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Child Sexual Abuse Prevention + Insurance

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CHILD SEXUAL ABUSE AND INSURANCE COVERAGE

Every sexual abuse crisis impacts the Church

By Gregory Love & Kimberlee Norris

Every year, it seems a particular organization or entity is embroiled in a sexual abuse crisis: the Catholic Church, USA Swimming, Penn State University, USA Gymnastics/Michigan State University, Hillsong Church, Ravi Zacharias Ministries, Boy Scouts of America... and the list goes on.

This year, headlines are swirling around the Southern Baptist Convention and its past response to sexual abuse allegations. Next year, it will be some other organization, but the pattern will continue.

For many, another organization's crisis does not directly inspire change ... *until it's your crisis.*

Very few religious organizations, for example, chose to learn from the sexual abuse crisis experienced by the Catholic Church, beginning in 1994, *until they repeated the same behaviors — yielding the same crises.* USA Gymnastics ignored the lessons to be learned from USA Swimming ... *until they repeated them.*

Sadly, organizational leaders rarely watch and learn from the crises of others. And so the pattern replicates.

By contrast, the insurance industry has been watching and learning from *all* crises. Many of these lessons have been incredibly costly — both in terms of human suffering and financial loss. Insurance professionals understand this important truth: the landscape has changed for all child-serving organizations — *and this is particularly true for churches.* The accumulated knowledge and experience in the insurance industry has given rise to significant change for *all* organizations, regardless of the *source* of the crisis: where child sexual abuse is concerned, your neighbor's difficulty is experienced at some level by everyone.

Questions: What does the insurance industry see, and how does that bring about change?

WHAT THE INSURANCE INDUSTRY 'SEES'

When a church experiences a sexual abuse crisis, church leaders understand and navigate the resulting issues through the narrow framework of that particular crisis or fact pattern. An insurance carrier, by contrast, navigates multiple crises at any given time, seeing the failures and the costs.

Clearly, the *human suffering* resulting from child sexual abuse is a church's primary priority: the church must adopt a victim-centric response to any allegation of abuse. (See our article, *ADDRESSING SEXUAL ABUSE FROM THE PULPIT*, in the July / August 2022 issue of *Church Executive*.) The damage to children and families stemming from sexual abuse cannot be overstated, and the Church must become and remain a place of empathetic response and healing.

From a financial standpoint, the cost to child-serving organizations, including the Church, has been monumental. Since 2010, the cost to resolve a child sexual abuse claim has skyrocketed. For the past 10 years, child sexual abuse claims constitute the No. 1 reason churches and Christian ministries end up in court. One recent industry report¹ calculated the average cost to resolve a sexual abuse claim, whether settled out of court or as a result of a verdict where the organization was found at fault, and found the following:

- Average payout for cases settled out of court: \$2.5 million
- Average payout for cases with jury verdicts: \$10.3 million

Insurance professionals (and carriers in particular) see these exorbitant amounts, ongoing year-by-year increases, and have no reason to believe it will slow.

INSURANCE INDUSTRY CHANGES

Albert Einstein once purportedly quipped: *Insanity is doing the same thing over and over and expecting a different result.* Given the astronomical rise in the costs to resolve an ever-growing number of claims, simply increasing insurance premiums will not cover the cost of claims. Taking Einstein at his word, something has to change. Collectively, the last decade of sexual abuse failures is having a *global* impact — and every church will be strongly affected.

The insurance industry is attempting to introduce sanity to the 'over and over' nature of sexual abuse failures. If a different result is expected, churches and child-serving organizations *must change*, and the insurance industry is uniquely positioned to introduce and require these changes.

Ongoing failures impact all

Sexual abuse failures offend the public conscience, driving up jury verdicts and settlement amounts, which increase insurance premiums for all child-serving organizations, regardless of where the crisis originated.

Further, sexual abuse failures — particularly over the last 10 years — have influenced insurance carrier practices and decision-making in ways now experienced by *all* churches. More specifically, sexual abuse crises have driven the following:

- Changes in the application or renewal process — *requiring more preventative protocols*
- Refinements in policy terms — *eliminating broad coverages*
- Changes in available limits — *conditioning access to higher limits and umbrellas*
- Exclusions for certain programming — *focusing on third-party use and sex offender programs*

Currently, insurance industry leaders understand sexual abuse risk better than any other professional group. Because insurers have a better understanding of the risk and how it manifests — *how we got into the ditch* — insurance professionals are creating pathways and guardrails to help clients *avoid future ditches*. For this to occur, change is necessary. [▶](#)

AN EFFECTIVE SAFETY SYSTEM

Prevention starts with understanding. *What does your church do to protect children from sexual abuse?* This question jump-starts any discussion about child sexual abuse risk and preparation. When asked, ministry leaders commonly refer to criminal background checks, child check-in systems, policies, video cameras, and security teams.

Sadly, this list is minimally helpful in protecting children from the dozens of abusers featured in media reports across the nation within the past five years. Yet the Church continues to double down on the 'list' as if it were the solution to the problem.

