

# Criminal Background Checks for Staff and Volunteers

**A Guide to Assist You in Making Sense of the Choices**



Performing criminal background checks on the people who will be working with the children in your care is not only a standard of the American Camp Association (ACA); it is your obligation to the families that have entrusted you with their kids. As you consider what your organization will do to check potential staff and volunteers, you may have a number of questions, such as:

- What does the **law** in my state require me to do regarding background checks?
- What **kind** of criminal background check should I perform?
- What **information** is included in a criminal background check, and what might be “left out”?

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Contrary to the databases shown on popular crime programs on television, there is not one all-inclusive database in this country that includes all criminal records of every offender in every state.

- Are those **online** \$5.00 background checks any good?
- Are **fingerprint-based** checks better than **name-based** checks?
- If I hire a company to help me, how do I know how to **choose** the one that will give me the most complete and accurate information?

ACA has been actively involved in providing camps and other youth development programs with access to the best available criminal background checks for a reasonable cost and with a short processing time ever since *The National Child Protection Act of 1993* was signed into law. The bill, nicknamed “Oprah’s Bill” for supporter Oprah Winfrey, included a provision to create the first-ever “nationwide database of all indictments and convictions of child abuse and sex offense charges, violent crimes, arson, and felony drug charges.” It specifically required all states to report crime records to this database. The bill also included language to allow organizations who employ a “childcare provider” to ask a state agency to check this database for all job applicants. Not to be minimized, it also provided protection to job applicants by establishing that reports could only be released on applicants who provided written permission for a background check to be made, and allowed for background check results to be appealed.

Sadly, as an unfunded mandate to the states, very little progress has been made to make any of the provisions in the bill a reality, with the notable exception of a database of registered sex offenders in each state. [The Dru Sjodin National Sex Offender Public Website](#), coordinated by the US Department of Justice, provides free online name-based searchability of all the sex offender registries in the country. While certainly not the complete database called for in Oprah’s Bill, it is such an important tool that the American Camp Association has made **an annual check of this database for all paid, volunteer, and contracted staff a mandatory standard** for all ACA-Accredited Camps.

Disappointed by the lack of movement on Oprah’s Bill, Congress passed the [Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today](#) (PROTECT) Act in 2003. The PROTECT Act is a multifaceted, expansive law that focuses on the prevention of the exploitation of children. Of most interest to ACA is a small provision for a pilot program that gives selected youth-serving organizations access to fingerprint-based criminal records checks of the Federal Bureau of Investigation (FBI) database for volunteers (excludes paid staff) at a reasonable cost and with a very short turn-around time — regardless of any

barriers to access in their state law. ACA was accepted into the pilot program in July 2006. Since then, ACA and a number of partners have been advocating to make the pilot program permanent and to extend the checks to paid staff as well as volunteers. (For more information on this advocacy effort, read the information about the *Child Protection Improvements Act* online at [ACA’s Web site](#).) Any ACA camp is eligible to participate in the pilot program (called PROTECTScreen) at any time, whether you need one check done, or thousands. Visit [ACA’s Web site](#) for more information on this program.

While access to the FBI database is a step in the right direction, it is still not a complete database. Contrary to the databases shown on popular crime programs on television, there is not one all-inclusive database in this country that includes all criminal records of every offender in every state. So, how do you decide what kind of criminal background check to perform on your staff and volunteers? The answer is complex. Use the information provided below to help you sift through the choices and make the decision that is best for your organization.

## State Laws

First and foremost, at a minimum you must adhere to any state laws governing criminal background checks and your program. ACA maintains a complete list of these state laws online at [ACA’s Web site](#). State laws change periodically, so ACA recommends you revisit your state laws annually to verify what is required at a minimum by your state.

## Definition

A criminal background check is a process of looking into the history of an individual to determine whether they have a criminal record.

## What Other Types of “Background Checks” Are There?

There are many different types of background checks an employer can pursue when performing pre-employment (or pre-volunteerism) screening. In addition to criminal background checks, other types of common checks are:

- Driving histories
- Education records / academic degree verification
- Credit checks
- Drug tests (drug tests to check candidates for current substance abuse are legal)
- Workers’ compensation reports

## Types of Criminal Background Checks

A wide range of types of criminal background checks are available today, each with strengths and weaknesses. Because there is no single criminal database in this country that includes every criminal record, no single background check is “perfect.”

## Options for how the individual is being identified:

- **Name-based check:** A name-based check uses a person's name and sometimes their Social Security number to match any possible criminal records. Name-based checks have inherent weaknesses:
  - The individual could provide a false name and Social Security number. In fact, according to the National Mentoring Partnership, over 1 percent of the 45 million individuals in the FBI criminal database have used over 100 aliases and false Social Security numbers.
  - Females may have two or more different last names if they have been married.
  - Criminal databases can have mistakes in the spelling of an individual's name and other relevant information.
  - Because of common names, "false positives" may arise — in other words, a check might come back with criminal records, but they actually belong to another individual with the same or similar name.

