Legal Issues 101: The Basics You Need to Know
Agenda

- Medical screening
- Marketing materials
- Liability releases
- Insurance
- Indemnity
- Serious incidents
- Controversial policies
Medical Screening
Medical Screening

- Why are you collecting data?
  - For use in an emergency?
  - To do medical screening?
Medical Screening

- Who decides if the participant can come?
  - Participant
  - Participant’s doctor (require form?)
  - Your organization
  - All three

- My advice
  - Keep info confidential
Medical Screening

- Complying with the ADA
  - Ask only necessary questions
  - Do individual assessment
  - Avoid categorical denials
Medical Screening

- Complying with the ADA
  - Determine if you can make reasonable accommodations
    - Can be a hardship
      - Not an undue hardship
  - Not required to fundamentally alter the essential elements
Marketing materials
Marketing materials

Can be the subject of claims for:

- Fraud
- Breach of contract
- Unfair and deceptive trade practices
Marketing materials

Don’t say:

- You run a “safe” program
- “Safety is our highest priority.”
- Your instructors are the “most qualified” or “best trained”
Liability release forms
Liability release form

- List activities and risks of your program
- Limitations by federal land managers
  - National Park Service
  - Forest Service
- Pay attention to font size and headers
Liability release form

- After you collect the form:
  - Check for changes by participants
  - Save for the proper statute of limitations
  - Special consideration for minors
Insurance
Insurance

- Certificate of Insurance (COI)
  vs
- Additional Insured (AI)

- When should you GIVE it?
- When should you GET it?
Insurance

- Notice requirements
  - Triggering event
  - How quickly need to report
Indemnity
Indemnity

- When to GIVE it
- When to GET it

- Confirm insurance will cover it
- Limit to amount of your insurance
Serious Incidents
Serious Incidents

- Collect evidence
  - Don’t change
  - Don’t throw things away
  - Describe changing characteristics (wet/cold/smells)
- Keep separate
- Limit access
Serious Incidents

- Collect witness statements: 2 options
  - Have write out what saw and heard
  - Interview
    - Have sign statement
- Statements from staff
Serious Incidents

- Sharing information with public entities
  - Federal, state, or local land managers

- Might be available to public through FOIA
Discoverability
Discoverability

- Discoverable if:
  - Created in the ordinary course of business
  - Includes oral statements

- To protect:
  - Use attorney/client privilege
  - Must be for purpose of soliciting advice
    - Sending a copy is not sufficient
Controversial policies
Controversial policies

- Sleeping arrangements
- Level of supervision
  - Solo or independent travel
- Amount and kind of food
- Limits on communication devices in the field
- Remote location
  - Distance from emergency medical care
- Behavioral expectations and expulsion policy
How to find help
How to find help

► Look for:
  ► An attorney who understands your program
  ► An attorney in the state(s) where you operate
  ► Attorneys who serve similar organizations
  ► Attorneys who come to WRMC or other conferences
  ► Ask for referral
Take Home Action Steps

- Pick the three most important issues from above.
- Chart out how to address those items and who will do the work.
- Set a timeline for completing those tasks in the next 6-12 months.
Questions?

Frances Mock
14 West Haven Place
Durham, NC  27705
Frances@FrancesMock.com
919-382-9090