

Concussions

What Camps Can Learn from the Zachery Lystedt Law



According to the Centers for Disease Control and Prevention (CDC), concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. Their data estimates that as many as 3,900,000 sports-related and recreation-related concussions occur in the United States each year.¹ At the same time, the effects of concussions on National Football League (NFL) pro football players have received much press this season. In just one weekend this past December, Green Bay Packers quarterback, Aaron Rodgers; Pittsburgh Steelers tight end, Heath Miller; Arizona Cardinals quarterback, Derek Anderson; and Indianapolis Colts wide receiver, Austin Collie were all in the news after being sidelined due to concussions. According to NFL data obtained by the Associated Press, the number of concussions being reported this season is up more than 20 percent from 2009, and more than 30 percent from 2008.²

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“ . . . He was seated in his wheelchair with his father by his side. He looked me straight in the eye and very slowly and deliberately said, ‘The reason I’m here is to help people.’ ”

What Is a Concussion?

A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. A concussion is a mild form of traumatic brain injury. The risk of catastrophic injuries or death can be significant especially in youth athletes when a concussion or head injury is not properly evaluated or managed.

Who Is Zackery Lystedt and Why Is a Law Named for Him?

Zackery is a young athlete from the state of Washington. Three years ago, while playing football for his middle-school team, Zack’s head hit the ground late in the first half of a game. He grabbed his helmet in obvious pain as he struggled to get up. He made it to the sideline, sat out for about fifteen minutes, and then went back in the game after half time. Zack continued to have symptoms from his first blow, and took other blows to his head in the second half of the game. On the last play of the game, Zack was involved in another tackle, this time forcing a fumble on the goal line to save the game. Zack collapsed in his father’s arms when the game ended, suffering a life-threatening brain hemorrhage that resulted in the removal of both sides of his cranium. He was in and out of a coma for almost three months. In the three years since Zackery was injured, his family’s focus has been two-fold: helping Zack heal, and preventing others from suffering a similar fate. Their goal has been to encourage states to enact laws requiring that athletes under the age of eighteen who are suspected of having sustained a concussion are removed from practice or a game — and not allowed to return until they have obtained a written return-to-play authorization from a medical professional trained in the diagnosis and management of concussions.

Zack’s family sought out experts and advocates in Washington state to assist with their mission. One key supporter they recruited was Stanley A. Herring, MD. Dr. Herring is a team physician for the Seattle Seahawks and Seattle Mariners, and is co-medical director of the Seattle Sports Concussion Program. Further, he serves as a member of the NFL’s Head, Neck and Spine Medical Committee. Dr. Herring recalls the first time he met Zack: “. . . He was seated in his wheelchair with his father by his side. He looked me straight in the eye and very slowly and deliberately said, ‘The reason I’m here is to help people.’ Perhaps because he couldn’t speak for nine months, or because he almost lost his life and has had to work so hard to regain any sense of normalcy, I knew how incredible that statement was, coming from him. He

doesn’t mince words, and everyone is a friend. He’s had choices along the way — anger or contentment, depression or acceptance, bitterness [or] peace. Each choice, each fork in the road, has made him who he is today: the driven, witty, fabulous seventeen-year-old young man who, along with his family, is changing the face of youth sports today.”³

Through their efforts, and under the leadership of attorney Richard Adler, then-president of the Brain Injury Association of Washington, and others, Washington state adopted the Zackery Lystedt Law, which became effective in July 2009. Athletes under the age of eighteen who are suspected of having sustained a concussion are removed from practice or a game — and are not allowed to return — until they have obtained a written return-to-play authorization from a medical professional trained in the diagnosis and management of concussions. The law also stipulates that parents and athletes must read and sign a head injury information sheet annually. School districts are required to work with the Washington Interscholastic Activities Association to develop guidelines for safe play, and private nonprofit youth leagues must comply as well. (Visit www.tbiwashington.org/tbi_wa/bill1824.shtml for more information about the Lystedt Law.) View the CBS video of Zackery’s story at www.cbsnews.com/video/watch/?id=5014944n&tag=api.

A Coalition to Advocate for Zackery Lystedt Laws in Every State

In 2009, The American College of Sports Medicine (ACSM), the world’s largest sports science and medicine professional organization, demonstrated their commitment to sports and recreation safety by issuing a national call to action for Lystedt Laws to be passed in every state and the District of Columbia. The NFL has joined in these advocacy efforts. In October 2010, NFL Commissioner Goodell spoke at the “Keep Youth Sports Safe” conference at the Seattle Seahawks’ offices. At the conference, Commissioner Goodell met Zack Lystedt and his family and committed that the league will continue to support promotion and adoption of the Lystedt Law until all fifty states pass Zackery’s law, or take action to keep youth sports safe from the risks of concussion. Watch a video of the commissioner’s speech at: www.nflhealthandsafety.com/media/videos/#promoting-safety-in-youth-sports. Read the commissioner’s letter to state governors at: www.nflhealthandsafety.com/pdf/NJGovernorLetterRG-508.pdf.

