

2009 Negley Awards for Excellence in Risk Management

Preventing Sexual Misconduct in the Workplace

Heritage Behavioral Health Center, Winner of The Chairman's Award

I. Introduction

Since its establishment in 1956, Heritage Behavioral Health Center has been committed to providing the highest quality of care possible. This includes ensuring the safety and well-being of its clients, staff, visitors and community. A behavioral healthcare provider faces many risks in conducting its business. Among the most serious are the legal, monetary and reputation risks associated with sexual misconduct and boundary violations in the workplace.

Heritage has always had generally accepted policies, procedures, and practices to reduce the risks associated with this conduct. However, in 2003 and again in 2005, two particularly serious incidents of this sort, unusual in Heritage's history, led management to redouble its efforts to reduce this risk.

Based on what we learned from the investigations of these two incidents and a root-cause analysis of one of them, Heritage developed an even more comprehensive and multidimensional approach than it previously had in order to minimize this risk. This narrative describes this approach, focusing on: policy and procedures, training, supervision, practices, environmental factors and investigative resources.

II. Policy and Procedures (P&P)

Policies and Procedures (P&P) are written to ensure that an organization operates in a manner that allows it to succeed in its mission and to do so consistent with the laws, regulations, rules and professional ethics to which it is accountable.

Heritage's P&P require that all candidates for employment receive an extensive set of background checks. Those most relevant to sexual misconduct and boundary violations are: a) Healthcare Worker Background Check, b) Department of Child and Family Services Child Abuse Neglect Tracking and fingerprint check, c) Department of Public Health/Health Care Worker Registry Background Check, d) State of Illinois Office of the Inspector General Background Check, e) Sex Offender Registry (state and national) and f) the National Practitioners Data Bank (for physicians) (Attachment A).

Heritage has a variety of P&P, a Code of Ethics and an Emergency/Addiction Continuing Care Residential Services P&P Manual (Attachment B) that state

the following are absolutely prohibited: sexual harassment or abuse of staff/clients; intimate relationships with current or former clients; and crossing professional boundaries. Any staff engaging in such conduct will be subject to immediate disciplinary action appropriate to the severity and circumstances of the conduct, including immediate termination. Staff are further informed that, depending on the nature of the sexual misconduct and the evidence supporting it, the State of Illinois may have an individual placed on the Health Care Worker Registry and/or charge him/her with a felony, even in circumstances in which sexual contact was consensual.

These documents inform staff on how and to whom reports of sexual misconduct or boundary violations are to be made. Staff are informed that the best protection against allegations of misconduct is to not only avoid it, but to avoid even its appearance as well as the opportunity (Attachment C).

If circumstance indicates we should modify P&P to reduce risk, we do. A notable example is a change we made to a residential admission and discharge procedure (Attachment D) as a result of the second of the two incidents mentioned above. We added a procedure to assess clients for high risk in a variety of areas, including any history of problematic sexual activity. Should the assessment reveal such information, it will be documented in the client's chart and guidelines noted on how to handle this potential risk. Where appropriate, relevant clinical issues will be addressed in the treatment plan.

We provide two handbooks to clients that are essentially an explanation of our P&P relevant to their treatment and their rights while in treatment. A handbook distributed to all clients states that they have the right to be free from abuse, humiliation, and exploitation (Attachment E). It says they have the right to an investigation as well as a resolution to their complaint. These rights are further posted as a framed 21 1/2" X 27" document in highly visible locations throughout all five floors of Heritage's main building. Smaller versions (10 1/2" X 16") are posted at three off-site residential locations. Additionally, these rights are written into Heritage's consent for treatment and financial agreement form (Attachment F). The handbook distributed to residential clients (Attachment G) informs them that close, intimate relationships

between residents are strongly discouraged and any sexual relationship/activities on our premises will result in immediate disciplinary action.

III. Training

Heritage's training curriculum consists of a comprehensive and multi-formatted system of personal face-to-face meetings with leadership, classroom training, internal computer-based training and web-based training.

All new employees are required to receive personal face-to-face training with various staff, including the Chief Compliance Officer (CCO). Typically, these sessions involve one or two employees, occasionally three or four. New employees must complete this training within seven days of hire, documented on a check-off sheet (Attachment H). Among the 12 areas of training in this format, four are relevant to sexual misconduct and crossing professional boundaries, with the CCO conducting two of them. In both of these trainings, he strongly emphasizes the importance of professionalism and the organization's prohibition against sexual misconduct and professional boundary violations - driven in part by what we experienced with the incidents above.

On the 3rd week training check-off list are 13 internal computer-based/web-based online trainings of which five directly address sexual misconduct and/or professional boundary violations. Two of them involve an audiovisual slide show on Sexual Harassment, one for all staff and one for managers. Another is a slide program on Abuse and Neglect. Two other online trainings involve tests on our code of ethics and on client rights. All online modules involve taking and passing a test. (Attachment I).

The new employee classroom training involves 14 full days and a half day, covering a total of 35 topics, of which some portion of seven topics addresses sexual misconduct and/or boundary violations and the importance of always maintaining professionalism in the employee's relationship with others (Attachment J). Three of Heritage's four senior leaders (the CEO, CCO and the Chief Clinical Officer) separately present topics in which some portion addresses professionalism, sexual misconduct and boundary violations.

