

# LOSS CONTROL BULLETIN

## *Equine Safety*

Hazards are conditions that create or increase the risk (chance) of injury to people, the horse and property. Controlling hazards reduces the likelihood of injury. Some hazards can easily be eliminated. Others are inherent and must be controlled with reasonable measures based on today's knowledge and technology.

Physical hazards, such as a frayed electrical wire, are easy to detect and correct (control). The hazards associated with horses, people and places are much more difficult to identify and control. Rules and procedures work best when people understand the purpose behind the rule.

As a horse owner or someone who has responsibility for horses, you should be familiar with the unique risks and exposures associated with them.

### *Consider the following in managing your risk:*

- The horse(s) you own or for which you are responsible (care, custody, control)
- The people who will be near the horse - employees, customers, others
- The location of the horse - where the interaction takes place
- The types of interaction between the horse and people
- Tack
- Facility
- Liability and waivers
- Negligence
- Written safety program

### *The Horse*

If you own, lease or board horses, you are responsible for knowing their propensities. If you board a horse with others or lease a horse to others, you have an obligation to inform them of known propensities.

Propensity is a tendency to engage in a specific behavior, such as biting or kicking. Propensity is specific to a horse, not a breed. Some states define a dangerous horse by "one free kick." After determining propensities, you must then act on them to warn, instruct and protect people who will be in contact with the horse.

Dangerous propensity is defined by state law and is the most severe risk, because you are held strictly liable. It also requires the highest standard of care. This is close to the wild animal standard.

Inherent risks are different than propensities and are defined in EAS/ELA statutes (discussed later).

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Hazard Assessment: Develop a written checklist of propensities for a boarder or seller to complete and sign before you accept the horse. Regularly update the propensities from observations and incidents reported to you. Incorporate this information into your care and control plan.

Develop a written incident reporting method for riders, employees and observers to collect information and incorporate it into your care and control plan.

## The People

Know your obligations (duties) to people you place with or near a horse.

- **Employees** – Develop a written training plan.
- **Contract Instructors** – Assess their skills, require certification and require written lesson plans.
- **Trainers, Groomers, Farriers, Veterinarians and Other Professionals** - Regularly review propensities and controls, plus their input, for your care and control plan.
- **Students** – Instruct from written lesson plans.
- **Riders** – Develop a written rider assessment method to be reviewed and signed by the rider. Include: approaching, handling, leading and turnout, tying, bridling, saddling, mounting and dismounting, warm up and riding. All riders must be evaluated for their skill level, ability to perform the activity and ability to safely manage a specific horse. That is, this horse, this day, on this ride, with this rider. Riders are not capable of self evaluation; they don't know what they don't know. The novice thinks he's intermediate long before actually demonstrating the intermediate skills. Unless you validate their alleged experience, it does not exist. Ring experience does not translate to trail experience.

Riders must learn tack inspection and fitting. Head protection should be required for all riders. All tack must be: 1) appropriate for the use, 2) regularly inspected and in good condition before each use and 3) properly fitted before each use. The best saddle poorly cinched is a poor saddle.

Use the written rider assessment method to match rider and horse.

You must inform the rider of the horse's propensities and specific precautions to take.

## **Other People**

There are two classes of other people: invited and trespassers.

Invited means they have permission to be on your premises. Invited may be guests, relatives, neighbors and bystanders. Children have no knowledge of horses unless proven otherwise. Adults must be assessed and cautioned. The best policy is to not allow people around a horse unless accompanied by staff.

Trespassers include innocent and intentional. An innocent trespasser is someone entering your property unintentionally. If your horse is near children, the fence must keep them out and the horse in. Intentional trespassing is someone entering your property with intent to do something. If there is a history of trespass without attempts to correct it, it can be viewed as invited.

At events, you will have spectators, participants, sponsors, officials and merchants. Anyone who must examine your horse must be informed of propensities. Handlers, people assisting loading and unloading, must also be informed and instructed.

People may observe a horse, approach a horse or attempt to enter a confined area such as a stall or fenced pasture. Post warnings and take measures to minimize this risk.

Crowds and other animals can affect the horse's behavior.

