. I make certain that time deadlines are conspicuously noted on the file jacket.
- _____ 6. I document all telephone calls made to and received from clients while I am in the office.
- _____ 7. I document all telephone calls made to and received from clients while I am out of the office.
- _____ 8. I document all instances of client noncompliance with legal advice.
- _____ 9. My files are legible to everyone involved in dealing with the client.
- _____ 10. I routinely review my dictation and correspondence for accuracy.
- _____ 11. I complete my file documentation in a timely fashion.
- _____ 12. I avoid subjective, disparaging comments about clients, other lawyers and opponents in the file.
- _____ 13. I document all legal advice I provide.

V. FOLLOW-UP SYSTEMS

The underlying cause of many malpractice claims is the failure of the lawyers and staff to implement or consistently comply with systems to follow up on important information. Lawyers 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 PRACTICE ON THESE FOLLOW-UP SYSTEMS:

- _____ 1. I have a system for following up on assignments given to others in my office.
- _____ 2. I routinely review and initial all papers received on my files before they are placed in client files.
- _____ 3. I have a consistent system for notifying client of the results of motions pertaining to their case.
- _____ 4. If I contact clients directly with results, I document this contact in the client’s file. (If my staff contacts clients with results, they document this contact in the client file.)
- _____ 5. I routinely review cancelled or missed appointments and follow up with clients if their failure to keep their appointments creates and increased risk of problems with their case.

VI. PROFESSIONAL PRACTICE

The most common reason for indemnity payments in malpractice claims is the determination that the lawyers involved actually were negligent – they breached the accepted standards of care. Staying current on the accepted standards in your specialty and being aware of common liability problems are essential to help you avoid negligence in your own practice.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF PROFESSIONAL PRACTICE:

- _____ 1. I do not give legal advice over the phone if I am not familiar with the client.
- _____ 2. I actively supervise lawyers that are under my direction.
- _____ 3. I regularly participate in continuing legal education courses in my specialty.
- _____ 4. I am actively involved in quality assurance and risk management activities in my law office.

VII. CONSENT

Although failure to obtain informed consent is rarely the primary allegation in malpractice claims, it is frequently named as a secondary allegation and can create significant difficulties in the defense of lawyers. Obtaining clients' informed consent need not be a difficult process and can be a very beneficial element of attorney-client relationship.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF INFORMED CONSENT:

- _____ 1. I discuss the major risks, benefits and alternatives with clients when recommending a course of action.
- _____ 2. I attempt to discuss the recommended course of action with clients at a time and place conducive to a good exchange of information and questions.
- _____ 3. I document my informed consent discussions in the client's file.

VIII. CLAIM HANDLING

Appropriate response to legal actions is essential to maximize their defensibility and minimize the impact claims lawsuits may have on lawyers.

EVALUATE YOUR PRACTICE ON THESE ISSUES OF CLAIM HANDLING:

- _____ 1. I am aware of the importance of early reporting to my insurance carrier of all lawsuits, claims and incidents.
- _____ 2. Once I become aware of actual or potential legal actions, I do not make any changes to the client file.
- _____ 3. I do not place correspondence or reference to communication with my insurance carrier or legal counsel in client files
- _____ 4. Once I become aware of actual or potential legal action, I do not discuss the details of the case with anyone other than my insurance carrier representatives or my legal counsel, unless they have recommended I do so.