

INCIDENT AFTERMATH INFORMATION

2022/2023

INCIDENT AFTERMATH: WHAT TO DO AND WHAT NOT TO DO

Every divemaster and instructor knows that if they are present at the scene of a dive accident, they may be exposed to financial liability or, at a minimum, involvement in a lawsuit — just for being there. Whether you're training or supervising as a dive professional or you're just out on a recreational dive, once an accident happens, you're involved.

WHAT TO DO (OVERVIEW)

1. Assess the seriousness of the situation and render first aid as appropriate.
2. Contact and assist emergency medical services and law enforcement.
3. Record the name and contact information of every person present when the accident occurred.
4. Notify all relevant parties. See NOTIFICATION below.
5. Secure all dive gear and any other physical evidence exactly as it is.
6. As soon as you are able, write down your recollection of the events leading up to, during and immediately following the accident.

NOTIFICATION

Report any accident or incident involving people you are training, supervising or diving with for pleasure to the following:

- Your employer
- The injured party's family
- Your certification agency
- Your liability insurance carrier and any other insurance carrier through which coverage may be available (auto, property, marine, etc.)
- Others (dive site owner, rental gear provider, etc.)

Be sure to comply with the notice requirements of your professional liability policy. If your coverage is with DAN RRG, the DAN RRG policy provides as follows:

1. The insured shall immediately give written notice to the Underwriter of any claim made against the insured, including but not limited to, any verbal demand or written demand, notice, summons or other process received by the insured or his or her representative.
2. The insured must notify the Underwriter as soon as practicable of any event (incident) likely to give rise to a claim hereunder, or of the receipt from any person

of a verbal or written statement of an intention to hold the insured responsible for an event (incident). If an event (incident) involves a fatality or serious bodily injury, immediate notice (within 24 hours) should be given to the Underwriter.

PHYSICAL EVIDENCE

Collect, catalog, and safeguard all dive equipment and other physical evidence as is. Do not tamper with or disassemble dive gear unless directed by a person with appropriate authority (law enforcement), and do not release the equipment to anyone other than law enforcement. If the equipment is released to law enforcement, make sure you know how you will be able to locate it in the future. Provide this information and your list of physical evidence to DAN RRG.

Physical evidence includes the original waiver and release forms completed by the injured person. Photocopies should be provided to DAN RRG.

DOCUMENTATION

Contemporaneous notes including observers' statements are important because it can be difficult to recall many details later on. Include in your notes anything unusual or relevant about the state of the injured person's scuba equipment. The existence of any such notes should be disclosed only to the liability insurance company and its attorney. This measure will greatly assist the investigation and potential defense in the event of a claim.

LEGAL PROTECTION OF COMMUNICATIONS

The members of the DAN RRG Incident Response Team are all licensed attorneys. Information provided to the team will be protected by attorney-client privilege.

DAN RRG's incident response team (IRT) includes the DAN RRG general counsel, the director of claims operations for DAN Services, and outside investigators and attorneys.

WHAT NOT TO DO (OVERVIEW)

1. Do not speculate or provide your opinion on the incident
2. Do not speak with anyone until you consult and attorney
3. Do not tamper with or disassemble dive gear unless directed by law enforcement

DON'T SPECULATE ON THE FACTS

Do not speculate about or volunteer to anyone an opinion as to why the accident occurred or what led to the injury or death. Limit your statements to the facts as you know them. Do not make conjectures, and do not attempt to assign blame on anyone. Do not say, "It's all my fault," or words to that effect. Even if you have feelings of guilt, do not discuss them with others.

DON'T DELAY SPEAKING TO AN ATTORNEY

Do not discuss the incident with anyone (other dive professionals, people at the scene, friends, family, etc.) until you have spoken with an attorney. Remember that anything you say can be repeated and used in a legal proceedings against you. If you discuss the incident with anyone, these individuals may be called as witnesses.

Your interest in minimizing adverse legal consequences in the wake of an accident need not be viewed as unfeeling or selfish. Ultimately the issue of fault revolves around the events leading up to the accident and the instructor's conduct in the context of these events. An instructor should not risk inadvertently doing anything after the accident that could lead to interpretation of wrongdoing by the instructor.

These measures of self-protection are exercised in all business activities, and, in this context, scuba instruction is no different. Further, these realistic concerns need not be incompatible with any sincere feelings of concern, support and comfort that may need to be heard by the family of the injured person.

DON'T TAMPER WITH OR DISSASSEMBLE DIVE GEAR

Place the dive gear in a secure area in exactly the same condition it was in when removed from the injured diver. Do not close the value or do anything else that would change the condition of the gear at the time of the incident.

WHEN DOES AN INCIDENT BECOME A CLAIM?

It is important to understand exactly what a claim is. A claim can be an oral or written notice to the instructor or their insurance company alleging the instructor's responsibility for injury to a diver and claiming monetary damages.

A claim can consist of a letter from a lawyer or the service of legal papers showing that a lawsuit has been filed. Although the instructor is required to notify the insurance company of a student injury, this notification is not technically considered a claim.

For practical purposes, however, the insurance company may consider a claim to be in effect if it is determined that an occurrence justifies further investigation.

SUBMITTING REPORTS TO DAN RRG

All DAN RRG insureds are required to report an accident or incident via one of the following means:

Phone DAN RRG Incident Response Hotline:
+1 919-682-9111

Fax +1 (919) 490-2935

Email LiabilityClaims@DAN.org

If you have any questions about reporting an accident or incident to DAN RRG, or if you have knowledge of an accident or incident at which you were present, call +1 (800) 446-2671 (toll free in the U.S.) or +1 (919) 684-2948 (if outside the U.S.), 8:30 a.m. – 5:00 p.m. ET.