

Legal Issues 101: The Basics You Need to Know

WRMC 2018
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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?

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