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- **Fingerprint-based check:** A fingerprint-based check uses fingerprints taken from an individual to identify that individual and to match any possible criminal records. Fingerprints are a form of "biometric-based" identification. That is, fingerprints are unique to the biology of every individual. Currently, the only way to **assure** the identity of an individual is through fingerprinting.
- **Other biometric-based checks:** While the technology is not widely available, there are other ways (in addition to fingerprints) to determine the identity of an individual in order to match any possible criminal records. These methods will increase in the future and include methods such as retinal scans and DNA extraction.

## Options for the types of records/databases that can be checked:

- **FBI:** The FBI maintains the most complete criminal database in the United States. It contains over 200 million arrest and conviction records concerning over 45 million individuals. All records are fingerprint-based. The database contains all federal crimes plus approximately 70 – 90 percent of each state's criminal databases. Low-level misdemeanors, driving citations, and DUIs make up the portion of state records that are generally not present in the FBI database.
  - *While it would seem reasonable that all youth-serving organizations should have access to the FBI database to perform checks on people who are working with children, thirty-seven states specifically bar access. Because states are the gatekeepers for criminal background information, state law determines your access. ACA is working with other partners to change this situation. The Child Protection Improvements Act mentioned above is our effort to provide you with access. More information is available online at [ACA's Web site](#).*
- **State Background Checks:** These checks include only the crimes committed within that state. These background checks are obtained through a state agency (the agency varies from state to state). Some states allow fingerprint-based checks, some only allow name-based checks, and some offer both types for different fees. Most state checks also include arrests, but a few include only convictions.
- **County/Local Checks:** These checks include only the crimes committed within a local jurisdiction. Background checks of a county or local jurisdiction are obtained through the local police or sheriff's department.
- **Private Vendor Checks/Databases:** There are dozens of private vendors that advertise criminal background check services. (Visit [ACA's Web site](#) for a list of ACA Business Affiliates that offer these services.) Private background checks are generally name-based. There are two basic methods that these private vendors use for providing background checks:



- Some vendors search county record repositories for the county of residence for the past three to five years (sometimes longer).
- Other vendors maintain databases of criminal records, often searchable online. Some of these vendors advertise their background checks as national in scope. However, most often, these databases actually only provide “multi-state” information. These vendors buy their criminal data from the states. But, many states have strong privacy laws, so they do not sell any criminal data. Other states sell only a portion of their data (for example, parole records — but not the full conviction or arrest files).
- **Driver’s License Check:** This check would catch any tickets, citations, or convictions related to poor driving, including DUIs.
- **State Sex Offender Registries:** Most states have sex offender registries available online. However, states do not share the same criteria of what constitutes a “sex offender.”

**Just doing a check is not enough. You need to have a plan of what you will do if you receive a report that indicates a criminal history.**

(Any crimes that would cause an individual to be on a sex offender registry should show up in a state or FBI criminal background check.)

- **US Department of Justice, National Sex Offender Public Website:** As mentioned earlier, [The Dru Sjodin National Sex Offender Public Website](#), coordinated by the US Department of Justice, provides free online name-based searchability of all the sex offender registries in the country.
- **Child Abuse Registries:** A few states will allow organizations that work with children to check an individual against their child abuse registry. These databases often include complaints of abuse that never result in arrest or prosecution and so would not be in a criminal database.

**Special note on the records/databases that are checked:**

One of the limitations of criminal databases is that often an arrest will be recorded, but the courts or police do not update that arrest record with the ultimate result. Without that update, it is not known if the individual was convicted, had the charges dropped, or was found not guilty. These incomplete records are often called “open arrests.” Some types of background checks only access convictions. When that happens, the check misses any of those open arrests.

**Choosing the Type of Check You Will Perform**

Most likely you have seen the advertisements for online \$5.00 background checks. Perhaps you’ve even been contacted by a company offering to complete the entire process for you. Prior to deciding what type of check you will perform, and whether you will hire a firm to help you, ACA suggests you consider the following questions:

1. **What kind of checks, if any, does your state require you to perform?**  
If checks are required by your state, what kind? Are those checks to be performed on in-state residents only? State requirements range from biometric fingerprint checks to checks against sexual predator registry lists or no checks at all. Some states only require that employees who are residents of that state be checked. Be sure you know what’s required by your state and comply with that requirement. It’s wise to also look closely at the information you will receive from your state and decide if it fully meets your needs. Many organizations are conducting a state biometric check and adding an additional type of check because of the areas from which they draw staff. To verify your state’s requirements, ACA maintains a complete list of these state laws online at [ACA’s Web site](#).
2. **What kind of checks, if any, does your insurance company require you to perform?**  
If background checks are required — and chances are, they are — specifically what kind? Your insurance company may require you to run checks on your staff regardless of whether your state requires it or not. Insurance companies are usually asking for a commercial check and may recommend specific companies for you to use. Check with your insurance company to identify the elements they want to be included in the check.
3. **Do you employ year round staff? Do you employ seasonal staff? Does any of your staff live in two places during the year (for example, at home and at school)?**  
Seasonal staff are a challenge to screen because they can live in more than one location during a particular time, and those locations could vary from year to year. Therefore, you need to consider all of those locations in the screening process.
4. **Do any of your staff live out of your geographic area? Do they live out of your state?**  
Staff who are recruited from other states need to be screened in those locations.
5. **Does any of your staff live out of the country? How many international staff are returning and have a Social Security number?**  
Staff living out of the country may or may not present a challenge in the screening process. If you are working with a placement agency to hire your international staff, be sure to discuss the type of background check they will perform

