

Risk Management

FOR CAMPUS RECREATION

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Welcome to a New Year

As we head into a new academic year, the first issue focuses on 'Risk Management' and provides some different perspectives on how to manage risk within the Campus Recreation environment. In addition to these risk management articles, we also have two diametrically opposed articles examining the age-old controversy of 'lightning and pools'.

We also introduce a new feature – the 'Directors Corner' – focusing on those more global risk management issues and strategies impacting Campus Recreation Directors today.

This month's issue also features Part 3 of our series on 'Occupiers' Liability' and focuses on 'Trespassers'.

Have a safe year!

Ian McGregor, Ph.D.
Publisher

Risk Management – What's it all about? What's all the fuss?

Joe Risser CPCU, ARM-P
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The term "Risk Management" has become increasingly popular in recreation activities and programs. But what is it and why is it important?

Let's take an example of how many people manage risk every day – when driving a car.

We **Identify Risk** including: personal injury, damage to your car, injury to other persons, their cars, property of others and exposure to liability as well as unplanned expenses (medical expenses, car repair or replacement, fines, court judgments, etc.)

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Risk Management – What's it all about? *continued page 1*

Managing risk is the process of planning, organizing, leading and controlling the activities and resources of a program or organization in order to minimize adverse effects of risk on people, property, operations, reputation and financial resources.

We **Analyze Risk** by imagining not only our own pain and suffering from injury but also that of others; significant costs of medical expenses; possible loss of income while recovering from injury; costs of repair or replacement of damaged vehicles and other property, and possible large costs for injuries or damages we cause to others if we are judged to be at fault.

We then **Develop** (or utilize existing) **Techniques** to manage the risks.

1. Society has established a number of **Risk Controls**, such as traffic laws and structures, to reduce the number and potential of car accidents. Drivers choose to follow these guidelines to prevent injury and damage to themselves and others, and to avoid other consequences such as traffic tickets. Having a 911 system to summon emergency medical aid to the scene of an accident is a risk control strategy to reduce injuries and damages.
2. There is however a need to establish a technique to pay for expenses if an accident occurs. **Risk Financing** is the other half of techniques to manage risk. Automobile insurance is a technique which can pay for many expenses resulting from an automobile accident. Society has stepped in and required the owners of cars to show proof of minimum levels of liability insurance in order to register and license a vehicle, to ensure that drivers can finance at least some of the expenses related to the risks of driving a car. Having a savings reserve is a technique that can help finance insurance deductibles or other uninsured expenses.

Deciding and Implementing Techniques is critical step in managing risk. Obeying traffic laws may not have significant costs, but maintaining a car in good operating condition to avoid accidents will be an expense. Compared to the thousands of dollars of damage for which a driver could be judged responsible, insurance premiums can be cost effective. Evaluating the costs (financial, time, effort) is critical to deciding which techniques a driver can implement in order to manage their risk through control and **financing**.

Risk Management in sports activities and recreation programs involves the very same steps to protect your programs and your business:

Identify Risk – Know your facilities, equipment, services, materials, operations, standards of care and how participants, employees, visitors and bystanders can be injured or property can be damaged.

Analyze Risk – How often could injury or damage occur? What could be the impact of each injury or damage that could occur on the program?

Develop Techniques to Control Risk and to Finance Risk – How can you prevent or reduce injuries and damage – safety procedures, staffing ratios, supervision, inspections, national standards? How could you fund payment for injuries or damages – financial reserves, insurance?

Decide and Implement Risk Control and Financing Techniques – Do you have the time, energy, skills, and funds to implement and maintain techniques to manage risk? What if you don't manage the risks? How will you pay for losses from risk? Should you discontinue some activities or programs to avoid risk?



Risk Management – What's it all about? *continued page 2*



Unmanaged risks can result in:

Injuries to people – participants, employees, visitors, others

Damage to property – personal, business or entity

Interruption of programs – failure to accomplish purpose, loss of business

Negative reputation – loss of participants and employees

Unexpected payment – thousands of dollars for medical expenses, repairs, replacements, legal fees, fines, etc. resulting in lack of funds for operations and possible closure of the program and/or business.

Loss of revenue and/or funding – unexpected payments, loss of participant fees due to poor reputation and interruption of program, loss of funding due to poor reputation and interruption of program resulting in reduction and/or closing of the program or organization.

Managing risk is the process of planning, organizing, leading and controlling the activities and resources of a program or organization in order to minimize adverse effects of risk on people, property, operations, reputation and financial resources.