As civil trial attorneys who deal with *standards of care*, we stand over scores of 'train wrecks' in Christ-based environments. In nearly all cases, the ministry in the media crosshairs employed a variation of the practices listed previously; the problem is that these do not address the real risk.

In layperson language, *standards of care* constitute *reasonable measures* to prevent a *foreseeable risk*. Child sexual abuse is a foreseeable risk in every child-serving organization: it is every ministry's legal obligation, and a current *standard of care*, to implement reasonable measures to prevent child sexual abuse.

By now, every church should have replaced the myths with FACTS:

Myths:

"Sexual abuse won't happen here."

"Background checks will solve the problem."

"I'm certain I would spot a sexual abuser."

"We teach our kids about 'stranger danger.'"

Facts:

Sexual abuse skips NO demographic.

90% of abusers have no past criminal history.

Abusers have no visual profile.

90% of kids are abused by a trusted individual.

Every church must employ an effective Safety System aimed at these foreseeable risks: the Preferential Offender and Peer Sexual Abuse (Read our previous articles in the *Church Executive* "Stop Child Sexual Abuse" series at <https://bit.ly/3SEzE6J>).

An effective Safety System includes the following elements:

- Sexual Abuse Awareness Training
- Skillful Screening Processes
- Appropriate Criminal Background Checks
- Tailored Policies & Procedures
- Systems for Monitoring and Oversight

In addition to these elements, every church must create an internal communications process and plan to ensure that allegations and suspicions of abuse are reported to the appropriate authorities.

Insurance carriers are beginning to require that churches confirm the existence of Safety System elements as a *condition* of coverage. This occurs in the application process, whether initiating or renewing coverage.

Application process

An application for insurance is a comprehensive document seeking information about various aspects of possible risk — from detailed questions about the building and the roof to a list of all autos and passenger vans. In the past, very few questions related to child sexual abuse and prevention efforts.

Today, insurance applications have dozens of questions seeking very specific information about all aspects of training, screening, supervision, policies, reporting processes, populations served and more. Some carriers require churches to complete a Sexual Misconduct Supplemental Application, which gets granular regarding safety system efforts, reporting practices and past situations involving sexual misconduct. Each of these applications require the signer to acknowledge that he or she has made reasonable inquiry and that the information is true, correct and complete, followed by a warning: *knowingly providing false information on the application is a crime and doing so might result in criminal penalties and might void coverage.*

Case study #1

An understaffed church in Missouri tasked a Family Pastor to 'handle' the church's insurance renewal. The online renewal application was completed by the Family Pastor, providing the answers he believed the carrier 'wanted to see' to ensure renewal. Notwithstanding a slight increase in premium, the policy was renewed.

Ten months later, a student ministry volunteer was arrested and charged with Aggravated Sexual Assault of a Minor in connection with his interaction with a 12-year-old boy. During depositions, it became clear the church was doing very little related to abuse prevention, in sharp contrast to the representations made on the renewal application. The Family Pastor was not criminally charged, but the insurance company initiated civil litigation to eventually void all coverages based on these misrepresentations. The church was forced to sell property to retain legal counsel.

Every church must install and maintain an effective Safety System addressing the known risk of child sexual abuse. Clearly, *protection of children* is priority, but navigating insurance issues provides yet another reason church leaders must understand sexual abuse risk.

FINDING GOOD RESOURCES

The complexities and challenges of sexual abuse risk are significant and will continue to grow. Help is available through insurance professionals who have committed to understand:

- Child sexual abuse risk;
- How sexual abuse risk is likely to manifest in the Church;
- How to identify and introduce prevention resources;
- Reporting requirements and communication strategies;
- Navigating insurance application questions;
- Understanding *sexual misconduct* policy terms;
- Creating an insurance plan that secures appropriate coverages and limits; and
- Navigating the initial steps of an allegation response.

Not every insurance professional has invested the time and effort to provide these services: choose your insurance relationships wisely!

Case study #2

A large church in Tennessee allowed its long-term insurance agent to complete an insurance application on the church's behalf. In the years prior, the church's business administrator appreciated the agent's willingness to go through the painstaking process of completing the applications for various carriers, simply presenting the finished product to church leaders for signature. The agent knew a great deal about the church's roof, facility and vehicles, but very little about sexual misconduct.

A subsequent sexual abuse claim revealed that the church's Sexual Misconduct coverage was limited to adult-to-adult behavior: all other forms of sexual misconduct (child sexual abuse and peer sexual abuse) were specifically excluded. The application included various misrepresentations concerning the church's sexual abuse prevention efforts, but the misrepresentations were irrelevant because there was no coverage to void.

The church replaced the agent, but not before experiencing an avoidable failure — in both prevention and coverage.

Good insurance partners — agents/brokers

Do we have the right insurance agent or broker? This critical question becomes more relevant each passing year. Sexual Misconduct coverage has become a very complicated environment: changes in policy terms, unbundling certain forms of sexual misconduct, expansion of application processes, state-specific reporting and prevention requirements, third-party use issues, and more.

