

# Communicating and Information Exchange in Recreational Products – WRMC 2011

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# Scope

External: Marketing, applications, medical, Student Agreement, contracts.

Internal: Logs, incident report, crisis PR, policies and practices, rules

# Use the right word(s).

- There is a word for what you intend to say. Use it.
- Your adversary will put the worst possible spin on it. (“Safe: free from risk of harm”, for example)
- So get it right!

# Why words matter:

- Fairness
- Legal liability implications
- Misrepresentations can void your agreement

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# Concerns with Various Types of Documents/Communication

- Marketing
- Describing risks and/or activity
- Participant/program responsibilities
- Medical forms
- Policies/procedures
- Incident reports and log entries
- Contracts

# Marketing

- You can sell and inform . Can you support what you claim?
- You are entitled to (some) puffing.
- Understand your audience – their knowledge, expectations, etc

# Describing activities and risks

Anticipate the audience's level of understanding and expectations re environment, supervision, medical support, unfamiliar laws, etc.

Reduce the surprises.

If the participant might die, say so!

# Responsibilities

- Explain what you cannot (or will not) be responsible for.
- Will you use subcontractors?
- Will there be unsupervised shore activities? Will staff participate?
- Medical care?

# Med forms

- Consult an expert to determine what medical info you need (CASAD+).
- Avoid unnecessary intrusiveness.
- Be specific re meds policy.
- Get consent to treat & exchange info.
- Be clear re limits of response capability.

# “Policies”

- Be clear re zero tolerance matters.
- Avoid confusion among “should”, “must”, “are expected to”, “always”, “our practice/policy is to”, etc.:
- Leave room for judgment!

# Log entries/Incident Reports

Do you want facts only? (The cause of/factors contributing to the incident?)

Put entries in context.

Anticipate further information and amendment.

Edit.

# Contracts

- Clarity, always (this is not a contest)
- In service contracts clearly allocate responsibilities, and back them up with indemnities and back up the indemnities with insurance.



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# Some tips:

- Tell the truth (the whole truth?).
- Anticipate what the audience needs to know.
- Images speak louder than words.
- Sell and inform.
- Use language suitable for the reader

# More tips:

- Watch your style, grammar and tone.
- Don't use the "S" word. ("D" word?)
- Be cautious of superlatives ("best", "most", etc)
- Don't assure, ensure (or insure), or guarantee unless to can perform.

# More tips:

- Avoid ambiguity (“it will be exciting and safe”)
- Avoid hyperbole (“Our safety record is unmatched”)
- Read and re-read your material with the eye and ear of your intended audience.

# Program Safety

- When individuals are injured while participating in recreation or sport activities and negligence is alleged, most complaints will include allegations regarding supervision or warning.
- Your duty to “inform” clients can be likened to the duty to supervise, instruct and warn.
- Supervision/warnings should be predicated on the age, skill, experience, judgment and physical condition of participants and the activity involved.

# Disclosure and Screening

- Focusing on “disclosure” will usually create a screening or informing type of communication flow.
- Think of creating an “information flow” between you, the operator, and your client/guest.
- Information exchange allows: 1) client/participants to make informed choices about whether and how they would like to participate in the activity; and 2) operators to make decisions about their participant/guests and their needs (e.g. – equipment, groupings, medical, ADA...)

# Ways to Impart Information:

- Brochures, catalogs, course descriptions
- Internet
- Trip application/registration forms
- Waiver/release documents
- Medical forms
- Telephone contact
- Pre-trip questionnaires and safety talks
- Media
- Travel agents or other promotional groups with correct info.

# Types of Information Imparted

- Provider to Participant: activities, unique elements, inherent or other risks, known and unknown risks, potential for accidents or injuries, abilities/limitations of guides, evac/emergency procedures, trip difficulty, weather, skills or conditioning, provider's goal or mission, what provider is NOT, participant's responsibilities
- Participant to Provider: physical abilities, experience, disabilities, limitations, medications, fears/concerns, expectations, attitudes towards adventure, values and personal needs

# “Risk Shifting” or “Assumption of Risk”

- When an organization takes the time to inform potential customers about what they can expect, what challenges and risks they are likely to face, and what minimum skill and fitness levels are required for each activity, it does two important things: 1) it increases the odds there will be a good fit between customer and activity and 2) it reduces the number of under prepared and unqualified people who end up in the field.
- Educating people so they can make their own knowledgeable decisions regarding participation is known as informed consent and provides a defense to negligence oriented claims.

# Legal Words

- Examples:
  - Dangerous Condition
  - Safe
  - Risk
  - Breach
  - Negligent

# “SAFE”

- What does “safe” mean
- Don’t make promises that you cannot keep
- You cannot ensure safety
- There are no assurances of safety
- Avoid absolute words like “safe”

# ASK YOURSELF THIS QUESTION....

- What will this sound like when you are on the witness stand at trial telling this story or repeating what you said?

# If a Lawsuit is Filed – Discovery Standard

- Everything is discoverable!!
- Everything that is relevant is admissible at trial (admissibility determined by judge)
- Everything that is reasonably calculated to lead to the discovery of admissible evidence must be produced in discovery

# What Documents are Evidence

- Broken piece of equipment
- Photographs
- Diagrams
- Maps
- Trip Logs
- Field Resource Guide/Manual

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# Field Guide for Staff

- Be sure that staff follows procedures to the letter, because when in trial a plaintiff's attorney will hold them to it.
- How will you as program director of field staff explain it to a jury if staff did not follow your own procedures.

# Staff Manual

- Policies and Procedures
- Follow industry standards/practices
- Comply with accreditation
- Do your field staff follow your own practices
- Are you going to have to explain to a jury why your staff did follow your own practices set forth in the staff manual

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- Incident Report
- Witness Statements
- Witness Interviews Policy and Procedures
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# Witness Statements

- Have each and every possible witness prepare a written statement:
- List all witnesses (names, addresses, and telephone numbers.)
- Describe location of witness
- Describe what saw or heard
- List all details (weather and surroundings)
- **SPELLING IS IMPORTANT!**

# Choose your words carefully

- What happened?
- Where it happened?
- When it happened?
- Who was involved?
- Background on program?

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# ASK YOURSELF...

- How will documents, field notes, witness statements look as a trial exhibits
- How will this look blown up on a 10X10 screen in front of a jury.

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# Analyze this Sample from a Website Message:

“Our program has been conducting adventure-based and outdoor learning experiences for schools, adult groups, and other organizations for over 30 years, and holds an excellent safety record. Over 80,000 participants have safely and successfully experienced our premium-quality education programs.”

# Sample B to analyze

“We are proud of our attention to safety and to the sustained achievements in program safety. Our accident prevention infrastructure ensures that each participant benefits from our extensive risk management systems and that our program offers thoughtfully developed experiential programs that minimize risk and maximize educational impact and value.”

# Sample C to analyze

“Our programs enjoy specific staff-to-participant ratios. Wilderness programs have multiple staff with each group to help ensure safety, a policy that leads the industry in safety management. Participants receive safety briefings as a regular part of the program.”

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