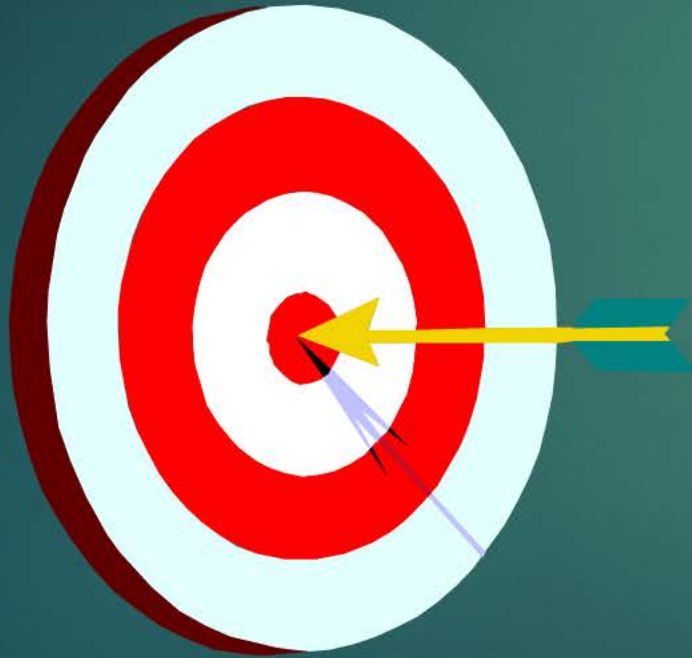




San Jose Police Communications
Negligent Performance & Discipline
Dispatch Academy
LD 101

Sgt. Keith Neumer
City Attorneys Office

Class Objectives



- ▶ Define negligent performance
- ▶ Describe meaning of “Good Faith”
- ▶ Possible consequences as a result of negligent performance
 - ▶ Administrative Investigation
 - ▶ Civil Action
 - ▶ Criminal Prosecution
- ▶ Identify ways to avoid negligent performance
- ▶ Identify methods to Reduce exposure to liability
- ▶ Identify resources available if discipline or lawsuit happens

NEGLIGENCE

- ▶ Failure to act with the prudence* that a reasonable person would exercise under the same circumstances; resulting in unintentional harm to another.
- ▶ The trait of neglecting responsibilities and lacking concern.



Negligent Performance & Good Faith

- ▶ **Negligent Performance** is the omission to do something which a reasonable man, guided by those Ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.
- ▶ **Good faith** is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone.

