

WHAT DOES

THE LAW

REQUIRE OF

ME?

How to Determine

Your Legal Duties

13 EMTS, 2 Broken

Pelvises, 1 Lawyer

WHERE CAN I FIND

THE LAW?

- Constitutions
- Statutes
- Regulations
- Ordinances
- “Common Law”: court decisions
- Federal, state, county, municipal

WHOSE LAND AM I ON?

Federal

- National Park (NPS/DOI)
- National Forest/Grasslands (USFS/DOA)
- National Wildlife Refuge (USFWS/DOI)
- BLM/DOI
- DOD

State

County

WHAT DOES THE LAW REQUIRE?

NEGLIGENCE

- Duty
- Breach
- Causation
- Damages

DUTY

A) Reasonableness Standard

- Duty owed when “reasonably foreseeable that the failure to act will create an unreasonable risk of harm to another.”
Scott v. Matlack, Inc., 39 P. 3d 1160 (Colo. 2002)
- Reasonable people follow the law. *Lombard v. Colorado Outdoor Educ. Center*, 187 P. 3d 565 (Colo. 2008)

B) Negligence Per Se

- Written law defines duty
- Violate law “conclusively establishes” violate duty; *Scott v. Matlack, Inc.*, 39 P. 3d 1160 (Colo. 2002)
- Violate federal statutes/regulations = negligence per se under state law; *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 US 308 (U.S. 2005)

Example 1: Campsite programs & adventure activities (§ 22VAC40-151-1020)

- *Policies*
 - Hiring & training
 - Staff-camper ratios
 - Equipment inspections
 - Rescue procedures
- Designated trip coordinator
 - Certified in wilderness first aid
 - Post-trip debriefing within 72 hours
 - Updated procedures & policies
- *Field trips folder:*
 - Medical info
 - Maps
 - Logs
- *Swimming*
 - Classifications
 - Lifesaving gear
- *Housing*
 - Mattress covers, screen
 - Protection from flies and mosquitoes
- *Footwear*
 - “Sturdy, water-resistant, outdoor footwear shall be provided for each resident”

Example 2:

Rock Climbing and Ropes Courses (12 CCR 2509-8-7.719.61)

- *Training/First Aid*
 - Supervisor “certification or documented experience” in variety of skills plus coursework
 - Always 1 staff with Red Cross standard first aid or equivalent
 - First aid kit geared towards climbing injuries
- *Equipment*
 - Must meet industry standards
 - Visually and physically inspected
 - Timely replace
- *Advanced requirements*
 - multi-pitching
 - when over 1 hour from definitive care
- *Instructor-Child Ratio*
 - 6 children= 1 instructors;
 - 13 children= 2 instructors

Example 3: Duties of skiers (C.R.S. § 33-44-109)

- Ski within limits of your ability
- Maintain control of speed and course, keep proper lookout
- Duty to avoid people below you
- Avoid vehicles, lift towers, signs, equipments
- When stopped or entering trail from side must yield to moving skiers
- Do not leave scene of accident unless to get help
- Presumed to read and understand properly posted info
- In bad visibility your responsibility to find signs

Example 4: Local Codes

Lombard v. Colorado Outdoor Educ. Center, 187 P. 3d 565 (Colo. 2008)

- FACTS: Teacher attended overnight conference at outdoor recreation center. Slept in apartment that had second floor loft reached via ladder. Slipped coming down ladder and was injured. 17 years, hundreds of guests, and no other incidents. County building code required access only by staircase; ladder violated code. Apartment had repeatedly been inspected and given certificates of occupancy.
- CLAIM: Premises liability: unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known
- OUTCOME
 - Violation of statute or ordinance= failure to exercise reasonable care
 - Violation of building code= knew/should have known because in effect at time of construction and owner was general contractor

ACTION STEPS

Ask An Attorney

- 1) What laws apply to me?
 - Federal, state, county, municipal
 - Constitutions, statutes, regulations, ordinances
- 2) How can I know about changes to these laws?
- 3) Will my program changes affect my legal duties?
- 4) Any new cases?

Be Proactive

- 1) What steps are the rest of the industry taking?
- 2) Staff training
 - Internal
 - External Certifications
- 3) Keep staff up to date
- 4) Assess errors and near misses; constant improvement