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Shootings on Campus

Impact on Campus Recreation

Christopher Tapfer
Emergency Management Coordinator
Washington State University

So far, recreational activities have not been specifically targeted by campus shooters.

Since last year's tragedy at Virginia Tech and February's fatal shootings at Northern Illinois University, the issue of an active shooter on campus has driven much discussion, many changes and considerable concern at colleges and universities throughout North America. While statistics will still indicate that shootings on a college campus are exceedingly rare, no college administrator will want to have to explain why their campus was not prepared for such an occurrence.

In the months following Virginia Tech, hundreds of reports and analyses of the tragedy were released. The result has been a number of changes at college campuses everywhere. These changes have ranged from the acquisition of new locks on buildings, classrooms and meeting areas; sirens and public address systems; text messaging or other communication systems to allow direct contact with students, faculty and staff and all manner of new communications tools that will increase the ability to provide warning and notification capability. Other changes include educational programs with training for students, faculty and staff on what to do and how to react if a shooter appears and the creation of threat assessment teams that can react to and address the issues the institution faces with troubled or problem causing students, faculty and staff and systems created that encourage the campus community to report troubled individuals so they can be reached with the help they need before a tragedy occurs. All these changes have the potential to make a difference and time will tell to see if they will have an impact on making college campuses a safer place to be.

For those in Campus Recreation, beyond the obvious aspects associated with being part of the campus and subject to the same issues the rest of the campus is subject to, what special concerns need to be considered? So far, recreational activities have not been specifically targeted by campus shooters. This doesn't mean the potential doesn't exist. Activities that bring a lot of people together in a recreation facility could be an attractive target for a campus shooter. It is important that recreation professionals be aware of the issues and develops the appropriate plans and preparations to enhance safety for their facilities.



Shootings on Campus *continued page 2*

A key element of your preparations will be to train your employees to be alert and to watch for potential problems and problem people.

This can take many forms. First, before taking any steps, work with your campus security personnel (commissioned Police, professional security force, local Police or whoever provides these services to your campus) to do a safety/security audit to determine the issues you may have. Physical improvements could include more controlled access points to enter facilities; monitored security cameras; checking of bags/packs brought into facilities; metal detectors at access points; and even security personnel on site during operational hours. A key element of your preparations will be to train your employees to be alert and to watch for potential problems and problem people. Then, having quick and easily implemented methods to communicate with other staff to activate response procedures, such as a security lockdown, is critical in an emergency. The ability to communicate with activity participants in recreation facilities to provide warning of a problem and then directions on what to do to provide for their safety and security will also be necessary.

What other role can Campus Recreation have in improving the safety of the institution? Many recreation programs have Wellness Programs with educational components. Use your expertise in this area to ally with your Student Affairs Office and the campus Police/Security personnel to provide campus violence awareness and prevention programs. New awareness DVD's such as Shots Fired On Campus and Shots Fired--When Lightning Strikes produced by the Center for Personal Protection and Safety in Spokane, Washington can be acquired and used on your campus for training and to generate discussions. Whether you use these DVD's or not, It is recommended to provide adequate perspective and the opportunity for discussion on the issues of campus safety and security, these programs should be presented by trained personnel and have Police/Security participating in the discussions. Additional activities could be offering instruction in personal safety (such as RAD or something similar) encouraging people to take an active role in their own safety. Additionally, and in cooperation with other campus units including Campus Threat Assessment Teams, organize programs and presentations on improving the safety of the campus environment and helping those who are troubled and need help, get the help they need.



Ultimately, other units within a college will have the responsibility of improving the safety and security of the institution in relation to the potential for a campus shooting incident. Whether it is to focus on enhancing the safety and security of the students, faculty and staff in recreation facilities through various physical improvements and increased security measures or by becoming involved in training and awareness programs to make sure campus community members have the knowledge and skills needed to protect themselves, a Campus Recreation program can still have a significant role in making a college campus a safer place to be for all.

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Developing a Campus Recreation Risk Management Committee

Creating shared responsibility in managing risk

Patricia Malarney,
Associate Director of Programming
Campus Recreation, Florida State University

Does your Campus Recreation or Rec Sports Department have a Risk Management Committee?