“ . . . since Zackery was injured, his family’s focus has been two-fold: helping Zack heal, and preventing others from suffering a similar fate. ”

Progress in Other States

As of October 2010, eight other states have adopted laws similar to the Zackery Lystedt Law — Oregon, New Jersey, New Mexico, Connecticut, Oklahoma, Virginia, Massachusetts, and Rhode Island. In many other states, active coalitions are advocating to enact similar legislation.

Application to the Camp Community

While camp programs are generally not held to the requirements of these state concussion laws (unless they conduct a youth sports program, such as a soccer or football camp), the practices and safety measures contained within them are still important to consider.

The American Camp Association's (ACA's) Healthy Camp Study Impact Report 2011, indicated that 23.6 percent of injuries to campers and 18.5 percent of injuries to staff were in the head/face/neck region of the body.⁴ Prevention of head injuries is such a critical issue that ACA standards for accredited camps require helmets to be worn for all participants participating in:

- Activities involving any kind of motorized vehicle
- Activities involving boarding, in-line skating, and hockey
- Adventure/challenge activities that involve rock climbing, rappelling, spelunking, high ropes (including zip lines), or vertical climbing walls/towers
- All horseback riding activities, including pony rides
- Bicycling

Prevention, however, is just the first step. It is important that your camp health care and medical staff:

- Understand how to recognize and evaluate a camper with a concussion
- Understand how to manage and treat a camper with a concussion (in partnership with parents)
- Develop policies and procedures regarding when a camper can return to camp activities

Resources

The NFL, the CDC, and a number of other organizations have partnered to create concussion awareness, prevention, and return-to-play materials for youth sports organizations. While not specific to the camp community, their recommendations can assist your camp in creating a culture where head injuries are minimized; where accidents involving head injuries are evaluated and handled by professionals trained in the diagnosis and management of concussions; and return-to-activity decisions are made by those medical professionals in partnership with parents.

For more information and resources regarding this issue:

CDC

- Concussion data, Information, and Overview: <http://www.cdc.gov/concussion>
- Learn to Prevent and Recognize Concussions: <http://www.cdc.gov/Features/Concussion/>
- *Heads Up — Concussions in Youth Sports* Toolkit: <http://www.cdc.gov/concussion/HeadsUp/youth.html>
This resource includes:
 - Fact sheet for coaches (useful for camp staff)
 - Fact sheet for athletes (useful for campers)
 - Fact sheet for parents
- Toolkit on Concussions for Team Physicians: http://www.cdc.gov/concussion/HeadsUp/physicians_tool_kit.html (useful for camp doctors and medical staff)

ACSM

- *Team Physician Consensus Statement: Concussion (Mild Traumatic Brain Injury) and the Team Physician*: http://www.acsm.org/AM/Template.cfm?Section=Search&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=12896&SECTION=Annual_Meeting
- This resource is a consensus statement of ACSM, the American Academy of Family Physicians, the American Academy of Orthopaedic Surgeons, the American Medical Society for Sports Medicine, the American Orthopaedic Society for Sports Medicine, and the American Osteopathic Academy of Sports Medicine.

American Academy of Pediatrics (AAP)

- *AAP Policy — Sport-Related Concussion in Children and Adolescents*: <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;126/3/597>

Notes

¹Centers for Disease Control and Prevention. (2008). Heads up: Concussion in youth sports. Retrieved from www.cdc.gov/concussion/pdf/Heads_Up_Activity_Report_Final-a.pdf

²Waszak, Jr., D., Lage, L., Booth, T., Dubow, J., and Jenkins, C. (2010, Dec. 13). NFL concussion reports up this season. Associated Press.

³SportsConcussions.org (2010). WA state's inspiration for a comprehensive concussion law. Retrieved from www.sportsconcussions.org

⁴American Camp Association. (2011). The healthy camps study impact report.

ACA wishes to thank Dr. Stanley A. Herring for his assistance in the development of this article. Dr. Herring is a team physician for the Seattle Seahawks and Seattle Mariners, and is co-medical director of the Seattle Sports Concussion Program. Further, he serves as a member of the NFL's Head, Neck and Spine Medical Committee. He was instrumental in the adoption of the Zackery Lystedt Law in the state of Washington.