CIVIL REPERCUSSIONS

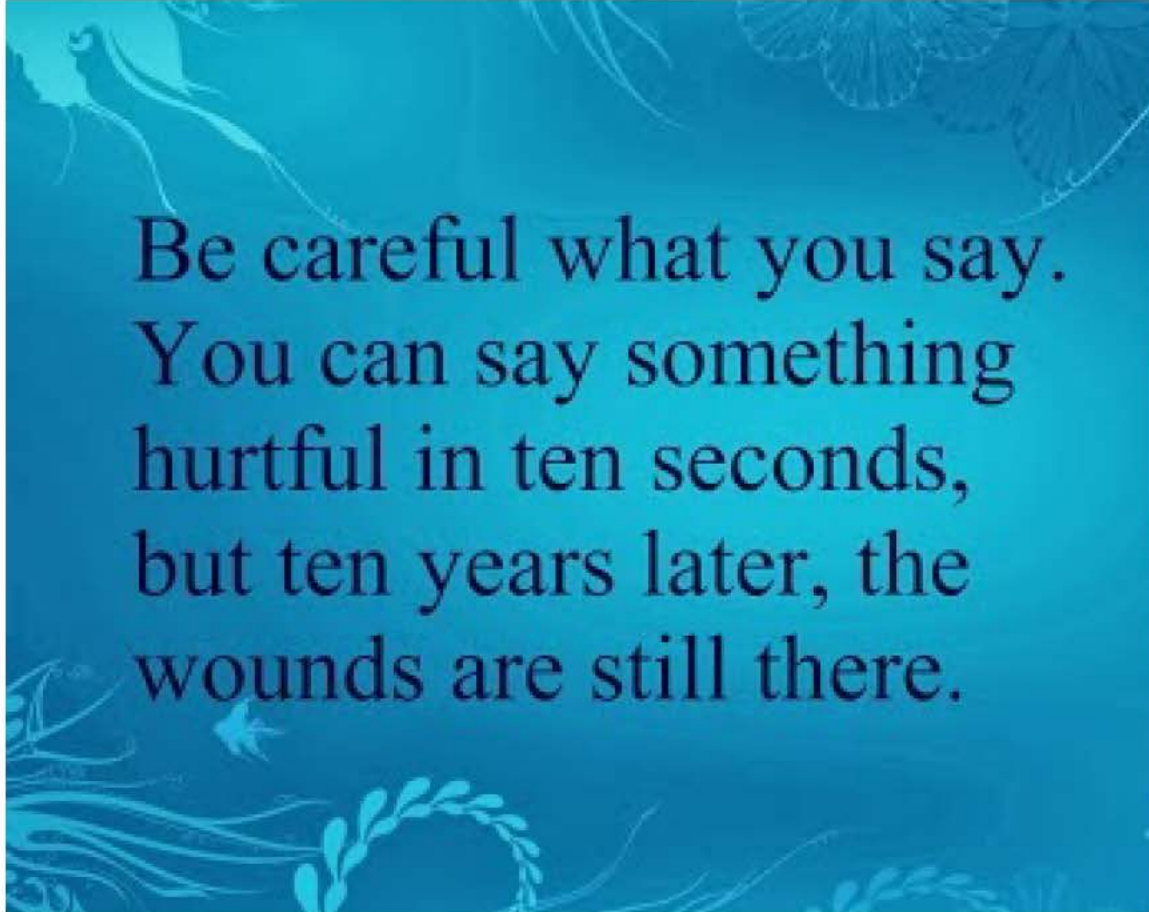
▶ Liability:

**Being legally
accountable for an
act or omission.**



Prudent

- ▶ Careful and sensible; marked by sound judgment.



Be careful what you say.
You can say something
hurtful in ten seconds,
but ten years later, the
wounds are still there.

Omission & Errors

▶ Omission

- ▶ Something that is omitted or neglected.
- ▶ The act or an instance of omitting: leaving out.

▶ Errors

- ▶ An act or belief that unintentionally deviates from what is correct, right or true. The condition of having incorrect or false knowledge.

“REASONABLE PERSON”

- ▶ A hypothetical person in society who exercises average care, skill, and judgment in conduct and who serves as a comparative standard for determining liability.
- ▶ Is a composite of a relevant community's judgment as to how a typical member of said community should behave in situations...

The reasonable man adapts himself to the world; the unreasonable one persists to adapt the world to himself. Therefore all progress depends on the unreasonable man.

-George Bernard Shaw

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Negligence Simplified

- ▶ Negligent: *Failing* to give care or attention, especially when this causes harm or damage.



Negligence Simplified

- ▶ Negligence is an unintentional act:
- ▶ It can be as simple as an accident or a mistake. That is, when you could have or should have done something to prevent it.



Levels of Negligence

- ▶ **Mistake** *If you could have or should have done something to prevent it.*
- ▶ **Reckless negligence**
- ▶ **Gross negligence**: A lack of care that demonstrates reckless disregard for the safety or lives of others, which is so great it appears to be a conscious violation of other people's rights to safety. It is more than simple inadvertence.
- ▶ **Willful negligence**: Intentional, conscious, and intended to achieve a particular result.

Common Negligent Performance Issues

- ▶ Call Taking – Hang Up Scenarios
 - ▶ Hang up if Translator is needed
 - ▶ Hanging up because RP is verbally abusive
 - ▶ Hanging up because of a Chronic RP
- ▶ Call Taking – Transferring Scenarios
 - ▶ Transfer from 911 to 311 because of a Problem RP
 - ▶ Transfer to wrong agency because you did not ask ?????
 - ▶ Not transferring to Medical or not staying on line while fire conducts their PAI (Pre-arrival Instructions)

