How Best to Limit Liability? Be a Good CPST!  By Denise Donaldson, Safe Ride News

In July, attendees of the 2019 Texas Child Passenger Safety Conference were fortunate to hear from Alan Korn, J.D., formerly the executive director and general counsel for Safe Kids USA. For many years, Korn provided steady guidance to CPSTs, laying the groundwork for a culture that is carefully conscientious but not hamstrung by worry over liability. As Korn put it, “Don’t let fear of liability prevent you from doing God’s work!”

This approach has proven very successful over the decades for the overall CPS program nationally, as CPSTs have, thankfully, not been the subject of lawsuits. Korn indicated that this is not surprising and went on to describe why: Because CPSTs must vigilantly follow established protocol, their risk of liability is very small (or, in legalese, de minimis). This is reassuring, whether you are a CPST working solo or the risk manager of a large hospital system.

First, Korn described what is required for liability to occur. While all CPS activities carry low liability, on the “continuum of liability,” activities like handing out brochures are much lower than hands-on activities, such as operating a fitting station. However, even in a hands-on situation, four elements of negligence must be involved before there is concern about liability:

- There must be a duty or obligation of care.
- A breach must have occurred in this duty.
- That breach must have resulted in actual loss or damage.
- There must be a causal connection between the CPST’s conduct and the loss/damage.

Even when all of these elements are present, “proximate cause” (the link of a CPST’s activities to an incident) must be established—and Korn says that this link weakens dramatically with every passing day after contact with the caregiver.

The bottom line is that, by following the National CPS Certification Training and the CPST Code of Conduct, CPSTs can effectively eliminate any real risk of liability simply by doing the right thing. (Review these documents by searching key words on www.cpsboard.org.)

Basic Points for CPS Risk Management

- PRIORITIZE CHECKUP SAFETY: Consider the safety of those present during a checkup to be the top concern. Have a person present whose main focus is event safety.
- DOCUMENT: Always complete checkup forms to document interactions with caregivers.
- USE WAIVERS: Have a hold-harmless waiver as part of checkup paperwork; be sure the caregiver signs it before doing a checkup.
- KEEP RECORDS: Store completed forms for about seven years. (The statute of limitations on negligence is five years.)
- KNOW WHEN TO ASK FOR HELP: Stay in your comfort zone; get help from others if the caregiver’s questions or needs exceed your knowledge.
- ENSURE ACCURACY: Use brochures/flyers that are kept up to date, created by technically reliable sources in the field.
- STAY CURRENT: Keep up on the latest best-practice and usage details; have current resources on hand.
- CHECK YOUR JOB DESCRIPTION: If CPS activities are part of your job, be sure those are stated in your job description (scope of practice).
- FOLLOW/CREATE POLICY: Follow your organization’s institutional policy; if no CPS policy exists, work toward establishing one.
- NETWORK: Cultivate useful relationships with departments in your organization, such as risk management and public relations.
- GATHER FUNDING: Feel free to take donations from caregivers if that is helpful for maintaining your program’s funding. Doing so does not increase liability risk.

What About Noncompliant Child Restraints?

Noncompliant child restraints (CRs) have become increasingly available, especially from online sources. What should a CPST do if a caregiver brings in a noncompliant CR for a checkup? To do the right thing—as well as to limit liability—approach this like you would any situation in which a CR is inappropriate for any reason. Tactfully educate the caregiver about the problem and include detailed notes about the interaction in the checkup’s written documentation. Report the noncompliant CR at Stopfakes.gov and/or nhtsa.gov.

If a child is present, consider how that child will be able to leave the checkup safely. For instance, ask whether a suitable CR can be brought from home by another caregiver. Prepare for this situation by having low-cost or loaner CRs on hand so that a compliant CR can be provided, if necessary. If the child must leave using the noncompliant CR, use your CPST skills to make the harness fit and installation as effective as possible (and, hopefully, used just for the drive to get a new CR). In general, if a caregiver chooses to ignore recommendations, note that in the documentation (initialed by the caregiver, whenever possible).

Find more resources for CPSTs at www.saferidenews.com