Preparing for the 2011 Summer Season

An Interview with Robert Monaghan of Hibbs Hallmark Insurance Agency, an ACA Business Affiliate

Q: Summer will be here before you know it and new activities are emerging at camp, such as “barn swinging” or “slack lining.”* While these activities might be “fresh” and exciting programming options, what are the insurance implications of offering such activities, and what are some of the things a camp needs to consider before adding these kinds of activities?

A: With any new camp activity, you need to consider insurance implications. In fact, in most *all* situations when a camp applies for insurance, they are required to fill out a very detailed application that asks about all of their activities, programs, buildings, etc.

Introducing emerging activities raises questions about safety for insurance companies. Who will be supervising the activity? How will the supervisor be trained? How will the camp maintain the integrity of the equipment used? How will the camp ensure the equipment is only used under appropriate circumstances (under supervision and in the locations for which it is designated)? Basically, what are the operating procedures for the new activity?

Often when insurance companies are unaware of what exactly a new activity will entail, they “Google” it and/or search for it on “YouTube.” You can imagine the types of extreme videos they find on virtual show-and-tell sights: slack lining across a rock formation in the Moab Desert, for example. Needless to say, these wild and crazy images are not endearing to insurance companies.

To negate this, you should be prepared with answers to your insurance company’s questions *before* you submit new activities on your insurance application. Plan ahead, do your homework, and determine what actions you need to take to really make the activity safe at camp.

Determine how staff will be trained, how the activity will be operated, and how you regulate against unauthorized use. For example, with slack lining, it is important to have spotters for the participants when they are walking the line. Have a plan for where this activity will be allowed, as it is important to have the appropriate surface underneath the slack line. You should also assure the insurance company that you will set up the line at an appropriate distance from the ground (less than eighteen inches) between two trees. As slack lines are portable, education as to where/when they can be used is critical. With many activities, it is important to also have a plan for secure equipment storage

**(Editor’s note: “Slack lining” is a balance sport that uses nylon webbing tensioned between two anchor points.)*

in order to keep it from ending up in the wrong hands (who just might want to set it up over a ravine or other dangerous location)!

After considering the safety implications, and appropriate steps to take to minimize risk, you might be wary of integrating new activities, or you might decide that the cost to reproduce them safely just does not outweigh the benefit at the moment for your camp. It’s important to think of these things *before* you start making major adjustments to your camp and its facilities.

If you have these operational guidelines in place before you call the insurance company to inform them of your new activity, your insurance company will be more likely to approve your activity faster.

And don’t forget that you need to alert your insurance company whenever you add a new activity — not just one that might be considered extreme. If you get a new element for your ropes course, alert your insurance company. It might not end up being a big deal, but make sure your insurance company knows.

Q: With H1N1 seemingly under control last season, what factors might camps weigh when deciding on pandemic insurance coverage?

A: Pandemic and contagion insurance are somewhat new in the insurance world. Companies are just now starting to roll out pandemic and contagion policies, usually called “communicable disease or outbreak” policies.

These policies pay extra expenses, and in some cases, loss of income related to your camp operations being shut down due to things like H1N1, Anthrax, etc. What triggers the policy is camp/site being shut down by an authority. The authority is usually the CDC or the state.

However, the effectiveness of this kind of policy is questionable. For example, last season, two or three camps voluntarily shut down after being in communication with the CDC regarding contagious outbreak. But because the CDC never “demanded” the closures, and the camps shut down voluntarily (although under the advice of the CDC), the camps had no claim and the policy was never triggered.

“Often when insurance companies are unaware of what exactly a new activity will entail, they search for it on ‘YouTube.’ Needless to say, these wild and crazy images are not endearing to insurance companies.”

So even though this kind of coverage is now available, there really isn't a good solution for a pandemic — the CDC must shut down a camp, and they have not yet really embraced that role. In addition, property insurance, which can cover loss of income and extra expense, does not cover communicable diseases. Property insurance and the business interruption you can add on is for property-related claims, such as fire, lightning, hail, wind etc.

One solution might be to require or suggest that parents buy tuition reimbursement insurance. Usually the policy covers about ten defined reasons for cancellation, and pandemics are included in newer versions of these policies. With these policies, parents will be rewarded what they are not refunded by the camp if a cancellation occurs. In turn, the camp will be rewarded the percentage of tuition that they deemed "non-refundable" to parents in the camper agreement.

However, this creates a challenge for camps to consider in their camper agreements. If, for example, your camper agreement states that parents will be refunded 90 percent of the tuition they pay, you will only receive the 10 percent of the tuition you retained as a non-refundable deposit. So the only way for the camp to cover their expense and/or loss is through the non-refundable deposit wording in their camper contract.