in each country. Ask them if they are conducting the most comprehensive police check available. (Special note regarding checks in the United Kingdom — there are specific checks called ACRO police certificates that are used for immigration purposes and specifically exclude using them for employment purposes. Checks used for employment purposes are called Criminal Records Bureau [CRB] checks. These are specifically designed for work with children and vulnerable adults. For more information, visit the [CRB Web site](#).)

In most countries, the records are tied to the home/permanent address so you do not have to be as concerned about staff living at home and school. If they are living or working in a country other than their home country, you should ask for a check from their home country. Be sure you ask for English translation or review of international checks. You should also consider running a national check in the US on returning international staff who have a Social Security number.

**6. Do you employ any staff members that are under 18 years of age?**

The age of the staff member often determines the information you can expect to receive. Most, but not all, records are sealed for staff less than 18 years of age.

**7. How many staff do you employ?**

The number of staff you employ in each different category (year round, seasonal, out of state, out of country, underage) will impact your decisions financially. If you are conducting commercial checks on large numbers of staff, look closely at the various choices available when making decisions about the most complete and cost effective way to proceed. Also look at the elements provided by the different commercial check options and compare them to each category of staff you employ.

**8. Ask any prospective company you are thinking of hiring how long it will take to get a background check report.**

When the season is short, it's important for you to receive your background check reports in a timely fashion. Ask how much time a report process is likely to require.

**9. Why can't I just check the national sex offender database?**

[The Dru Sjodin National Sex Offender Public Website](#), coordinated by the US Department of Justice, only provides online name-based searchability of all of the sex offender registries in the country. Since it is name-based only, there is no way to verify that the name you check does belong to that person. And remember, it only contains registered sex offenders, not individuals who have been convicted of any other type of crime.

## Stay Informed at e-Institute. Stay Safe at Camp.

Sign up for four online mini-courses from ACA's e-Institute — each course is designed to teach strategies you can use to keep camper and staff injuries and illness at a minimum . . . .

- **OUCH:** Protective Equipment, What All Staff Should Know
- **No Outbreaks Here:** Simple Strategies for Reducing the Spread of Communicable Diseases at Camp
- **Footloose:** Minimizing Slips and Falls at Camp
- **Knife Safety:** Reducing Sharp Object Injuries at Camp

Register for these important injury and illness prevention courses today!

[www.ACAcamps.org/einstitute](http://www.ACAcamps.org/einstitute)



## 10. Do I need to conduct a criminal background check on each returning staff member every year?

You have no way of *really* knowing what the staff member has been doing since your season ended unless you do a new check. While the ACA standard HR-4B requires a criminal background check for new staff over the age of 18, you should consider doing this check on both new and renewing staff every year. And as mentioned before, be sure you know what your state law and insurance company require regarding returning staff.

## What to Do With the Information Received

Just doing a check is not enough. You need to have a plan of what you will do if you receive a report that indicates a criminal history. Some states have laws that mandate who you can and cannot hire (that is, they will tell you what crimes are unacceptable and will not allow you to hire anyone with that record). Some states will filter information based on their predetermined set of criteria for your employment classification. For other checks, including checks performed by commercial firms, you may get back an abundance of information that might not seem relevant — and is often hard to understand. You need to have an organizational plan on what to do with the information before you receive it. Some organizations call this their “screening threshold.” Many organizations wait to think about the hiring process until they get back negative information. Emotions may rule at that point, and if so, consistency in the process is hard to attain. Set your thresholds now. Discuss what your organization is willing to tolerate in past history. For example, would you hire someone with a drug-related misdemeanor from seven years ago? By setting the thresholds before screening, you can assure fairness in your hiring process.

Many organizations have asked for assistance in setting their thresholds. Check with your state law first. Then consider that the partners in the PROTECTScreen pilot have identified the following as cause for concern with staff working with youth: felony, drug conviction, crimes against children, acts of cruelty or violence, sexually-related crime, cruelty to animals, and other acts specific to a position such as embezzlement. Then discuss with your attorney to develop your own thresholds.

