

Wrongful Termination - Creating Policy and Practice to Avoid Risk

The primary purpose of the Negley Awards is to elicit information from clinicians and behavioral health provider organizations about extraordinary and quality practice to share with the ultimate goal of facilitating best practices.

This year we are requesting submissions describing employment practices targeting claims of unlawful (wrongful) employee termination. Many states allow "employment at will" meaning that employees are employed at the will of the employer and may be terminated so long as the firing was not for an unlawful reason such as the employee's race or religion.

Most litigation of wrongful termination claims involves parties with strikingly different perceptions of the facts. Employers typically contend that the employee was fired for poor job performance. On the other hand the employee often contends that he or she was disciplined differently than other coworkers similarly situated because of some unlawful reason. For example an older person could contend that he was disciplined differently because of his age and that a younger person was treated better for the same behavior. Thus the employee could claim that although he was late to work two times, other younger coworkers were late to work the same number of times but were not fired.

Also common to many wrongful termination claims are facts demonstrating that there has been a serious break down in communication between the fired employee and the supervisor who made the firing decision. These claims persist despite the fact that most community behavioral health organizations have elaborate grievance procedures. In an actual recent claim the employee and supervisor began communicating face to face and informally about a contested issue. Over time

the communication became limited to written memoranda making it clear the parties were no longer exchanging ideas and understanding each other but instead were taking assertive and defensive positions. The employee was fired, and the litigation ended only after substantial cost.

By this example we do not mean to imply that written documentation of the supervisory and disciplinary process is not important. Quite to the contrary, comprehensive documentation is very important for at least two reasons: (1) it structures a careful and thorough series of interactions between management and employee and (2) in the event of litigation it is essential to proving what actually happened.

We also do not imply there is no place for written memoranda between the supervisor and employee. It is just in this particular case example the memos made it clear that effective communication ceased and the lack of communication was part of what led to litigation. Of course, memoranda can also be part of effective communication.

Ensuring consistent discipline of employees and effective communication helps avoid litigation altogether. Among other reasons, comprehensive documentation is important if litigation does occur.

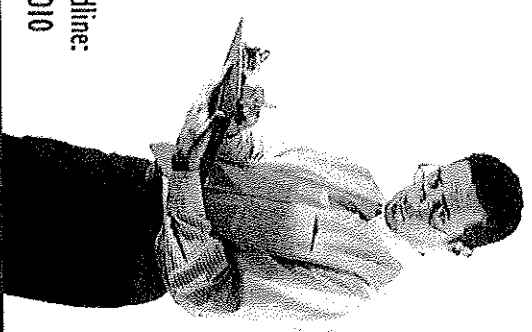
Thus we request that your submission describe your employment practices (other than your standard grievance procedure) designed to prevent wrongful termination claims. How do you ensure that your similarly situated employees are disciplined consistently and unrelated to such factors as race, religion, age and other unlawful reasons for discipline? Please also describe your practice (other than your standard grievance procedure) to ensure that employees and supervi-

sors who make firing decisions communicate effectively throughout the discipline decision process.

Please also describe your procedures to ensure that the supervisory and disciplinary process is well documented. Of course, in the event of litigation, documentation must be available to be useful. Therefore, please describe your procedure to ensure that documentation of the supervisory relationship is both secure and retrievable even after years have passed and supervisors have changed.

Include discussion of any relevant supervisor-training module you may have and submit any relevant forms and policies you use.

By submitting your materials you are agreeing that the Mental Health Risk Retention Group may publish your materials without fee to share with its insureds and to use for any other purpose.



Application deadline:

November 15, 2010

It is agreed that all submissions become the property of the Mental Health Risk Retention Group, Inc. and will be used in the Company's loss prevention program in its discretion including but not limited to publication of the materials submitted.

APPLICANT CORPORATE NAME: _____

By _____ Title _____

Date signed: _____

Please complete both sides of this form. On a separate sheet, provide a brief description of the history and scope of your organization (limit 200 words). Attach the description and this agreement to narrative and send 15 copies by Monday, November 15, 2010 to: 2011 Negley Awards
Mental Healthcare America
1876-A Eider Court, Tallahassee, FL 32308

Judging Criteria

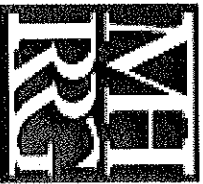
Programs submitted will be scored based on evidence of the following:

- Availability of data to demonstrate that the intervention or practice has successfully impacted the targeted area of liability exposure for the organization
- Availability of data to demonstrate that the intervention or practice has improved the organization's overall quality of care
- Degree to which the intervention or practice is likely to reduce future liability exposure
- Degree to which the intervention or practice demonstrates adherence to best practice standards, as applicable
- Degree to which the intervention or practice demonstrates a new or creative way of assuring adherence to relevant best practices or otherwise adds to the general knowledge in the field
- Ease with which the intervention or practice could be duplicated in other behavioral health settings

NEGLEY ASSOCIATES UNDERWRITING MANAGERS

A brief history of the Negley Awards . . .

The Negley Awards were established in 1990 by Negley Associates, underwriting managers for the Mental Health Risk Retention Group. The Awards recognize and reward outstanding achievements in risk management by community behavioral health centers. Winners share their risk management strategies with other behavioral health centers thereby enlightening the greater community. Since the award program's inception, in excess of one-quarter million dollars have been awarded to deserving applicants.



Application Process

Application deadline is **November 15, 2010**.

Applicants must be either (1) a shareholder in the Mental Health Risk Retention Group (MHRRG), (2) a member of Mental Health Corporations of America, Inc. (MHCA), or (3) a member of the National Council.

Application essays may not exceed five typed pages, single-sided, double-spaced on standard letter size paper, text size no smaller than 10 pt. Each organization is limited to one entry per year. President's Award Winner in the previous year is not permitted to apply. Send fifteen (15) copies of the application to 2011 Negley Awards, Mental Healthcare America, 1876-A Eider Court, Tallahassee, FL 32308.

Applications will be reviewed and three winning applications selected by the MHRRG Board of Directors whose decision is final. Three unrestricted cash awards are made: a \$10,000 President's Award, a \$5,000 Chairman's Award, and a \$5,000 Directors' Award.

Winners will present their programs in Clearwater Beach, Florida at MHCA's Winter Conference to be held February 22-25, 2011. They will present a second time at the Annual Conference of the National Council to be held May 2-4 in San Diego, California. Finalists will receive up to \$1,500 to offset the cost of travel expenses to the two conferences.

As a condition of *all entries*, organizations agree that their submissions may be shared among others in the industry at no cost by way of printed or electronic magazine, newspaper or newsletter articles, press releases and verbal presentations. Any names, dates or places should be changed to protect the privacy of clients or individuals as this report/case history will become public information. Centers under the direction of MHRRG Board members are ineligible to participate.