As a director, you may have to have a really tough refund policy if you want to be reimbursed by the insurance company for the lost tuition. That doesn't fair too well sometimes with Mom and Dad. While you want to be generous to parents with your cancellation policy, you also want to make sure you can be made whole for any expenses you incur.

A third way to cover pandemic risk is with an event cancellation policy. Event cancellation coverage is usually for expensive events like conferences and other large gatherings. If for some reason (including pandemics) an event is prevented from happening, the insurance company covers the expenses for the event. This sort of route is tricky as well, since the event site would have to be closed by a written authority as well.

Ideally, a new policy will be developed that is similar to the new communicable disease and outbreak policies, but doesn't require the camp to be shut down by an official authority

Q: What aspects of a camp business does contagious outbreak insurance cover (cancellation of sessions, loss of business, etc.)?

A: Right now there are only a handful of insurance policies covering this risk. Some pay for extra expenses you incur, while others pay for loss of revenue up to a specific limit. The outbreak insurance offered stand-alone does not pay loss of revenue. It pays a flat amount per day. Camps can use that to clean the facility, or take the money and use it for loss of income. It pays a specified amount of money for a specified number of days — typically, the higher the daily payout, the fewer number of days a camp will receive money. Some of the forms that provide loss of revenue will

have a waiting period rather than a deductible. Often the waiting period is seventy-two hours.

In general, business interruption coverage has a waiting period of seventy-two hours. They will not cover any loss of revenue during the first seventy-two hours. A camp could easily lose revenue during the waiting period. It's often recommend that camps "buy back" the waiting period to twenty-four hours.

Q: What do you feel a camp director should know about "cancellation" insurance (from the perspective of the parents cancelling the camp experience)?

A: Currently, there is not a really good policy designed to cover a case where a parent decides to cancel their child's camp experience. The contract, or camper agreement, is really the only place to establish loss mitigation . . . and as discussed earlier, it can get yucky.

The question then becomes, "how do I protect myself without upsetting the parents?" Many camps use a payment installment system, where a 25 percent tuition deposit is due a few months prior to camp; then 50 percent is due approximately one month before camp; and finally, tuition is paid in full two weeks before

(Continued on page 6)

THE CAMPLINE

Published three times a year by the American Camp Association.

■ The digital issue of *The CampLine* is not only environmentally friendly but allows you to utilize *The CampLine* resources more readily. Click any of the links throughout *The CampLine* to be sent directly to a Web browser where you can research and learn more about specific topics. It's just one more way *The CampLine* can help you.

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ISSN 1072-286

camp. This type of payment system usually is accompanied by a policy that states parents will receive a 25 percent reimbursement if cancellation occurs less than two weeks prior to camp. That way, parents don't risk losing all but 25 percent of their payment if they need to cancel long before the session starts.

These percentages are just an example. One of the reasons your cancellation clause will be important is if the parent does purchase tuition reimbursement coverage, in the event of a covered loss, the insurance company will only pay what was not refunded by the camp. This is a good solution to make the parents whole; however, it may not make the camp whole if your non-refundable deposit is too low.

The same delicate balance put in place for parents in camper agreements needs to be present in contracts with rental groups. If a camp is told that 180 people are coming, and then only half show up, the camp loses money on those missing attendees *and* the food they've bought. A rental group contract must require the group to pay for a minimum number of people. Also consider that if groups cancel two or three weeks before a session, a camp may be refunded \$2,000, but it loses a lot more in potential revenue. The only way to address this is in your contract.

Q: What are some key points a camp director might need to know about "loss of business" insurance and what typical scenarios might prompt a claim to be filed?

A: The number one cause for loss of business is power outage. Next in line are telecommunication, IT, and human error. Natural disasters like fire, lightning, or extreme weather are less frequent but often more severe.

Loss of income and extra expense coverage are endorsements that can be made part of a property insurance policy. To trigger loss of income and extra expense coverage, there must be a covered loss to covered property. The loss of income coverage would have a waiting period of seventy-two hours, so it would not pay loss of income for that first seventy-two hour period. The extra expense coverage does not have a waiting period or deductible. Often camps sustain income loss due to a power outages off-premise. In those situations, in order for the policy to respond, you would need to add an endorsement for off-premise utility service disruptions.