## The Location

Locations include owned land, leased land, public land, private land, event facilities, parades, highways, roads, streets, parks, trails, bridges, rivers, near construction, near loud machinery, trains, airplanes and ships. Transporting includes hazards from loading, traveling and unloading. Anticipate hazards with the location and develop an action plan.

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## The Facility

Shelters need to be designed, built and maintained to minimize animal injury. Fencing needs to be properly designed, installed, regularly inspected and maintained to contain horses. Fencing requirements are horse specific, not breed specific. Develop a written inspection form and adhere to planned inspections.

Fire Risk – Identify, manage and control known hazards, including: spontaneous ignition, lightning, faulty wiring, flammable gasses and liquids, open flames or heating devices and incompatible chemical storage (fuel oil and fertilizer).

## Liability and Waivers of Liability

Equine Liability Acts (ELA) or Equine Activity Statutes (EAS). Forty-four states have laws that limit equine owners' liability for inherent risks IF THEY WARN according to the law. One example is a horse being startled unintentionally from an external stimulus. Know the law to gain the protection.

Waivers of liability are contracts to limit your liability. The standards of enforceability are set by each state. Two sides to every contract are: plaintiff attorneys who declare any contract is breakable (unenforceable) and defense attorneys who declare the contract is unbreakable. Select an attorney who knows your operations and state equine law.

In regard to waivers for minors, one lawyer author points out that, unless your state has ruled to the contrary, 1) a child's signature is not enforceable. 2) parents signing a release can release their right to sue, not the child's 3) if only one parent signs the release, that signature is not binding on the other parent.

## Negligence

Negligence is a legal liability that exists when the party causing the accident/injury breaches a duty to the injured party. The duty may be "to warn," or it could require extensive assessment and instruction. State law and court decisions establish duties and reasonable standards to meet those duties. Frequently, they phrase it foreseeable, that you knew or should have known of the hazard and did not act accordingly. Negligence is not exempted under ELA/EAS.

Assumption of risk can be a defense, even for children, but you must make a compelling case you explained, they understood and then accepted the risk.

## Witness Chair

In any accident scenario, imagine yourself in the witness chair (expert witness or defendant) and how you would respond to charges of negligence. "What reasonable measures did you take to ..."; "How could my client have known..."; "What evidence do you offer that the tack was ...".

## Develop a continuously improving safety program

- Draft a policy statement
- Assign responsibility and accountability
- Your Operations
  - Develop policies, procedures and rules
  - Written emergency and first aid procedures for people
  - Written emergency and first aid procedures for horses
- Your Facility
  - Design, installation, maintenance, methods, procedures and rules
  - Written facility inspection form and plan
  - Hazard assessment, identification and control
- Your Horses
  - Screening, care and control plan, monitoring
  - Revision
- Students
  - Written lesson plans
- Public
  - Appropriate posted warnings and cautions

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## Reference

Take the time to develop your reference information when compiling a written plan. There are thousands of books and millions of websites, but scarce time to read. At one second per website, reviewing 3 million sites would take 21, 40-hour weeks. At one minute per website, it would take 25 years. A second may be enough time to rule a site out, but it is certainly not enough time to determine its validity for use in developing your written plans. Any random website or book is only a start.

This link (1 of 3 million), [www.horsemanshipsafety.com](http://www.horsemanshipsafety.com), is the American Association of Horsemanship Safety (AAHS) website. It contains links to horse law and safety articles written by Robert O. Dawson, Law Professor at the University of Texas Austin and Jan Dawson, JD, President AAHS. It has links to each state's equine law. This material should stimulate your thinking, help you assess your operations and prepare you to discuss issues with your lawyer.

Some print references to consider consulting include the following:

Clarke-Dawe, Esq., James, "Equine Liability: what every horse owner needs to know." Carriage House Publishing, Middleton, New Hampshire, 2003. The author summarizes 200 lawsuits in 49 states to emphasize major equine law issues. Even though an Alaska decision is not binding on New Jersey, the thinking behind the decision will work its way into the legal system.

Greene, Dr. Betsy & Jan Dawson, "Self-Guided Horse Facility Analysis". Available from AAHS.



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