Common Negligent Performance Issues

- ▶ Assumptions
 - ▶ Not using full Unit ID
 - ▶ Not handling chronic 5150 because of past events
 - ▶ Assuming situation is Code 4
 - ▶ Not documenting Completely (Weapons, Medical, Party Info, etc.)
 - ▶ Not Paying Attention (Texting, Watching TV, Computer, etc.)
 - ▶ Not Sending Appropriate Help (Medical, ACS, etc.)
 - ▶ Showing up to Work 11550 or 647f

Dispatcher Mistakes



Social Media



Three basic rules for dispatchers:

- ▶ **Rule #1** - Don't promise what can't or won't be delivered (ETA)
- ▶ **Rule #2** - Always verify the location with the reporting party (911 display)
- ▶ **Rule #3** - Use care to avoid increasing the risk to the reporting party. (Do not instruct RP to go outside and get a better look.)



Government Code 820.2

- ▶ “Except as otherwise provided by statute, a public employee is not liable for any injury resulting from his/her act or omission where the act or omission was the result of the exercise of the discretion vested in him/her...”

Government Code 820.4

- ▶ A public employee is not liable for his/her act or omission, exercising due care, in the execution or enforcement of any law. Does not apply to false arrest or false imprisonment.

Course & Scope of Employment

- ▶ The actions or activities an employee might reasonably undertake as part of his or her job. An employer is responsible for actions an employee takes within the scope of employment, which means the employer can be liable to third parties who are injured by the employee's conduct.

REMEMBER.....

Murphy's Laws

1. In any field of endeavor, anything that can go wrong, will go wrong.
2. Left to themselves, things always go from bad to worse.
3. If there is a possibility of several things going wrong, the one that will go wrong, is the one that will cause the most damage.
4. Nature always sides with the hidden flaw.
5. If everything seems to be going well, you have obviously overlooked something.

- ▶ To err is human
- ▶ 'Things' happen
- ▶ Learn from the mistakes you make
- ▶ Wisdom: learn from the experience of others