The surprise with loss of income coverage is that, while there is not a deductible, there is a waiting period — often seventy-two

hours — which means the insurance does not cover any loss revenue for the first seventy-two hours after an event. But as previously mentioned, it is possible to buy that waiting period down to zero or twenty-four hours. The other surprise is that you have to document your loss of revenue. Often this requires submitting financial statements for the past several years. We recommend purchasing loss of business income and extra expense coverage so that you have a choice in the event of a loss. One can decide either to shut down operation and claim loss of revenue, or in most cases, the camp decides to use the extra expense coverage to secure temporary buildings and continue operations.

When cash is needed, you can get a check in advance on extra expense coverage. For example, if your camp were to suffer from a devastating fire, you could use the extra expense money without delay to start setting up portable facilities, phones, bathrooms, etc. Extra expense coverage is really important because it helps you stay open.

Q: What are some emerging issues that you see for 2011?

A: I think the contracts a camp uses to rent to an outside group and with camper parents need to be reviewed by an attorney. Some camp contracts I've seen recently are way out of date on their cancellation clause, and are in need of a venue clause.

Also, be cautious when selecting vendors. I know of a camp that had extreme flooding in their administrative office building after a shoddy re-roofing job and couldn't be reimbursed for it. This particular camp had hired a contractor who presented a certificate of insurance indicating he was insured. In reality, he was only insured for residential roofing, not commercial. The camp's insurance company wouldn't pay for the damage because contractor negligent work caused the loss. The contractor's insurance company wouldn't pay for the damage because they weren't insuring the contractor for commercial roofing. Now the camp's only recourse is a legal battle with the contractor and his insurance company for reimbursement, and it is sure to be long and painful.

In these difficult economic times, some contractors may be tempted to stretch their job descriptions in ways they are not qualified for in order to get more work. In this particular situation, the camp had followed procedure and done everything possible. Be sure to check references whenever you hire a contractor, and don't hesitate to call the insurance agency and verify that the contractor is covered for the job he or she is going to do.

Online Resources for Social Networking Issues and Cyberbullying

ACA has resources to help you understand, prevent, and address problems with cyberbullying and social networking sites among your campers and staff. The resources include articles from experts like Bob Ditter and Joel Haber, Ph.D.; solutions to real-life internet problems; a sample Internet policy; and more. Prepare yourself with social network safety techniques and ideas to prevent cyberbullying before your camp season starts! Visit www.ACAcamps.org/knowledge/participant/social-networking-cyberbullying today.

Criminal Background Check Resources

The American Camp Association (ACA) is committed to the protection of children and youth. Because of societal events, significant news media regarding child abuse, and the expectation by parents regarding reasonable precautions for child safety, the ACA National Board of Directors worked with the National Standards Commission to consider whether the current ACA Accreditation standard regarding the screening of staff was in line with industry standards. Upon completing an environmental scan, which included other accrediting bodies, as well as national youth serving organizations, it became evident the 2006 version of the ACA standard regarding the requirement for criminal background checks (not mandatory) was NOT in line with these organizations and the industry standards. **(A criminal background check is defined as a process of looking into the history of an individual to determine whether they have a criminal record.)** Therefore, the ACA National Board of Directors has made the decision to require criminal background checks on new staff eighteen years of age or older beginning in 2011 — that is, **Standard HR4-B is now a MANDATORY standard.**

Standard HR4-B states:

Does the camp have written evidence of a policy in practice that requires screening for all camp staff with responsibility for or access to campers that includes:

HR4-B: For new camp staff eighteen years and older, paid, volunteer, and contracted, a criminal background check?

(Additional elements of standard HR4 mandate an annual check of the National Sex Offender Public Web Site and a Voluntary Disclosure Statement. Other non-mandatory parts of the standard include reference checks and a personal interview.)

ACA recognizes that **conducting a criminal background check is just one method by which camps work to create a safe environment** for campers, and we agree with other accrediting bodies and youth serving agencies that it is a very important practice. (The wording of the current standard has not changed and ACA does not dictate what type of criminal background check must be conducted.)

A full 96 percent of ACA-Accredited camps already meet this standard, so your camp may not need to make any changes in your procedures. For camps that have not complied with this standard yet, ACA has a number of **excellent resources to assist you** in choosing the criminal background check process that is right for your camp:

- ACA Position Statement on Criminal Background Checks: www.ACacamps.org/sites/default/files/images/publicpolicy/documents/CBCPositionStatement.pdf
- *Get Help Determining What Type of Background Check Is Right for Your Camp* — ACA Educational publication: www.ACacamps.org/sites/default/files/images/CBC%20Ed%20Piece%2012-10.pdf
- PROTECTScreen — \$18.00 fingerprint-based FBI criminal background checks for camp volunteers: www.ACacamps.org/publicpolicy/PROTECTScreen
- ACA e-Course: *Dispelling the Myths and Confronting the Realities*: www.ACacamps.org/einstitute/criminalbkgd
- ACA Business Affiliates that provide criminal background check services to camps: <http://webportal.acacamps.org/BuyersGuide/ProfessionalSearch.aspx>

The ACA Camp Crisis Hotline 800-573-9019

The ACA Camp Crisis Hotline is available twenty-four hours a day and is offered year-round. It is important to remember the hotline is not a medical, insurance, or legal advice hotline, but it does serve as an “ear” to help you talk through your crisis. The hotline staff can help you think of issues and questions and identify other resources that can assist you.