## Need More Help?

This brief article has attempted to introduce you to the intricacies of criminal background checking in America. Since this is such a complex topic, ACA has created an online course to help. [Criminal Background Checks — Dispelling the Myths and Confronting the Realities](#) is available **online**: \$20 for ACA Members, and \$55 for non-Members. The following is a review of the other resources mentioned in this article:

- [Online database](#) of all state laws regarding criminal background checks related to camp programs.
- US Department of Justice [National Sex Offender Public Website](#)
- National Child Protection Act of 1993 — “[Oprah’s Bill](#)”
- [PROTECT Act of 2003](#)
- PROTECT Act pilot program that allows ACA camps fingerprint-based criminal background checks of the FBI Database — [PROTECTScreen](#)
- [Child Protection Improvements Act](#) (in Congress Now)
- [ACA Business Affiliates](#) — Criminal Background Checks

*Photo courtesy of Cathedral Domain, Irvine, KY.*

# 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.



# When Behavior Becomes a Legal Issue

©By Reb Gregg and Catherine Hansen-Stamp\*

## Introduction

Behavior issues continue to be a prominent and growing concern of camp managers. Today's campers and staff present new challenges. They come to camp accustomed to being tightly supervised and managed at home and school, medicated for a variety of disorders, exhausted, and immersed in a virtual, digital world — with little outdoor adventure experience or contact with the natural world. And the focus is not entirely on campers and staff. Parents are requiring more and more attention as they demand a larger role in the lives of their children while at camp.

This article will discuss setting expectations with respect to the behavior of campers, their families, and staff. We will suggest some content and means of communicating those expectations, the enforcement of behavior requirements, and the hazards of failing to enforce them. We will emphasize the need for clarity of communications in this area, including a shared (by camp and families) understanding of how the camp expects to act in certain situations. We will also discuss a camp and counselors' legal obligations and duty of care regarding supervision and control.

How and why is this a legal matter? A family might claim that a camp has violated a contractual obligation or legal duty of care by not recognizing or adequately addressing a behavior issue — resulting in some emotional or physical trauma. A more aggressive camp might be charged with having unfairly disciplined a child — embarrassed a child before other campers, physical roughness, or sending a child home without a refund of tuition, for example. A staff member whose behavior or performance has been reviewed may not have been dealt with to a parent's satisfaction. A parent requiring more attention from the camp than his or her child might claim he or she has been improperly denied access to the child or to information about the child. Behavior issues have legal implications.

The focus of this article again emphasizes our belief in the importance of that vital “information exchange” flowing between a camp and its camper families, and between a camp and its staff. Effective and accurate information exchange is a key risk management tool in managing and minimizing the risk of loss to both campers and to the camp — and avoiding surprise, hurt, and disappointment.

## Legal Duty of Care

A camp's duty to keep its promises — outlined in a contract or otherwise — should be clear. A camp's legal duty to take care of a child is not as well understood. As we have discussed in previous articles, a camp's legal duty of care weaves in and out of the camp experience, changing with activities, circumstances, relationships, and environments.<sup>1</sup> A camp can establish and influence its legal

duty by announcements, promises, and other expectations of care which it promotes or allows to exist. Other factors can also affect the duty of care.<sup>2</sup> Unless so modified, the camp's legal duty is to act as a reasonable camp would in protecting campers from unreasonable risks of harm. Similarly, a camp staff member's duty is to act as a reasonable camp *staff member* would act in the same or similar circumstances. The test of reasonableness is objective. The test is how one acted — not what one intended, or felt. The “reasonable person” is a fiction that is defined by a jury. A legal duty — and its breach — is the core of a negligence claim.

Certainly, the camp and camp staff need to follow applicable laws in supervising children — for example, state reporting laws regarding suspected abuse or neglect or camp licensing requirements. In addition, staff should honor a camp's own internal policies and applicable ACA Standards (as these can form or influence the duty of care). However, the law does not require that a camper be protected from all harm or that the camper be protected in all circumstances. In fact, the law recognizes risks of harm that are “reasonable.” In past articles, we have discussed risks of harm considered reasonable (including those which are inherent in the activity, and arguably, those which are expressly assumed or waived).<sup>3</sup> In some jurisdictions and in some instances, a co-participant, staff member, or other party's negligence is even considered a risk inherent in the activity — what is “reasonable” takes on a special meaning. A camp has no duty (varying, of course, based upon a jurisdiction's law) to protect participants from these “reasonable” risks. On the other hand, unreasonable risks include those foreseeable risks which are considered unacceptable to the community (an enlargement of the inherent risks, for example). Even those courts which assert that a camp or camp counselor has a duty of *in loco parentis* — to provide the level of care which a parent might — require only that the camp act reasonably. Courts consistently recognize that growth and development include some risk taking, disappointments, and injuries, and that a camp is not an insurer of safety. Nonetheless, behavior issues pose challenges to a camp committed to keeping its promises and endeavoring to meet its legal duty of care.

One unique aspect of the camp environment is the fact that camp staff (particularly in geographically isolated locations) often do not leave the camp at the end of their shift and go home. Camp staff may be “off duty,” but still “on premises” throughout the camp season. What is an “off duty” staff member's legal duty of care to the campers? While they may not be responsible for certain “on duty” tasks (instructing horseback-riding or leading a hike, for example) they may still be responsible, to some degree, for the general welfare of the campers. What if, for example, an off duty counselor is heading out on her mountain bike to take a ride, and







privacy of others); appearance (dress, piercings); language; prohibition of drugs and smoking; avoidance of sensitive issues (sexual, political, other); and abusive and intentionally wrongful, certainly criminal, conduct.<sup>5</sup> All such rules should open and perhaps close with an admonition that the values and reputation of the camp are to be preserved and that conduct that reflects unfavorably on the camp is prohibited. As part of the rules, or elsewhere, the camp may choose to reserve the right to dismiss a camper, in its discretion, under certain circumstances — for example, a camper who presents a safety concern or medical risk, is disruptive, or engages in behavior detrimental to the program. This can give the camp some room to exercise its judgment, outside a list of specific rules.