Does your Campus Recreation or Rec Sports Department have a Risk Management Committee? Does this committee meet on a regular basis each semester or convene only when there is an 'incident' in your program area or facility? Is risk management the responsibility of one individual or is it clearly stated in the job descriptions for each position in your department? Are your emergency action procedures or protocols consistent throughout the department? Do you have travel guidelines for students and staff? Does your facility have an emergency action plan and is this plan checked or practiced routinely?

These were only some of the concerns our Campus Recreation Department at Florida State University addressed as it developed a new internal Campus Recreation Risk Management Committee in 2004. This committee consisted of full time professional staff members who represented all program and facility areas in CR.



Much of the momentum for the development of this committee evolved from a campus wide initiative within the Division of Student Affairs (DSA), and led by our own Director of Campus Recreation. The initial goal of the DSA risk management task force was to review risk in our programs and facilities and to continue to provide a safe environment for our students, faculty and staff. The Campus Recreation committee members felt that our department already had a 'leg up' on the division's goal/initiative due to the experience levels of many of our committee members in our inherent high risk program areas such as Aquatics, Rec Sports, Outdoor Adventure and Fitness. Our initial charge in 2004 included:

1. Assess the exposure of risk in all areas of Campus Recreation.
2. Develop action plans within each program area and overall as a department. Include not just accidents but natural disasters and crisis situations.
3. Develop a departmental Risk Management Manual.
4. Discuss procedures for implementing timelines for updating policy, procedures and protocols for our risk management plan.
5. Establish responsibilities and procedures for reporting and communicating to upper level management.

By setting up these goals at the beginning, the committee developed quickly into a task oriented functioning group. Although lengthy discussions developed with each topic area, the bottom line was that this committee was productive as it reviewed, developed and implemented functional policies and procedures that would help reduce or eliminate our risks or help us manage our high risk areas more effectively and according to the standards of the industry.

Developing a Campus Recreation Risk Management Committee *continued*

What we realized was that Campus Recreation would turn out to be a model for other departments in the Division of Student Affairs.

Coinciding with the development of the risk management committee, our Department had a new Director (although not new to FSU or Campus Recreation) and new, energetic professional staff who had many questions regarding risk and liability. To accomplish our tasks we solicited resources within our University, including the legal staff and requested shared information from other University colleagues either through listservs or blogs on various risk management topic areas.

In our first year we developed incident and accident charting for the entire department based on a newly revised consistent accident/incident reporting form. Previously each department had their own accident forms that would be used for their own specific program area. It was imperative that these forms be consistent and inclusive for the entire Department. By formulating this consistent department wide form Campus Recreation could then chart the risk areas by program area and subsequently develop staff training and preventative strategies to help in reducing risk or to train staff how to manage risk more effectively.

Emergency action procedures were reviewed and revised as we developed consistent response protocols for all program areas. The committee endorsed the policy that all student and professional staff have current certifications in 'CPR/AED for the Professional Rescuer', as well as basic First Aid. Although this would be a labor intensive endeavor each semester, we felt strongly that this criterion needed to be met since many of our staff have dual responsibilities in more than

one program area and continuity and consistency in emergency response was essential.

Through regular monthly and bi-monthly meetings in our first two years, each program area reviewed, revised and implemented job descriptions to include language that clarified our risk management responsibilities. Subsequent years found our committee developing, evaluating, revising, and imple-

menting many areas of risk management and risk prevention that included: development of a department wide risk management manual, revised emergency action plans, facility safety inspection check sheets, MRSA protocols, travel protocols and procedures for handling distressed students on campus.

The beauty of this committee is that some years found us a bit more active than others, depending on societal trends. What we realized was that most of what we had developed or were in the process of developing in Campus Recreation would turn out to be a model for other departments in the Division of Student Affairs.

One of the training programs which emerged from the Risk Management Committee's initiatives is an accompanying article on 'Audit 911' developed by our full time professional staff at our Leach Student Recreation Center. This program was an extension from what typical Aquatic programs have accomplished for years in their training programs. However this was expanded to include all staff located in one building at our Student Rec Center.

The Risk Management Committee is continuously evolving and addressing new issues and risks. Each year we must be prepared for new and challenging opportunities. Risk management and prevention is a shared responsibility that must be embraced by all staff. Our committee keeps safety on our minds and allows us to reduce risk to our constituents.