Contracting with User Groups, Revisited

By Charles R. Gregg and Catherine Hansen-Stamp *

Introduction

Previously in *CampLine*,^{1,2} we have discussed issues pertaining to a camp's arrangement to allow third parties (non-traditional campers) to use its premises. The ACA Accreditation Process Guide³ ("ACA Process Guide") refers to these persons or groups as "user groups." In a typical transaction, a user group may use all or a part of the camp's premises and staff, but the primary responsibility for the well-being of the group remains with the group and its leaders.⁴

ACA Process Guide Standards ("ACA Standards") in the Health and Wellness, Operations Management, and other sections of the ACA Process Guide address these user group arrangements, and the 2007 ACA Accreditation Standards Resource CD-ROM contains further information.⁵

Stressed economic times have made the prospect of renting to user groups more appealing than in past years. In any economic climate, however, contracting with user groups can be a valuable resource and can produce revenue in non-traditional camp seasons if carefully managed.

As we have noted, potential user groups might include anything from events of only several hours' duration to extended retreats and conferences. An organized city youth group may wish to conduct its own "camp" for a week or more. As attractive as the prospects are for revenue generation and exposure of the camp to the public, there are traps for the unwary. The purpose of this article is to remind camp managers of those traps, and suggest some strategies for avoiding them.

As with any new venture, before the camp decides to offer its premises and staff to third parties, it should assess the plan from a risk management perspective, by asking the following: Why do this? Is third-party use of our camp consistent with the camp's core values and reputation? Can the camp manage the risks of hosting events and populations with which it may not be familiar? Do the camp properties offer particular challenges that may require special precautions?

The camp must understand that these visitors may not be traditional campers with a demonstrated loyalty to the camp — through family histories or otherwise. Will existing liability and other insurance policies cover this new use of the properties and challenges to its staff? Since the uses may occur outside traditional camp seasons, where will the camp turn for appropriate staffing? These and other issues can be addressed by careful planning and the advice of professionals. The camp is the "host," and entitled to set the ground-rules for any visit or use. But before embarking on the adventure of third-party use, the camp must understand the challenges and its own limitations in meeting them, and set its requirements accordingly in negotiating and documenting the agreement.

Take another look at our Winter 2008 *CampLine* article on this subject, "Contracting with User Groups and Outside Providers:

Legal and Practical Issues," for a broad view of these issues. We will narrow our focus in this article to target a few current concerns, as expressed by ACA staff and others.

Camp / User Group Arrangements

Drawing on discussions at the most recent Insurance Roundtable conference session, including an expressed concern that some camps are not sufficiently attentive to practices and policies related to user groups, it was suggested that we address the following areas in this article:

- What are the insurance issues?
- Who is responsible for whom, what, where, and when, related to the use or visit (important elements of the user agreement)?
- What are the other important elements of the agreement, including how to stress user group / chaperone responsibilities?

Insurance

We assume the camp has property and general liability insurance coverage, at least for its traditional camp operations, sufficient to address reasonably anticipated claims and losses that may arise out of its operations. Before inviting third-party use, the camp must determine that it has coverage for claims that may arise out of such use of the camp and involvement of its staff.

Be sure the insurance agent understands the anticipated user group use, how responsibilities for the visiting group members will be allocated between the camp and user group, and the nature of the agreement with the user group. The agent will be interested in what protection the camp seeks from the user group in the event of a loss or other claim; and his or her advice should be sought regarding if and how the camp might rely on the visiting group's insurance to protect it (the camp) from claims. The agent will discuss with management the possibilities of the camp being named an additional insured on the user group's liability policy, and the limitations of the protection provided by that strategy. If, in the agreement with the user group, the camp will be called upon to protect (indemnify) the visitor group from a certain category of claims (arising out of some aspect of the visit that is the responsibility of the camp, for example), the camp will want assurance that such an indemnity agreement will be covered by its insurance. Be very precise in describing the responsibilities — and corresponding liabilities — of the user group and the camp. For example: Is the camp liable for an accident which occurs on its grounds before the announced commencement of the visit? (A recent incident involved the drowning of a group member who arrived "early" and was unsupervised in his exploring of the camp grounds and waterfront.)