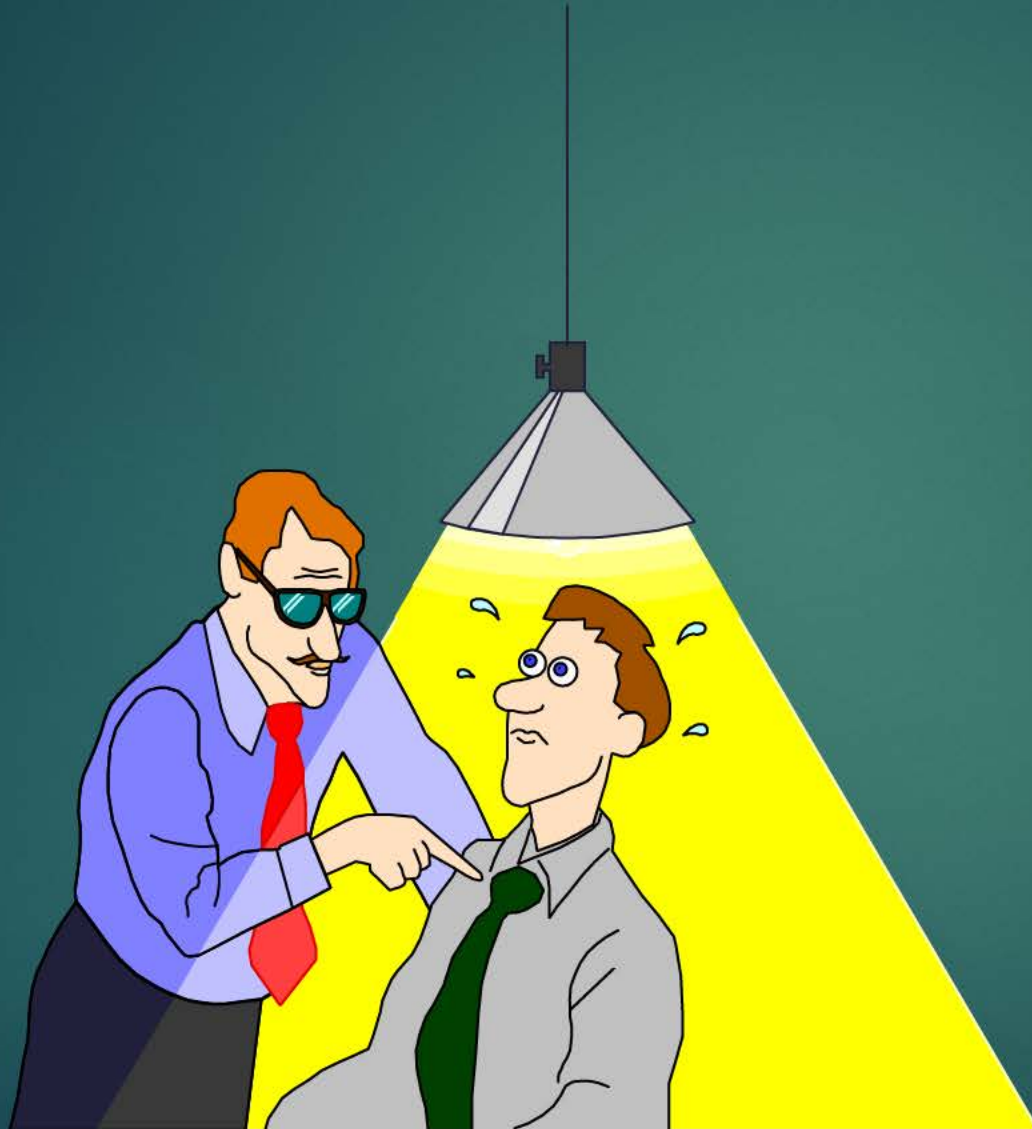
Administrative Investigation

Internal Affairs investigation

Versus

Chain of Command investigation

The Investigation!



ITS YOUR FAULT !!!

I KNOW YOU DID IT !!!

Confess !!!!

Are you bored yet?



Developing Performance Standards

and hiring Qualified
Applicants helps to
Avoid PROBLEMS

Discipline

What is the primary goal of discipline?

- ▶ **To change unacceptable behavior or performance**



Effective Discipline IS:



- ▶ Fair
- ▶ Consistent
- ▶ Timely

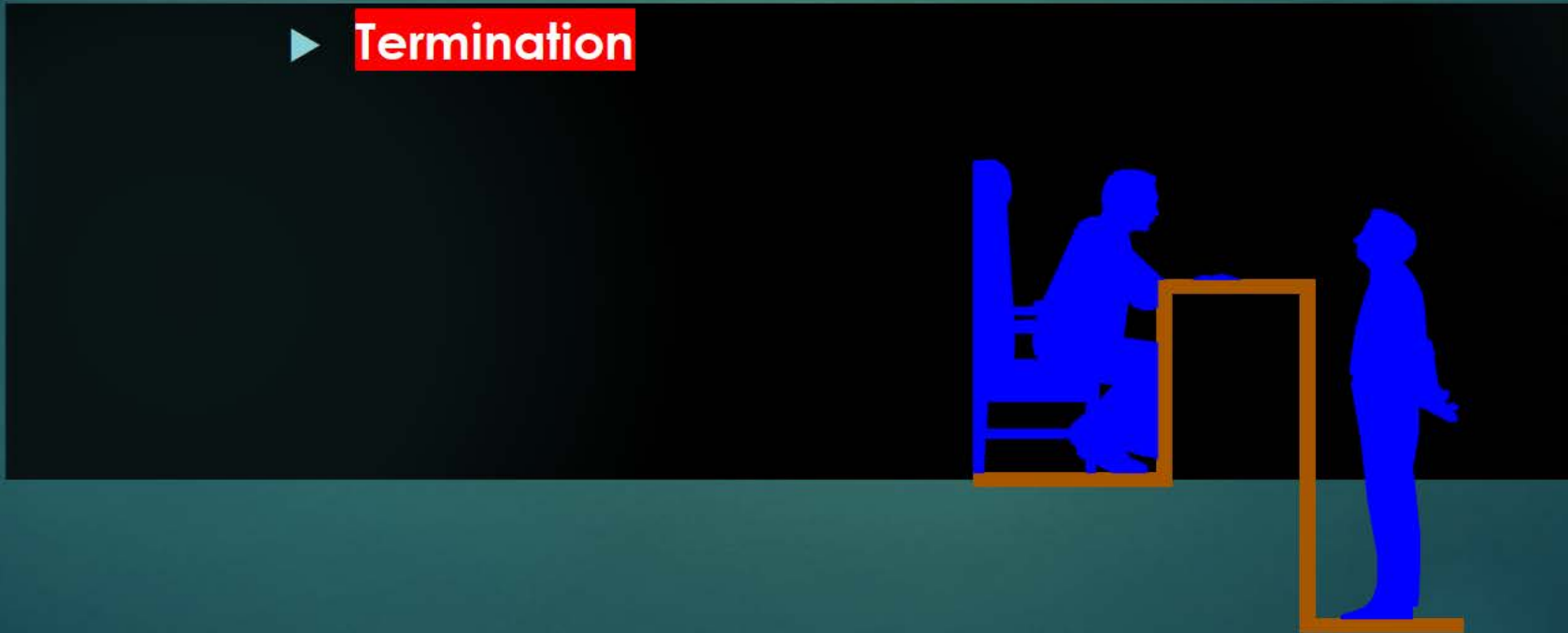
Forms of Informal Discipline

- ▶ **Training**
- ▶ **Informal counseling**
- ▶ **DOC**
- ▶ **LOR (Skelly allowed)**



Forms of Formal Discipline

- ▶ Suspension
- ▶ Salary step reduction
- ▶ Demotion
- ▶ Termination



Liability – 42 USC 1983



Vicarious Liability



- ▶ Responsibility for a civil wrong that a supervisor bears when a subordinate or associate has actually committed the acts that give rise to the liability.

How to reduce exposure to liability

- ▶ Adequate training
- ▶ Written policies and procedures
- ▶ Audit and control measures
- ▶ 'Best Practices' concept
- ▶ Responsiveness to community
- ▶ Develop performance standards
- ▶ Hire qualified applicants



Tips for call takers...

- ▶ **When in doubt, send them out!**
- ▶ **When in doubt, upgrade rather than downgrade**
- ▶ **Pay attention to background noises, trigger words, & what the RP *isn't* telling you**
- ▶ **Ask the right questions to get the right answers**



Importance of Training



- ▶ Failure to train or to provide adequate service is now being regarded more as gross negligence
- ▶ A predetermined and carefully thought out training program will minimize potentially liable situations

Available Resources



- ▶ Union Representative
- ▶ Personal Attorney
- ▶ City Attorney
- ▶ CAPTO (California Association of Police Training Officers)
- ▶ APCO (Association of Public Safety Communications Officials)
- ▶ NENA (National Emergency Number Association)

Skelly Disciplinary Process

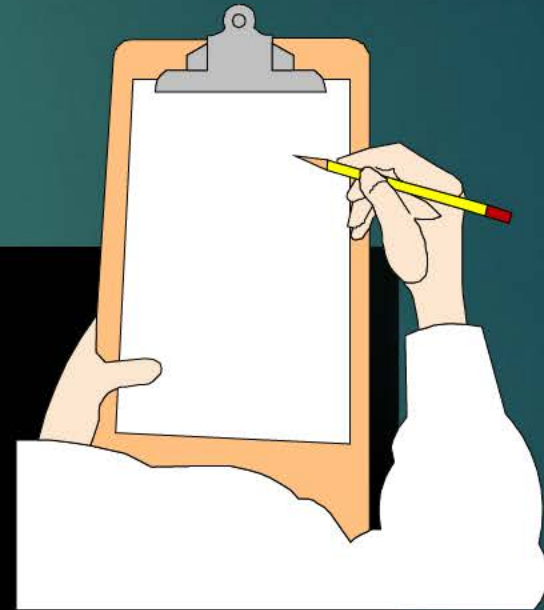
Post-Discipline

- ▶ Skelly hearing
- ▶ Hearing officer should be impartial-makes a recommended decision
- ▶ Employee has the right to be represented by representatives of his/her choosing
- ▶ Must be notified of the results of the hearing

REVIEW

List the three basic rules for dispatchers

- ▶ Don't promise what can't or won't be delivered
- ▶ Always verify the location with the reporting party
- ▶ Use care to avoid increasing the risk to the reporting party