Some insurance agents specialize in coverages related to elite athletes, knowing the risks involved and where to shop for appropriate insurance solutions from the right carriers in the right coverage combinations. Other agents specialize in coverages related to music events, art auctions, aircraft, and so on.

Given the changes in the landscape related to sexual abuse risk, it's imperative that church leaders work with insurance professionals who specialize in serving churches — *particularly where sexual misconduct coverage is concerned.*

Case study #3

After 'firing' its prior agent (See Case study #2), the same large church in Tennessee engaged an insurance broker very familiar with risks common to churches. A representative from the broker completed a preliminary risk assessment and performed a site visit. With this information in hand, the insurance professional:

- Created a physical plant risk mitigation plan — and secured coverage;
- Made recommendations related to cyber security — and secured cyber coverage;
- Arranged for an outside consultant to provide an active-shooter plan and training;
- Provided recommended resources to address child sexual abuse risk; and
- Negotiated appropriate coverages and policy limits, notwithstanding the prior claim.

The right insurance professional (agent or broker) can have an enormous impact, allowing a church to focus on ministry in a child-safe environment.

Good insurance partners — carriers

Often a church will purchase insurance products directly through an agent or representative of an insurance carrier. Again, churches need to ask: *do we have the right insurance carrier?* Some insurance carriers work almost exclusively with churches or have significant business segments dedicated to churches. These insurance carriers are optimal for several reasons:

- The company provides policies tailored to church programming;
- The policies provide coverages for risks common to churches (i.e., cyber, theft);
- Sexual misconduct coverages are tailored to common church claims;
- Policies often include mitigation funds (i.e., counseling, public relations); and
- The carrier's loss control professionals are familiar with navigating abuse issues.

The right insurance broker will know which carriers provide the right services, policies and resources. If a church chooses to interact directly with an insurance carrier, church leaders should confirm that the carrier has significant experience in the church marketplace and is able to navigate ongoing changes in the landscape.

Sufficient insurance coverage

After the right insurance agent and carrier are secured, every church should ask: *do we have sufficient insurance coverage?* Keep in mind; there is no one-size-fits-all plan for insurance coverage. A mega-church with an associated private school might have a blend of policies and

umbrellas providing layers of coverage, which looks much different than the coverage solution for a rural Cowboy Church.

Ministry leaders should *know* that they have the right combination of policies from an insurance carrier conversant with common ministry risks. When a church has the right agent, broker and carrier, the question of *sufficient coverage* can be addressed.

Third-party facility use

Boy Scouts of America has settled more than 82,000 child sexual abuse claims for just short of \$3 billion. A significant portion of the settlement will be paid by churches and denominations that chartered or hosted Boy Scout Troops — hence *third-party liability*. This circumstance has forced the entire insurance industry to look closely at churches permitting third-party use of church properties and facilities. Renewal applications now inquire about third-party facility use, third-party facility policies and third-party facility agreements. Insurance policies are incorporating conditions for coverage:

- Requiring the third-party to implement effective child safety measures;
- Requiring the third-party to maintain a specific level of insurance coverage; and
- Requiring the third-party to have the church named as an additional insured.

Navigating third-party liability risk is another reason to work with the right insurance professional.

Programs for Registered Sex Offenders (RSOs) or 'known offenders'

Many churches have or are evaluating programs to assimilate known sex offenders. Given the risks associated with known offenders attending or participating in church activities, the insurance industry is adapting its processes and products. It is now common for an insurance application to inquire whether a church provides ministry services to known offenders, describing its policies and practices for doing so. Some insurance policies will simply omit coverage related to the risk stemming from known offenders; others will require conditions for coverage.

If a church has — or is considering — an RSO program or process for allowing the participation of known offenders, insurance coverage might be impacted: another reason to work with the right insurance professional.

SUMMARY

The attorneys at MinistrySafe have spent decades equipping churches and Christian ministries to understand, prevent and navigate sexual abuse risk. Sadly, churches lacking good instruction and guidance become case studies for the *next* sexual abuse crisis.

Excellent preventative resources (available at www.MinistrySafe.com) are the place to start, but ongoing relationships with informed insurance agents, brokers and carriers are imperative for churches navigating the changing landscape of sexual misconduct arising in ministry contexts. **CE**

Kimberlee Norris and Gregory Love are partners in the Fort Worth, Texas law firm of Love & Norris [www.lovenorris.com] and founders of MinistrySafe [www.MinistrySafe.com], providing child sexual abuse expertise to ministries worldwide. After representing victims of child sexual abuse for more than two decades, Love and Norris saw recurring, predictable patterns in predatory behavior. MinistrySafe grew out of their desire to place proactive tools into the hands of ministry professionals. Love and Norris teach the only graduate-level course on Preventing Sexual Abuse in Ministry Contexts as Visiting Faculty at Dallas Theological Seminary.

¹The 2022 Praesidium Annual Report