Responsibilities

Proper insurance may provide some protection against claims, but more important is the prevention of claims; and more important than the prevention of claims is the prevention of injuries and other losses. No camp experience — traditional or otherwise — is risk free. A quality camp program will reduce the chances of losses, and in the context of third-party use, the quality program will assiduously define and allocate — between the camp and the user group — responsibilities for the maintenance and well-being of the group members.

The camp must be clear about supervisory responsibilities — in the camp / user group agreement, in written material furnished to the visiting group and its members before the visit, and in the indispensable orientation of the group and its leaders before activities commence. The camp must instruct its staff to not become involved beyond the limits of supervision and participation assigned to them.

Of course, the areas of responsibility will vary with the use. Responsibilities for a wedding and reception are not the same as those related to a triathlon event, mini-camp, or corporate retreat. Nevertheless we can offer the following: Be clear in assigning responsibilities between the camp and user group and require consultation if there is any uncertainty. It is to the camp's advantage to describe the duties of the camp precisely (for example, leading or participating in the supervision of certain activities, meals and lodging, providing meeting rooms and other areas, and use of equipment and facilities) and provide that, otherwise, the group members and their leaders have full responsibility for the welfare and supervision of the group. Supervision issues will predictably be a part of a claim that arises from the third-party use, and there should be little doubt, after the fact, about whose supervision is being challenged.

The User Agreement

What we have written above presumes that the camp will enter into a formal agreement with the user group executed by an authorized representative of the group. What should such an agreement include? A camp, whether accredited or not, should work with their legal counsel in crafting these agreements and reviewing applicable ACA standards and any applicable state law as they consider specific arrangements with user groups. The following provides some general thoughts.

The title is important. Is this a “lease,” a “rental,” or a “facilities use agreement”? Or something else? The title should reflect the intent of the parties. The terms used may have special legal significance. “Visitor’s Use Agreement” is an option that may give you the flexibility you need in addressing the various issues, without pinning you down to the duties of a landlord or social host, for example. Discuss this with your legal counsel, of course, to consider regarding local law on the subject.

The agreement must identify the parties to the agreement (the camp and the user group) and be signed by persons authorized by each party to do so.

Certain terms might require definition or explanation. What is meant by “camp premises,” for example? What is the “waterfront”? Will “camp hours” be observed? Do the parties intend any distinction between duties owed to persons actively participating in certain events and those who are merely visitors or chaperones?

If the camp wishes to limit the size of the user group, the agreement should say so.

The nature of the event should be described — what will be happening during the visit?

When does the “visit” officially begin (with the commencement of the orientation?) and when will it officially end? These “markers” are important in establishing the period of the camp’s responsibility, and those limitations should be made clear. Expectations regarding early arrivals or “holdovers” should be clearly described. The camp may choose to disclaim any responsibilities for such persons. The camp may choose to simply turn away early arrivals and escort visitors off the premises at the end of the visit.

Specify the cost of the event and the method of payment. Will there be an advance payment of some or all of the total amount? May the agreement be terminated or cancelled, and if so, under what circumstances? Will a refund be paid? Will special fees be charged for certain activities — the challenge course or horseback riding, for example? The group should be required to pay for any property damaged by a member.

The agreement must describe the facilities, equipment, services, and staff that the camp will provide, and importantly, as noted above, the respective responsibilities of the parties — visitor or camp — with respect to the anticipated use. The agreement may specifically disclaim camp responsibility for certain matters — discipline, for example — but expressly reserve the right to expel from the camp any person determined by camp management to be a threat to themselves or others, or whose conduct reflects negatively upon the camp.

Will the health center and its staff be available to the visitors? Will the camp provide any level of medical care? If such care is the responsibility of the visitor, what qualifications does the camp expect of the care giver?

What areas of the camp will be available to the user group? Will access to certain areas of the camp be prohibited or limited? Is the waterfront, pool, challenge course, or remote or otherwise hazardous area of the camp premises “off limits” or to be used only under certain conditions and with described supervision? If, for example, a lifeguard is required for water activities, or a trained specialist is required for the climbing wall or other facilities or equipment, who is responsible for obtaining those services and what credentials are required?

Will the camp provide security for the premises? For the visitors? Around the clock? The visitors must be advised during orientation of security practices and policies, and the limits of what the camp will provide.

