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The Risk Connection is a publication of Local Government Risk Management Services, Inc., a service organization of the Association County Commissioners of Georgia and the Georgia Municipal Association, whose purpose is to educate and inform cities and counties about loss control methods and risk management.

The opinions expressed in this publication are those of the authors and are not necessarily those of the ACCG or GMA, and further, are not intended to provide specific legal advice. Readers should seek legal advice on specific concerns from their own legal advisors. Any questions or comments should be directed to: *Dennis Watts, Editor, 3500 Parkway Lane, Suite 110, Norcross, Georgia 30092, 678.686.6284, dwatts@gmanet.com.*

Editor's Note

In this issue of the *Risk Connection*, we have some informative articles that are worth considering for how they might be applicable to your local government. As the risk control agency for ACCG and GMA, we at LGRMS hope you and your employees take safety seriously; not doing so affects us all.

- The first article, from Elarbee Thompson attorney Tracy Glanton, deals with workplace romance and the

potential necessity for having policies dealing with this very real potential, and for potential harassment liability later on. Sometimes it is good, until it is not.

- The second article from the Public Agency Training Council deals with jails and deliberate indifference. In the case shown in the article, this jail staff did things right.
- We also have three articles on general vehicle maintenance and safety.

Should Employers Implement a Kiss-and-Tell Policy?

by Tracy Glanton

In light of the amount of time spent at work and the close relationships that invariably develop between co-workers, workplace romances seem inevitable. While some will survive through "sickness and in health," others may not last until "death do us part." Regardless of the end result, both situations can pose challenges for employers, who must decide how to manage the impact of a workplace romance on employee morale, workplace productivity, and legal liability.

Recent action by a company that dismissed its CEO amid allegations of sexual harassment serves as a reminder of one step employers can take to address romantic relationships in the workplace – implement a policy outlining its expectations for workplace conduct. In an effort to prevent sexual harassment, avoid conflicts of interest, and create a

comfortable working environment for its employees, the company implemented two rules that set forth its expectations with respect to workplace romances.

1. No management-level employee may make sexual advances, welcome or unwelcome, toward any subordinate, regardless of whether the subordinate reports to the management employee, either directly or indirectly.



2. No employee who has a personal relationship or romantic relationship with another employee may be in a position with any perceived or actual influence over the other's terms and conditions of employment.

The company also requires employees who are involved in a romantic relationship in which one has actual or perceived influence over the other's terms of employment to disclose the relationship to Human Resources so that a determination can be made "whether there is or may be a reasonable concern for favoritism, employee morale, confidentiality, discrimination, security, safety, a conflict of interest, or other business conflict," and if so, what adjustments should be made to address the concerns (e.g., transfer one of the employees to another department).

With Valentine's Day right around the corner, and the fact that love may be in the air, now may be a good time to revisit your organization's fraternization policy. While

many view an outright ban on romantic relationships between employees to be unrealistic (although some employers have issued rules to that affect), the policy should, at a minimum, prohibit romantic relationships between a supervisor and a subordinate when the supervisor has direct influence over the subordinate's terms of employment. This would help avoid the greatest risk of liability arising from a workplace romance (or more likely the demise of the romance) – sexual harassment claims.

The policy should also define what conduct is and is not allowed, the potential ramifications for violating the policy, and any disclosure requirements.

Lastly, once the policies have been updated, they should be distributed and training provided so that employees understand the employer's expectations for workplace conduct and the potential ramifications of becoming romantically involved with a co-worker.

Jail Staff Not Deliberately Indifferent to Pre-Trial Detainee Medical Needs

P.A.T.C Legal and Liability Risk Institute

The Federal District Court for the Eastern District of Kentucky reviewed Robert Medley's claim that the staff at the Shelby County Jail had been deliberately indifferent to injuries he received while at the jail. The case provides a good example of how courts will look at such claims.

The court reported the facts as follows:

On or around May 8, 2012, Plaintiff Robert Medley was incarcerated at the Shelby County Detention Center ("SCDC") as a pretrial detainee, charged with manufacturing methamphetamine. Medley was housed in a cell with approximately twenty-two other inmates, and his confinement at SCDC was largely without incident for one month. However, on June 9, 2012, Medley recalls lying down on his bunk around 5:30 p.m. to go to sleep but waking to a sensation of ice water hitting him in the face. SCDC allowed hot-pots, electrical devices that can rapidly boil water, within Medley's cell, and fellow inmate Anthony Howell – allegedly unprovoked and without warning – threw hot water from a hot-pot onto the left side of Medley's face. (alleging water was thrown on Medley's "face, left ear, left eye, left arm, and chest").]