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In addition to this structured training, Heritage provides on-going training via email. This training typically involves short refreshers about maintaining professional relationships, how and to whom to report reportable incidents, a new law regarding sexual contact with a client, legal consequences for not reporting abuse and/or neglect to the Office of Inspector General (OIG), Illinois Department of Mental Health, concerns related to our code of ethics and the like (Attachment K).

IV. Supervision

Good supervision is critical to maximizing the value of training and to ensure the continued development of required skills, competence and performance. For some years, Heritage was unsatisfied with the traditional model of supervision where documented feedback takes place once a year, typically emphasizing things that are in the most recent past, and where inconsistency among different supervisors in paying attention to key areas of performance is common. As a result of this dissatisfaction and in looking for ways to improve the quality of supervision, Heritage designed and implemented the use of supervision logs quarterly (Attachment L). This allows employees to get more frequent and timely formal feedback, have the opportunity to provide their own feedback, and there is greater consistency in what supervisors cover. The supervision log has two mandatory and two optional sections.

What is relevant here is that one of the mandatory sections asks two questions related to a variety of improper, unprofessional, unethical and/or illegal behavior. Thus, all employees are required to document at least quarterly if they are aware of a wide range of possible risk areas for the organization.

V. Practices

In one of the two incidents mentioned above, a residential staff person was alleged to have engaged in sexual activity with two clients in the basement of our main building, an area used primarily for storage, with no treatment services provided there. In the second incident, a residential staff person and a client engaged in sexual activity in our residential cafeteria. One practice we now employ to more carefully track clients is use of a form called a "Round Summary" (Attachment M). Every 15 minutes for Crisis and Detox clients and every 30 minutes for Residential Rehab clients, the residential staff must use this form to document the whereabouts and activities of all clients during all three shifts.

VI. Environmental Factors

As a result of a root cause analysis conducted on the second of the two incidents mentioned above, Heritage modified some environmental factors to further reduce the risk of sexual misconduct associated with our residential programs. Since this incident took place on the third shift when only one staff person was normally assigned to a unit on a two unit floor (for a total of two staff), plus a nurse in the nurses office, we added another staff person to the floor (for a total of four), to provide additional coverage to the entire floor.

Although there was a camera in the cafeteria where the incident took place, the staff person turned off the lights (an unlit cafeteria during third shift was not unusual) and locked both doors from the inside prior to engaging in the illicit conduct with the client. The cafeteria is now locked from 11:00 pm - 6:30 am and is considered off-limits and unavailable for use.

In this incident and others, investigations have been hampered because we did not have enough cameras (only 16) to adequately ascertain the movements of staff/clients; their stationary position limited what we could see; camera resolution was sometimes insufficient to provide the information we needed; and the playback features were awkward and limited, sometimes resulting in an inability to get the information we sought. This system used tape that had to be manually changed daily.

We have since replaced this system with one comprised of 31 cameras of higher resolution. Sixteen are in color and four are able to pan the environment (these are placed in the highest risk areas on several floors). We now have significantly more extensive and better coverage of high risk areas than ever before. Playback features are far superior and we have the ability for relevant leaders (six of them) to remotely view what is happening in the coverage areas from their homes via the internet. This is a digital system that stores video up to 31 days.

VII. Investigation Resources

When incidents occur that undermine the safety and well-being of clients, staff, visitors, etc. or that outright result in some form of harm, they must be competently investigated to determine what happened and why. Such investigations provide the information necessary to hold responsible parties accountable and to identify possible problems with processes, procedures, systems, and environmental factors. To ensure Heritage can conduct competent and credible internal investigations, we

have four leaders that have been trained by the OIG (Attachment N). To maintain their investigative certification, they are required to take two refresher courses every three years. Their investigative experience ranges from four to over ten years.

VIII. To Be Implemented

For our December 2008 New Employee Orientation Training, the Coordinator for Specialized Training and After Hours Crisis has added another hour of instruction on professional boundaries and sexual misconduct (Attachment O). This will be added to either the Crisis Intervention or Working With People class she teaches.

IX. Conclusion

Heritage recognizes the importance of maintaining a safe and secure environment, one that allows it to pursue its mission in a challenging environment, yet keep its risks low, including those associated with sexual misconduct and professional boundary violations. From the period 1998 —2008, Heritage typically investigated one to three allegations of sexual misconduct per year (Attachment P). Two exceptions were 1998 and 2004 when no such allegations were made. Another exception was 2007 when six allegations were made (half of which were unsubstantiated). We will need to further investigate whether there was an underlying reason for this unusual spike in ten years or whether it is simply a statistical anomaly. It is interesting to note that of the 23 allegations that came to our attention for investigation during this ten year time period, 25% of the cases were substantiated/founded, 61% unsubstantiated/unfounded, and in 13% of the allegations, the complainant did not want to pursue the case.

We have had no allegations of sexual misconduct related to our residential programs since 2005, when we experienced the second of the two most serious incidents described above and where much of our targeted efforts have been directed within our comprehensive and multidimensional approach to reducing such risks.

Heritage will continue to seek ways to improve its efforts and its risk profile in this area, as it recognizes that even one instance of the conduct discussed in this application is one too many. ❖

Attachments and additional information available from:

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