As mentioned previously, who is responsible for supervision — whether day or night (cabin) supervision, or supervision of some or all activities? To the extent user group representatives (paid staff or volunteers) are responsible for any areas of supervision, it

should be clearly described. To the extent the camp is responsible for facilitating or supervising activities, security, or discipline, the administration must understand the skills required and provide the necessary competencies. The camp administration must understand that the participants may be adults or otherwise not traditional summer campers with whom the usual staff (and probably management) is most familiar. Specific training and staff with new skills may be required for certain visits. As mentioned earlier, if supervisory responsibilities are shared or split between the user group and camp, the details of this “split” should be carefully described in the agreement, so there is no confusion during the event — or after the fact — regarding who is supposed to be charge.

Most importantly, having described the respective responsibilities of the camp and the user group leaders, the agreement should specifically provide who will bear the legal liability for an injury or other loss suffered by a visitor (or the camp). These matters are best dealt with by mutual or reciprocal “indemnities” — a concept with which your legal counsel should be familiar. An indemnity is an agreement to protect another from claims of a certain type. For example: The user group might agree to indemnify the camp against claims arising from an activity of the user group over which the camp has no control or supervisory responsibilities. The camp might agree to provide its own indemnity, for claims arising from defects in the grounds, or other issues the camp has agreed to take responsibility for in the user agreement.

As mentioned previously, will the user group be required to have insurance, or to add the camp as an additional insured? Will that be reciprocal? These areas should be considered.

Will the participants (including user group staff and parents or guardians of minor participants) be asked to sign a participant agreement containing a waiver or release, forgiving the camp, in advance, for an injury or other loss which occurs? And will that agreement include protection from even the negligent acts of camp staff members? State laws vary on the applicability of agreements of release and indemnity, and the advice of legal counsel must be sought regarding these matters.

Other provisions might include an agreement regarding what law will be applied to a dispute (presumably the laws of your state, not including those laws which might make applicable the laws of another jurisdiction); where a suit, if it is brought, must be filed; identifying that if one provision of the agreement is found unenforceable, the remainder of the provisions will be enforced; or other relevant provisions. (In these days of camera cell phones, it is also a good idea to deny any responsibility for the use of photos taken by others.)

ACA Standards

The ACA Standards address user groups. OM 18 describes the user agreement. OM 19 discusses user group responsibilities and the orientation of the group, and refers to HW 24, regarding health care planning.

HW 23 sets out requirements for emergency care personnel, and HW 24 and 25 cover health care planning and certain health information pertaining to visitors.

PD 5 covers certain conditions for the “use, safety guidelines, supervision requirements, warnings, or restrictions for program activities, equipment, and facilities” available to the user group. PD 20 and OM 8 discuss the camp’s orientation of user groups to the camp.

HR 9 addresses the camp’s need to inform the user group of appropriate supervision ratios and procedures.

The Accreditation Standards Resource CD-ROM (at OM 18A and 18B) includes a sample user agreement and outline. A sample release form is discussed and provided (at PD 5 and 11).

CAUTION: These forms are offered for illustrative purposes only and any variation of them should be used only after consulting with legal counsel familiar with your camp and applicable law. The reader may access other ACA resources through Section 11 of the CD-ROM.

These materials (and the concepts they cover) should be required reading — or re-reading — for camp management interested in third-party use.

Conclusion

In conclusion: Your camp will owe certain duties to a visitor. The interests of the camp and its supporters are best served if you shape those duties strategically, as you wish them to be, not as some judge or jury might impose them on you. As always, seek competent legal counsel in negotiating and documenting these relationships.

**This article contains general information only and is not intended to provide specific legal advice. Camps and related organizations should consult with a licensed attorney regarding application of relevant state and federal law as well as considerations regarding their specific business or operation.*

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¹⁴“Contracting with User Groups and Outside Providers: Legal and Practical Issues,” Charles R. Gregg and Catherine Hansen-Stamp, Winter 2008 CampLine; available at www.ACAcamps.org/campline/2008feb

²⁴“Contracting Your Camp for Third Party Use: Legal and Practical Issues in Use Agreements,” Charles R. Gregg and Catherine Hansen-Stamp, Winter 2005 CampLine; available at www.ACAcamps.org/campline/w-2005/contracting-your-camp-for-third-party-use

³This resource available at www.ACAcamps.org/accreditation/07accred-standards

⁴ACA Process Guide, definitions pp.19, 22, and 303–304. Supervisory responsibilities though, may vary widely, depending upon the camp’s arrangement with the user group — emphasizing the need to carefully articulate the parties’ respective responsibilities in the agreement.

⁵This resource available at www.ACAcamps.org/accreditation/07accred-standards