Sexual misbehavior is among the most challenging of the behavior issues. As stated above, the camp should develop rules and policies for appropriate and inappropriate behavior that are understood by staff, campers, and their *parents* (see ACA Standards HR-11 and HR-17.) Staff should also be trained on appropriate (and inappropriate) contact with campers, and importantly, on recognizing behaviors that may indicate a camper has suffered sexual or other abuse before or during camp.

The rules will include matters pertinent to off-campus activities and out-of-season contacts (face-to-face and by the internet, for example).

Families must understand the practical limits of what the camp staff can and are willing to do in fulfilling their supervisory duties. “24/7 constant supervision” is not a reality, as any parent knows. A responsible camp will describe very carefully what it will do in the area of supervision, and what, as a practical matter, it *cannot* do. The child (and parents) must accept some responsibilities in this regard.

Parents should be told what contact will be allowed with their child, and how frequently; they might be asked to limit inquiries about the child except in predetermined circumstances.

Parents should be told under what circumstances they will be contacted concerning events at camp that may affect the child, and advised that the camp retains considerable discretion in this regard (see ACA Standard HW-19).

Parents should be told under what circumstances the camp will contact outside law enforcement or other government authorities (including incidents of abuse or neglect, or reports of such incidents).

The camp’s rules for staff, campers, and families should explicitly provide that decisions regarding violations are made in the camp’s sole discretion. These decisions might be described as final (or the camp may describe some appeal mechanism).

So, the camp sets the expectations, preserving and declaring appropriate discretion at almost all levels regarding the behavior of campers, staff, and even families. If a family does not trust the camp to exercise proper judgment in these areas, the child is in the wrong camp. The point of a camp’s careful articulation and presentation of expectations is to reduce surprises when the camper, staff, or family is confronted with a violation of the rules.

That is, they are prepared for the action the camp takes and cannot complain that they were uninformed of the expectations, or the consequences of a violation. The advance notice is fair, and it can prevent the kind of surprise, anger, and frustration that produces lawsuits and damages a good camp’s reputation.

## Applicable ACA Standards

Staff training on appropriate behavior and camper supervision is an important tool for camp and staff in the effort to meet their duty of care and to keep their promises.<sup>6</sup> The ACA Standards give us helpful guidance in these areas, including HR-14, 15 and 16 — staff supervision, staff and camper relationships, and behavior management; HR-7 — staff training regarding their own behavior; and HR-11 — behavior management and supervision. As noted above, and important for our discussion, bad or simply unanticipated behavior can severely challenge the camp staff in their exercise of their duty of care. Staff and campers must understand the permissible limits of marginal behavior, and staff must be trained how to intervene in sensitive areas (see standard HR-17). Staff behavior management training should include the identification of the beginning of emotional and other conflicts, and maintaining the proper relationship with the campers — including modeling good behavior and adherence to camp values and policies (see standards HR-15, 16, and 17). Behavior management training is particularly important in this era of “the virtual kid,” who comes to camp over-sanitized medically and emotionally, and often delayed in recognizing risks, using good judgment to manage them, and accepting accountability for under-performance. Note that staff must be made aware of behavioral issues associated with items disclosed on the camper medical form — for example, side effects from medications, a disclosed behavior issue, or a medication “break” for an ADD condition — to allow staff to effectively deal with these challenges.

The camp should be clear in its expectations of staff regarding staff reporting requirements concerning behavior incidents. There will be issues that the staff are allowed to deal with, and others requiring senior staff involvement. Staff will be trained, of course, to distinguish between real problems requiring aggressive intervention and those which offer opportunities for collaborative problem solving and teaching. In any event, it might be good policy to require *all* behavior related incidents to be reported internally promptly after the occurrence. This would, among other things,

**Staff training on appropriate behavior and camper supervision is an important tool for camp and staff in the effort to meet their duty of care and to keep their promises.**

allow the camp to assess the type and severity of different behavior related incidents, in what instances a report to the parent is appropriate (or required by law to authorities), and provide staff training opportunities. Again, there must be clarity for campers and families regarding where lines are drawn — including a camp’s right to exercise its discretion — so there are no surprises when the camp acts or chooses not to act. Drawing those lines and training staff to recognize them and act accordingly are as important as anything the camp will do in meeting its duty of care to campers and families.