According to Medley's Second Amended Complaint, "the Jail staff or nurse(s) applied some sort of cream or ointment to the Plaintiff's face and then placed him in isolation for over 13 hours." However, Medley's response to the Defendants' summary judgment motion admits he was examined and monitored much more frequently. Medley's deposition testimony indicates that, to the best of his recollection, SCDC officials Sergeant Ann Doyle, Deputy Larry Donovan, and Deputy Austin Sasser responded to the incident shortly after it occurred. According to Deputy Sasser's Incident Report, Deputies Sasser and Donovan entered the cell and saw that Medley appeared to be burned from the hot water. Donovan immediately escorted Medley to the SCDC's medical unit, while Sergeant Doyle



and Deputy Sasser escorted Howell, the perpetrator, to an interview cell for further investigation.

At the time of the incident, SCDC contracted with Southern Health Partners (“SHP”) to provide medical care to SCDC inmates. SHP Nurse Dana Aldridge was on duty when Medley was burned, and she testified to treating him at approximately 5:45 p.m. for superficial burns to his face, neck, chest, and back. She then notified her supervisor Nurse Angel Robinson and SHP’s physician Dr. Ron Walldridge of the incident, and she sent photos of the burns to Dr. Walldridge for his recommendation. Dr. Walldridge ordered treatment for Medley’s burns, including cold compresses to cool down his skin, Silvadene cream, and Ibuprofen. Subsequently, Medley was placed in a single cell for observation, which took place at approximately fifteen to twenty minute intervals.

Nurse Aldridge testified that she conducted a follow-up examination of Medley around 6:45 p.m., during which she called Dr. Walldridge to report that Medley “had formed some blisters and complained of not being able to see out of his right eye.” [Dr. Walldridge continued to order a treatment of ice packs and cold compresses, Silvadene, and Ibuprofen. [Medley testified that, at some point, Sergeant Doyle applied Silvadene cream to his face, but Sergeant Doyle denied doing so, and Nurse Aldridge’s notes and testimony indicate Medley refused Silvadene application both times she examined him. Nurse Aldridge checked on Medley again before leaving her shift around 10:30 p.m., and she observed him sleeping comfortably and thought the treatment orders from Dr. Walldridge were sufficient to properly care for Medley’s injuries.

Sergeant Ann Doyle, instructed to contact supervising Nurse Robinson if Medley’s condition changed, was tasked with monitoring Medley from the time Nurse Aldridge left her shift until 6:00 a.m. the next morning, when SHP Nurse Christina Peach arrived. On or around 2:00 in the morning, Sergeant Doyle noticed Medley’s face had blistered; he was dripping fluids and



complained he could not see or hear on his left side. Sergeant Doyle contacted Nurse Robinson, who instructed Doyle to keep monitoring Medley and to give him Gatorade for hydration until the next SHP shift nurse arrived. Doyle did not assess the situation as a life-threatening emergency. Sergeant Doyle spoke on the telephone with Nurse Peach around 5:00 a.m., notifying Peach that she should evaluate Medley as soon as she began her shift at 6:00 a.m. on June 10, 2012. When Nurse Peach arrived, Peach called Dr. Walldridge and updated him on Medley’s condition. At that point, Dr. Walldridge ordered Medley be sent to the emergency department.

Emergency responders transported Medley to the University of Louisville Hospital Emergency Department. Medley arrived around 7:15 a.m. and was treated for second degree burns. As a result of his injuries, Medley asserts he “lost all hearing in his left ear and continues to experience bleeding from his left ear requiring repeated medical attention, decreased eye sight from his left eye, and other disabilities on the left side of his face.” (Citation Omitted).

The court noted that in order to succeed on a claim that jail officials were deliberately indifferent to medical needs, Medley would have to establish two elements. First, he would have to show an objective component meaning he needed to establish that he actually had a sufficiently serious medical need.

The court noted that a “sufficiently serious medical need” is a medical need as one that is diagnosed by a physician as mandating treatment or in the alternative a medical need that is so obvious that even a layperson would easily recognize the necessity of a doctor’s attention. In this case Medley was arguing that his burns were such that a

layperson would easily recognize the need for treatment by a doctor. Thus, he was arguing that he should have been taken to the hospital sooner.

The second element necessary to prove a medical claim by a person in jail is that the prisoner must show that subjectively each member of the jail staff that is sued knew of an excessive risk to the prisoner's health or safety and disregarded the risk.

The court noted that Medley's claim failed on the second element necessary to establish his claim. The court wrote:

The record demonstrates that Doyle attentively cared for Medley; she frequently monitored his condition and followed the instructions of SHP as to Medley's medical treatment. When Doyle recognized Medley's condition was worsening, she proactively took steps to aid the treatment process. She called Nurse Robinson and Nurse Peach, and she took photographs of Medley's condition throughout the night and early morning to show to Peach the next day. [See R. 56-1 at 7-8.] Medley has not refuted

these facts and has not demonstrated the subjective culpability needed to succeed on a deliberate indifference claim against Sergeant Doyle. Therefore, she is also entitled to summary judgment on this claim.