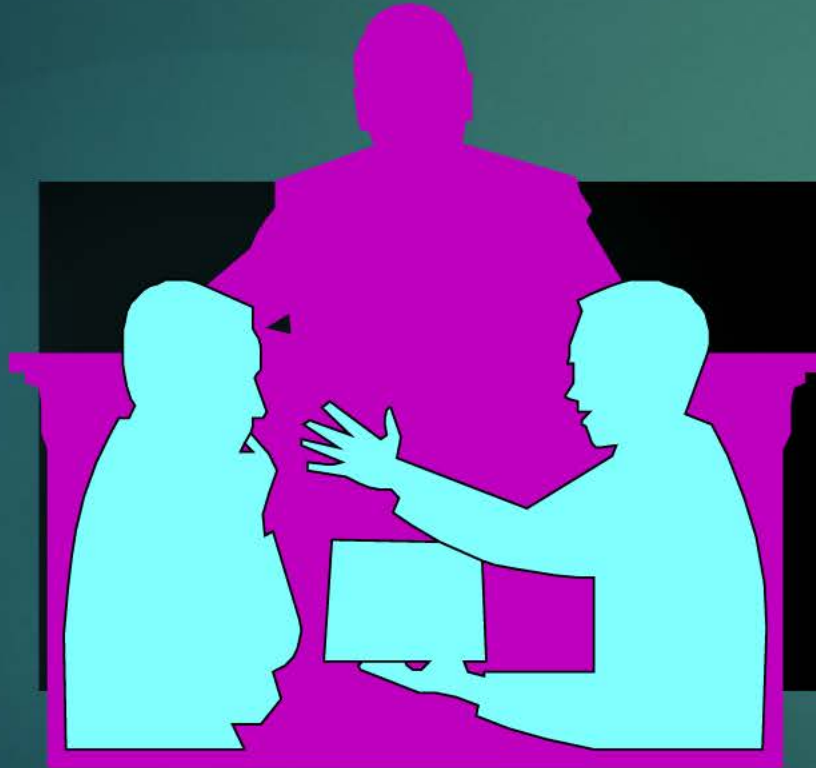


REVIEW



The primary goal of discipline is to:

- ▶ Change unacceptable performance or behavior



Effective discipline is:

- ▶ Fair
- ▶ Consistent
- ▶ Timely



REVIEW

Disciplinary problems can be avoided by:

- ▶ **Developing performance standards and hiring qualified applicants**



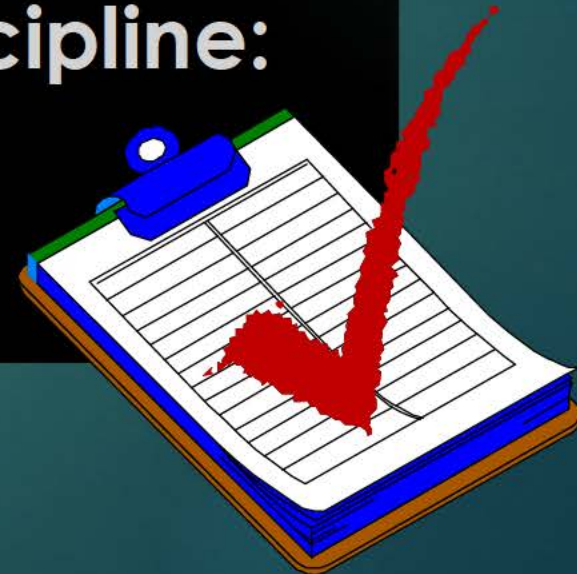
REVIEW

Name 4 forms of informal discipline:

- ▶ Training
- ▶ Informal counseling
- ▶ DOC
- ▶ LOR (Skelly allowed)

Name 4 forms of formal discipline:

- ▶ Suspension
- ▶ Salary step reduction
- ▶ Demotion
- ▶ Termination



REVIEW

Name 7 ways to reduce exposure to liability:

- ▶ Adequate training
- ▶ Written policies and procedures
- ▶ Audit and control measures
- ▶ 'Best Practices' concept
- ▶ Responsiveness to community
- ▶ Develop performance standards
- ▶ Hire qualified applicants

QUESTIONS ???