The rules themselves have legal implications. Persons affected by the rules are entitled to believe they will be enforced. Particularly, parents of a camper (or minor-aged staff member) may assume that the camp is caring for their child under the announced rules and codes of behavior. A parent might fairly argue that he or she had a “deal” (contract) with the camp that the rules, training, and enforcement would protect the child from himself or herself, and from other campers and staff. An attorney for a camper mistreated by another camper or staff will very quickly turn to the camp’s own rules and policies to assess the strength of his or her case against the camp. If the camp is intimidated by this prospect, the answer is *not* the elimination of the rules. It is to develop the rules thoughtfully, with regard for what is practical and do-able (with appropriate flexibility), educate campers, families, and staff to those rules, and enforce them. The camp community deserves nothing less.

## Conclusion

Tension exists between allowing natural and healthy development in a camp environment, (perhaps the best managed environment in which these things can happen), and conduct that crosses the line, is potentially harmful or illegal, and simply should not be tolerated. The two poles are relatively easy to identify as a camp thoughtfully develops its rules and policies. The challenge for camp management is to establish strategies for identifying and dealing appropriately with conduct that falls somewhere in between the two poles. The law books are replete with examples of first time, not reasonably anticipated misconduct (a spontaneous fight between two campers, “horsing around,” sexual teasing, etc.). These and other such incidents, courts have found, occur beyond the range of reasonable staff supervision and could *not* have been reasonably anticipated — at least at that time and in those circumstances.

The courts recognize the realities of camp life — including the unacceptable expectation of 24/7 constant supervision.

The policies and rules we have discussed above, and others, serve to establish a foundation for reasonable behavior and accurate expectations for camps and their staff, campers, and campers’ families. The camp can endeavor to address the gray areas by openly retaining the right to exercise its discretion; allowing its staff to appropriately exercise judgment; training staff on behavior issues; articulating staff, camper, and camp families’ responsibilities to the camp experience and environment; and announcing the limits of the camp’s supervisory role. In doing so, the camp takes steps to fill realistic supervisory gaps and shift some of the responsibility for right behavior to the child, the family and to its staff members.

\*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.

## Notes

1. “Camp Risk Management: Sources and Strategies,” Winter 2010 *CampLine*; “A Camp’s Duty of Care — In Good Times and Bad,” Winter 2009 *CampLine*; “Reasonable Supervision and the ‘Safe’ Environment—What Are the Issues?” Fall 2005 *CampLine*.
2. See: “A Camp’s Duty of Care — In Good Times and Bad,” Winter 2009 *CampLine*, cited in endnote 1, above.
3. See, generally, articles cited in endnote 1 for discussion of these issues.
4. Please see our *CampLine* Fall 2007 article, “Avoiding Staff Surprises,” for more detail on these issues.
5. Camps should review any applicable state camp licensing laws and regulations, and the ACA Standards for additional information on the suggested or mandated detail and content of rules and/or policies for parents, campers, and staff.
6. Please see our Spring 2009 *CampLine* article, “Staff Training and Risk Management — Key Risk Information for Front Line Staff.”

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# Medication at Camp: Mitigating the Risks

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Medication at camp is not a new topic; however, information about medication oversight in the camp setting is sparse. Most camps delegate this responsibility to their camp physician and/or nurse with the assumption that what these professionals do “must be right.” Such an assumption neglects to consider that a physician or nurse can only effectively manage camp medications if given the parameters under which that oversight should occur. This article discusses some of those parameters. It is provided to help camp administrators be more effective in mitigating risks associated with the decision to have medications at camp and to encourage a review of camp medication policies.



## Define “Medication” for Your Camp

Begin by determining what the word “medication” means at your camp. Some camps limit medication to those substances controlled by the US Food and Drug Administration (FDA). Other camp professionals have broadened their definition to include any substance a person might use to maintain and/or improve their health. Such a definition brings herbals, supplements, and other remedies under the medication umbrella. And some camps have not defined the term.

Defining “medication” results in people — parents, campers, and staff — understanding what substances will and will not be part of the camp’s medication policy. It also helps healthcare professionals understand the breadth and depth of substances that camp medication policies and practices must address. In addition, those who bring medications and other remedies to camp know what is and is not part of the camp’s medication policy.

## Know the Regulations

This may not be as easy as it sounds and is an area that can keep your camp’s legal counsel quite busy. Some states have discrete regulations that direct camp practices surrounding medication. Other states have regulations that address only some aspects, and still other state regulations are silent; they say nothing about medications in the camp setting. The point is to know the regulations of the state in which the camp is located, paying particular attention to what is — and isn’t — said.

In addition, consider what the credential of healthcare providers allows insofar as medication is concerned. Physicians, for example, have great latitude because of their prescriptive authority. Medication is an integral part of the physician’s domain. Nurses, on the other hand, are educated about medication but only utilize the medications ordered by a physician, both prescriptive and OTCs, for a given person or group of people. Nurses need some type of medical order or protocol to even give someone a Tylenol®. That being said, some states give nurse practitioners prescriptive authority, the scope of which is defined by regulation. And some states make a distinction between the scope of medication practices for RNs and LPNs.