The court noted that Jailer Bobby Waits and the County Judge/Executive were sued in their individual capacities yet they had no personal involvement in the events surrounding Mr. Medley, thus the claims against them were dismissed.

Additionally, the claims against 10 other deputy jailers were also dismissed due to a lack of any evidence that any of them knew of and disregarded a substantial risk. The court also dismissed claims that Shelby County had deficiencies in policy and training related to this event because Mr. Medley established no underlying constitutional claim.

Bottom Line: Attentive care and proper documentation is a key component to overcoming a claim that correctional staff has been deliberately indifferent to medical needs.

Wiper Blades

By Julie Hyer, LGRMS Public Safety Risk Consultant

One most valued components your automobile is equipped with is also one of the most neglected, until they are needed; Windshield wiper blades. They usually are not given much attention until it starts raining. If they haven't been properly maintained or haven't been used in a while you may wind up having worse visibility when you turn them on. Here are some simple tips to keep them working properly.

Regular cleaning. In dry conditions, wiper blades may dry out, crack, tear or bulge. They can also absorb petroleum debris, dust, and dirt from the roadway. This can cause smearing or streaking on the windshield. At least once a month, wipe the blades with a glass cleaning solvent or mild soap and water to remove any debris. Inspect the blades for tears or cracks. Clean the windshield itself when you clean the wiper blades, especially the parts of the windshield the wiper blades don't reach.

Replace worn blades. Obviously, if any defects are found during cleaning and inspection, replace the blades. Also, if you hear squeaking or squealing when the wipers are in use or if the blades smear or streak the windshield, it is time to replace them. Most automotive parts stores will install wiper blades for



you free of charge if you purchase the blades from them.

Windshield washer fluid. Keep washer fluid in the reservoir and make sure the system is working properly. Even in dry conditions, dust and other small particles can accumulate on the windshield. A dirty windshield will obstruct your vision and could cause a collision! In warmer months, use a solution formulated to remove bugs and petroleum debris. In colder months, use a solution formulated to resist freezing.

Visibility is a key factor in driving and avoiding collisions. Take the few minutes to ensure you can see what's coming at you.

Why Vehicle Maintenance?

By Julie Hyer, LGRMS Public Safety Risk Consultant

Even the most skilled of drivers become accident prone when they are driving a vehicle which is improperly maintained. When a driver neglects to replace worn tires, brakes, belts, hoses, wiper blades, etc. there is a significant increase in the probability of having an accident. This is because it may be more difficult to maintain control of your vehicle.

The life expectancy of a vehicle will be greater when it is properly maintained. A well-maintained vehicle generally needs less costly repairs. You can expect a vehicle to perform at its best when a careful check is made of all the vital fluids, such as oil, transmission fluid, brake fluid, and power steering fluid.

If you wish to reduce the possibility of accidents or roadside emergencies, take the time to take care of your vehicle. An emergency vehicle that cannot make it to its desired destination could have disastrous consequences. A personal vehicle that breaks down can be extremely frustrating.

Motor Vehicle Accidents

By Dennis Watts, LGRMS Training and Communication

Motor vehicle accidents continue to be a leading cause of both worker injury and liability claims within Local Governments in Georgia. Your employees spend a lot of time on the road, probably the most dangerous place, most of us experience on a daily basis.

A few tips can help minimize the potential for injury or claims.

Wear seatbelts. Make sure you (and all of your vehicle operators) wear their seatbelt. Studies show the chances of being killed or severely injured increase for those not wearing a seatbelt.

Slow down and increase following distance. Rear end collisions are the leading cause of motor vehicle accidents. Slowing down a bit and increasing the following distance (the National Safety Council recommends three seconds for passenger vehicles) decrease the chance of rear ending someone.

Avoid distractions. Talking on your cell phone and texting are the worst thing you can do while driving. We have all seen that person texting, going way to slow for traffic, not seeing the light has changed, or



Increase the probability of keeping control of your vehicle, increasing the life expectancy of your vehicle and protect your vehicle against breakdowns on the roadway by keeping up with your vehicle maintenance.

When you carefully maintain your vehicle, you increase driver safety.

having a hard time staying within their lane. These people are extremely dangerous. So are you if your doing the same thing. Avoiding distractions and slowing down while increasing following distance are winners.

Backing. A lot of Georgia motor vehicle accidents (as well as nationwide) are backing related. If you have to back, make sure you use your mirrors, turn your head, and then back up cautiously. Some companies have made it part of their policy that employees either back into a space (easier and safer than backing out) or pull through, thus allowing them to pull forward when they leave, which increases visibility, and reduces backing accidents.





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