



Superintendent Liability in the Face of Regulatory Compliance

By Charles Passios and Don Brethauer

EDITOR'S NOTE: Charlie Passios is a GCSAA director and the golf course superintendent at the Hyannisport Club. He was a speaker at the 1991 Wisconsin Golf Turf Symposium. Don Brethauer is GCSAA's government relations manager and spoke at the 1991 Wisconsin Turfgrass Association Winter Turf Conference.

It probably does not take a turfgrass graduate long to realize that golf course superintendents sometimes find themselves in precarious situations. We spend our time trying to balance the conditions Mother Nature provides against the kind of golf course conditions that are considered acceptable by the players and governing boards. Environmental concerns and restrictions add more and more paperwork, legwork and training requirements to our basket, which already runneth over with responsibilities. We juggle all of these demands, and more.

An unspoken jeopardy that superintendents face every day is the threat of personal liability. This liability can originate from any management act for which a superintendent could be judged negligent—anything from instructing an employee to apply a pesticide in a manner inconsistent with label directions, to not training employees properly the hazards of the workplace.

Recognition of personal liability for superintendents points out the importance of a couple of things: (1) the adherence to and compliance with governmental regulations, and (2) the need for golf course owners, governing boards and management to understand why compliance is important.

The superintendent is responsible for complying fully with the regulations, but may be put in the situation where he/she lacks the tools or resources to do so. For example: In Massachusetts, golf courses are required to post notification of chemical applications. Suppose, however, that a club's management or board of directors instructs the superintendent not to post—in order

not to alarm the membership, or for whatever reason. The superintendent follows the employer's wishes, instead of the law. The superintendent and the club could both be held liable, civilly and/or criminally.

In most lawsuits, more than one party will be named as defendants. Generally, those defendants who have the capacity to pay for judgments and court costs are the ones who bear the financial burden of a legal decision. However, an employee may still be personally responsible for the legal fees associated with a lawsuit—unless insurance and/or an indemnity clause provides legal coverage.

Insurance policies held by the course or club generally include coverage for employees' legal costs. The language for such coverage usually is included in the definition section of the insurance policy. The policy limits coverage and the kinds of acts that are insured. For example, many insurance policies issued to golf courses do not include coverage for incidents arising from chemical applications and few, if any, cover wrongful acts deemed to be willful, intentional or malicious in nature.

Some contracts for golf course superintendents include indemnity clauses. An indemnity clause does not relieve the superintendent of responsibility, but it can cover most of the costs of a lawsuit, including court costs, legal fees and judgments for acts of negligence. However, most indemnity clauses have monetary limits associated with them. These limits usually range from \$100,000 to 250,000. In addition, indemnity clause language does not cover wrongful acts that are deemed to be willful, intentional or malicious.

Indemnity clauses kick in either after the insurance coverage has been exhausted or in cases where the insurance does not cover specific acts for which the superintendent has been found to be negligent in his/her actions.

If you want answers to specific legal questions, contact your club's or your personal lawyer. Do not rely on advice

from an individual who is not a lawyer. You should also ask a lawyer to review your contract and the insurance policy of the club or course so you know exactly what kind of coverage you have. It is also important that you fully comply with government regulations because of potential legal consequences.

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