If the camp hires paramedics, EMTs, and various first aid credentialed providers, know each credential’s allowable practices regarding medication. For example, paramedics and EMTs may be allowed to give some medications but this ability is often curtailed by requiring situation-specific orders from a physician. First aiders, on the other hand, are very limited; they are most often



## Visit the following Web sites for more helpful resources:

Listing of

[State Environmental Agencies](#)

Listing of

[State Health Departments](#)

ACA's database of

[Camps and State Regulations](#)

relegated to “rescue medications” such as a victim’s epinephrine or nitroglycerin.

In addition to regulations that define medication practices associated with credential, there are also regulations that govern how medications are dispensed. Pharmacy regulations come into play for medications overseen by the FDA. From a camp perspective, these regulations are most impactful when a camp stocks meds associated with life-saving actions, medications such as epinephrine, albuterol, and oxygen. The impact appears when state regulations only allow prescribing medication to a given individual rather than an entity (e.g., camp). This can place a camp in a tough spot. On one hand, risk management acknowledges a responsibility to be prepared for reasonably anticipated events. The potential for anaphylaxis among children at camp is a reasonable potential; therefore, be prepared. On the other hand, camp policies also seek compliance with law (regulation). The rub between these two potentially conflicting “goods” is the basis for ethical decision-making, a concern shared by entities in addition to camps.

Recall that this section began with the comment that sorting through regulations surrounding medication could keep a camp’s legal counsel quite busy. There are, admittedly, some vexing problems associated with medication rules and regulations. Given the current situation, one coping strategy is to become informed and then, in discussion with the appropriate stakeholders (e.g., legal counsel, insurance companies, Board), make decisions. Follow this by informing parents, campers, and staff so their decision to engage in the camp experience is an informed decision.

### Write the Camp’s Medication Policies

The more people there are who make decisions about and/or handle medications, the more imperative it is that medication policies are written. If several people handle medications, a camp may want to be even more discrete by also describing practices. The [Association of Camp Nurses’](#) (ACN) best practices statement about medication management for day and resident camps (2007) recommends that elements such as these be part of the written policy:

- A. The camp’s definition of medication (what falls under the policy and what does not).
- B. A description of how medication brought to camp should be packaged and under what circumstances a medication may be refused (e.g. inappropriate packaging, wrong name on prescription label, wrong dose on label).
- C. The location and security of medications, including refrigerated meds, those used for emergency purposes, and those in the personal possession of an individual (e.g., rescue inhalers, EpiPens®).
- D. A description of how daily, routine medications are given to clients and recorded.
- E. A description of how “as needed” medications are accessed and recorded.

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- F. A medical protocol/order signed annually by an appropriately licensed physician that describes the circumstances and doses under which the camp's stocked medications are given.
- G. The camp's process for reviewing a medication that has an atypical use or falls outside the camp's protocols.
- H. A list of emergency/rescue medications that may be carried by individuals and the guidelines for overseeing these medications.
- I. Designation of what medications, if any, are stocked in what first aid kits (e.g., tripping, kitchen, waterfront), and a description of the training and oversight provided to staff who access these first aid kit medications.
- J. A protocol describing how medication errors are handled, to whom they are reported, and how the incident is documented.

In addition to these elements, ACN also recommends that clients — especially parents and staff — are informed in writing about the scope of medication services offered by the camp, the camp's confidentiality practices, the credential of the professional(s) who oversees medications on a day-to-day basis, other staff who may participate in the medication process (e.g., trip staff), and how to contact the camp should exceptions to the medication policy be requested.

When considering mitigation of risk associated with medications, ACN's statement also recommends that information about each individual's medication profile be reviewed by an appropriate healthcare professional (RN or MD) before the individual arrives at camp and a determination made as to the effectiveness of the individual's medication plan in relation to the camp's environment, program, and schedule. This is particularly important for medications used to manage chronic conditions, including psychological diagnoses. Given that some psychiatric medications need 4–6 weeks to reach therapeutic effect, some camps are recommending that campers on these medications be on the same dose of the same med for at least three months prior to attending camp. This is not to say that a person who does not meet this criteria may not come to camp, but rather that the parent contact the appropriate camp representative to talk about the timeline.

## Explore Other Potential Risk Areas

Pharmaceutical waste has been a concern nationwide, most recently with regard to ground water contamination associated with disposal of expired, damaged, and/or leftover medications by flushing down the toilet (Marugg, 2009). While some states have regulations that address this, others do not — yet. Consequently, explore options for disposal that are available. For example, talk with the local waste management company; they may have a program or know of one. Also contact state agencies such as the Department of Environmental Quality, Department of Public Health & Environment, or Department of Substances Control. Another option may be the local hospice program. This program often deals with leftover medications and may know of options.

Another potential risk is associated with the delegation of medication to non-licensed personnel. Trip leaders are a classic example of this; they are often given medications needed by campers and told to give the medication at a specified time. Delegating a task includes responsibilities for both parties: the person doing the delegation and the person accepting the task. Since medication delegation has a risk potential, it's advisable to pay attention to these responsibilities. Select an appropriate person for the task, adequately train the person, obtain the person's acceptance of the task, and put an oversight process in place — one that assesses that what one assumes is happening with medications is, in fact, occurring.

