

Working with Minors Legal Issues

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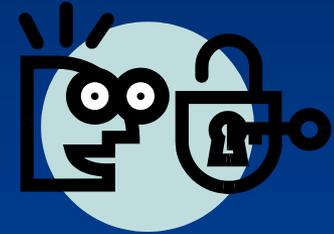
8:30 – 10 a.m.

This presentation

This presentation contains general information and is not intended to provide specific legal advice. Organizations should consult with appropriate legal counsel, regarding matters specific to their business and aware of the laws in their jurisdiction.

Focus – Why are we here

➤ Endeavor to run a Quality Program!



➤ Choosing to responsibly manage risks rather than just avoid lawsuits



Perspective - WRMC

- Risk management – *not risk elimination*
- Goal: responsibly managing risks (wwwh)
considering risk of loss to participant and to operation



Minors – Some issues

- Helicopter parents
- The new “kid”
- Marketing tension – what parents want vs...
- The triangle: OPC – recognize and address
- Information Exchange is key
- Minors (and parents): personal responsibility
- Divorced parents – ***Authority of enrolling parent/
semester program**

Minors – Other Issues

- Supervision d/n = assuring safety
- Age = changing standard of care **Nowlin**
- Instruction – freedom to teach/learn **Kahn**
- Free and unstructured time – articulate
- Minor - LIT, apprentice et al.

Minors – other issues

➤ **Sexual abuse** – is this Wilderness ‘Risk Management’?

- 1995 Co-ed tenting Mock Trial to current –
- What organizations are we talking about?
- Points on the map? Changing laws, standards

➤ **Medications and Conditions**

- Information collection – warning ‘street value’
- Securing medications – “open air drug emporium”

Minors and Law

What 'law' are we talking about?

- Civil and Criminal Law
- Case Law ('common' law)
- Statutes & regulations, e.g.:
 - ✧ Children's Online PPA
 - ✧ Child care licensing laws
 - ✧ Sexual Abuse reporting laws



Civil Law

Focus Torts - Negligence



- Most common ‘legal’ measuring stick (standard of care):

That degree of care that a reasonably prudent person would exercise in the same or similar circumstances (Reasonable care)

Negligence

Duty of Care

The standard of care forms the basis for the duty owed in a negligence claim:

The duty to exercise reasonable care to protect others from unreasonable risks of harm.

“Tort” of Negligence

Elements:

- Duty (Judge)
- Breach (Fact-finder)
- Proximate cause
- Damages



There must be all 4 elements!

Duty - Minors

Is there always a duty? No, but...

Providing services + custodial relationship, duties arise...

Common claims:

Negligent hiring, screening, selection of staff

Negligent supervision

Failure to instruct or warn participants

Duty - Minors

In Loco Parentis

- What is it?
- History - a shield, not a sword
- Highest duty?
- Reality – most courts

What in loco ISN'T (e.g. signing for the parent)

Church rafting case

Negligence: Duty/Breach

- A variety of factors can *create, eliminate or influence* the duty
- These factors impact the basis for a negligence claim and any defenses to a claim

Factors – Duty/Breach

- Control or oversight
- Nature of relationship: minors = custodial
- Foreseeability (but not always)
- State or federal laws and case law
- Standards and practices
- Gratuitous undertaking

Factors – Duty/Breach

- Your internal policies (oral or written)*
- Staff words or conduct*
- Representations in your external materials*
- Your contracts* Information exchange
- Known problem that isn't fixed
- After program contacts *Camp Sunshine

Minors: Defenses to a Negligence Claim

- Absence of any element, (including) no duty or eliminating the duty
 - Inherent Risk doctrine (PAR)
 - Parent for Minor Release of Liability (in larger agreement containing description of activities, risks and AAR, among other important provisions) **Eriksson, Kelly**
 - Limited immunity (govt, coach, volunteer) or reduced duty (RUA)

Minors: Defenses to a Negligence Claim

- Reduce or eliminate ultimate liability
 - Comparative Fault laws: a minor's contributory negligence
 - Secondary Assumption of Risks (age is a factor)

Examples

- **Coyler v. Methodist Church**, MISS – Costa Rica, 17 yr. old, unplanned activity, death – Duty? Breach?
- **Chavez v. City of SF Springs**, CA – 16 year old fall from waterfall, mixed supervision message, inherent risks/secondary assumption of risks ‘tension’, judge ‘disagreement’ on supervision/responsibility

Examples

- **Munn v. Hotchkiss** CT – 15 yr. old, school trip to China. Jury verdict \$41.5 million: school negligent in: 1) failure to warn of the risk of serious insect borne illness and 2) to “ensure” that she took protective measures.
- **10 year old CO camper**, night time supervision; allegation of abuse and **2 13 yr. old US school students** – international trip – night time incident.
- **Amoako v. Methodist Church**, Ohio – Church retreat, turning 18, ‘no hazing or initiation behaviors or ‘pranks’, free time before lunch, the ‘choking game’ – Duty? Breach? Foreseeable?

Duty/Breach potential

- Where is duty/breach potential?
- Where does your program manage risks?

Two Silos



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