In discussing some of the risks associated with medications, it's also important to remember that progress in medication practices has made it possible for more people to enjoy a camp experience. Readers may recall the era when nebulizers for asthma treatment were only found in emergency rooms; now there are hand-held, battery-operated nebulizers. People who were allergic to Mother Nature would avoid camp; now they take a pill and get on with their day. Youth with various mental, emotional, or social challenges didn't come because they didn't fit in; medication now makes it more possible to be part of the camp community.

With progress comes an impact — there's a lot of medication that comes to camp with campers and staff. As a result, medication oversight is no longer something peripheral to camp; it is a core service. Take time to review your camp's medication policies and practices. Make sure your camp has appropriate people working with medications supported by appropriate policies that compliment the regulatory environment that impacts your camp operation.

### References

- Association of Camp Nurses. (2007). Best practice statement: Medication management for day and resident camps. *CompassPoint*, 17(4), 4.
- Marugg, M. (2009). Keeper of the Kits: Pharmaceutical waste. *CompassPoint*, 19(3), 18.



## Severe Weather Impacts: Tips for Response and Prevention

As we all know, the 2009/2010 winter/spring weather has been anything but normal. There have been record snowfalls in several parts of the county, unprecedented flooding in the Northeast, and fires and strong winds in other parts of the country . . . so what might this mean for your buildings, property maintenance, and insurance? This topic was one of several discussed at the recent Insurance Roundtable held at the ACA National Conference in Denver. Our thanks to Robert Monaghan of Hibbs-Hallmark & Company and Michael Swain of Markel Insurance for taking some additional time to respond to several questions.



- Any time a used vehicle is purchased, a complete safety check should be done prior to using the vehicle.
- A rule of thumb: If a system was to fail and create an unsafe situation, then it should be maintained by a licensed professional.

### When hiring a contractor to complete an inspection of wiring, repair a roof, etc., what things should a camp director consider?

- For any profession that offers a license/certification (electrician, plumber, auto repair, etc.), make sure the company/individual can provide you with a current license/certificate!
- Any contractor should also provide you with a certificate of insurance. It is important to make sure they carry:
  - Workers' compensation insurance. If they do not and someone is injured on the job, it could impact the camp's workers' compensation insurance.
  - The camp should require a certificate of insurance evidencing General Liability coverage that includes products and completed operations coverage . . . with limits of at least \$1,000,000 per occurrence / \$2,000,000 aggregate.
- If a contractor will be driving throughout your property, it is also wise to request that their commercial auto coverage also be shown on the certificate of insurance.

### Do you have any "words of wisdom" to share with camps regarding maintenance as it relates to insurance coverage?

- It is very important to document and keep accurate records of all maintenance completed — and keep it indefinitely. You never know when you might need them, for both insurance and litigation.
- Promptly report damage discovered to your insurance agent. That way, the investigation can start quickly and there won't be any challenges or questions about why you didn't report it earlier. This also allows the camp to be "whole" as soon as possible.
- It is important to discuss business interruption insurance with your carrier. Many camps will carry property insurance on their buildings but don't always consider the extra expenses or loss of business income that might be incurred should there be a loss. A sample question you might consider asking your agent is: "If my dining hall burns down in the middle of the summer, what are all of the *types* of coverage I should consider

in order to allow me to operate the rest of the summer?" Having all the information allows the camp director to make a conscious and educated decision.

- Whenever possible, make sure to have good separation (space) between buildings. This is one method of fire mitigation. Other fire mitigation tactics include:
  - Keeping the grass and other vegetation cut and cleared away from buildings, even during the off season.
  - Cleaning up fallen branches in the main areas of camp.
  - Removal of dead tree limbs from trees in living and trail areas of camp.
- An insurance underwriter will often ask the agent if the camp seems to have "good housekeeping" procedures. If so, this often equates to someone who cares about all aspects of their operation (maintenance, recordkeeping, etc.).
- Pay special attention to the roofs of buildings where electronic equipment is stored — especially if equipment is stored there during the off-season when a leaking roof would not be noticed immediately.
- If your program uses a river for something like rafting, or you have a river/stream running through your property, be aware of what might have occurred upstream during the winter season that could impact your program and/or property (log jam that might break loose, logs buried, etc.).

### What resources should camps be referencing with regard to proper camp maintenance?

- The articles in *Camping Magazine* that focus on maintenance are always a good resource. Rick Stryker writes the "Building Principles" column on maintenance issues. View [Camping Magazine online](#).
- The ACA Web site — the [Knowledge Center](#) also includes some information.
- Government or trustworthy organization Web sites provide good information for maintenance, codes, and what to do in the event of a disaster. A few are listed below. Also check your state's government Web site for state-specific codes.
  - [Air Conditioning, Heating, and Refrigeration Institute](#)
  - [Federal Emergency Management Agency](#)
  - [The Alliance for Fire & Smoke Containment & Control](#)
  - [Code Check](#)
- Of course, your insurance provider!