If you would like further information regarding our committee work please contact the author at pmalarney@admin.fsu.edu



Creating a 'Student Risk Manager' position

Cary Primeau
Recreation Coordinator
University of Saskatchewan

A 'Student Risk Manager' position has ensured that the important day-to-day risk management tasks get done

As recreation professionals, we all have risk management on our radar - among other duties that our busy jobs entail. Unfortunately, we cannot be all things to all people and often important risk management issues or initiatives fall by the wayside. Rather than lose sight of these important initiatives and day-to-day tasks, effective delegation becomes the key.

Like most Campus Recreation programs, the majority of programming occurs at times when our office is closed, i.e. after the regular office day. Hence at the University of Saskatchewan, a 'Student Risk Manager' position has been created which essentially acts as the liaison between what happens in the regular operation of programs, games and other events and the managers of those programs in the office. The Student Risk Manager reports directly to the Facility Manager (who is also the chair of the department's Risk Management Committee) completing the loop of information-sharing among all programs.

The Student Risk Manager hired by the College of Kinesiology at the University of Saskatchewan are required to have valid first aid, CPR and AED training, and many students are also part of the Athletic therapy program under the direction of the head therapist for Huskie Athletics. The current Student Risk Manager, Josip Batinik, states: "The issue of safety encompasses both prevention and management of accidents. For prevention, we try to minimize hazardous elements and make sure our personnel are trained for emergency situations. As a student risk manager, it is imperative for me to work closely with the staff of the entire facility. This position has given me the opportunity to work with and learn from different individuals of various backgrounds. To be successful in promoting safety and the implementation of safe practices, cooperation and teamwork are essential. In my opinion, the University of Saskatchewan's Campus Recreation program is now safer since we are very successful in working together".

The weekly duties of the Student Risk Manager include:

1. Inspect all facilities operated by College of Kinesiology and return completed facility checklists to the facility manager on a bi-weekly basis.
2. Complete venue checklists and report any problem areas to the appropriate coordinator for proper follow up.
3. Inspect all first aid kits / stations in facilities operated by the College of Kinesiology on a weekly basis. Document the status of the first aid kits by maintaining a weekly inventory list. Submit that list to the head Athletic Therapist and re-stock kits as necessary.
4. When requested, attend all College of Kinesiology program orientation meetings to provide a summary of the Emergency Action Protocol and the procedures followed in the event of an injury. These orientations include, but are not limited to, Campus Recreation captain's meetings, Aquatics and Fit Centre in-services.
5. Attend all scheduled College of Kinesiology Risk Management Committee meetings.
6. Complete a weekly review of all incident reports. Reviews should ensure that Kinesiology staff has followed proper protocol in case of injury, and ensure reports are completed correctly and in full, as well as detailing the causes of incidents and possible solutions. Forward this review to appropriate College of Kinesiology program coordinator for proper follow up.

Consider implementing a 'Student Risk Manager' position in your department! For Campus Recreation at the University of Saskatchewan it has ensured that the important day-to-day risk management tasks get done – and important initiatives are not lost. It also provides a great learning experience for all students hired in the position.



Directors Corner

360-Degree Risk Management, *Part I*

Lori Miller Ed.D., JD, Professor, Sport & Recreation Law
Wichita State University

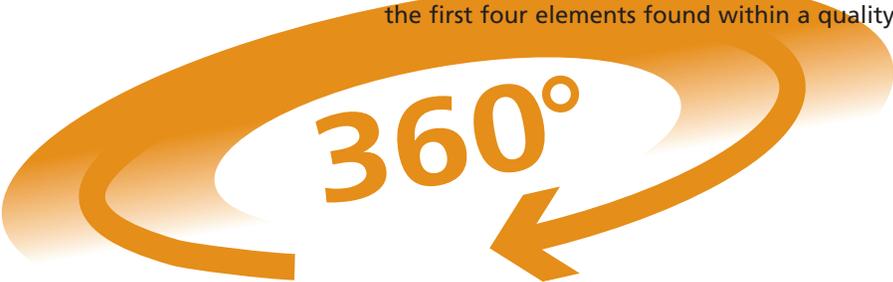
The 360-degree risk management concept embraces the dynamic, all-encompassing nature of campus recreation risk management systems in the 21st century.

As we begin a new academic year, it is a good time to step back and take a fresh look at your department and the policies and protocols related to the management of inherent campus recreation risks. This two-part article provides both novice and seasoned campus recreation administrators with a simple, concise, and descriptive concept, i.e., 360-degree risk management, to assist in the comprehensive design or review of their respective campus recreation risk management system.

As depicted by the icon, the 360-degree risk management concept embraces the dynamic, all-encompassing nature of campus recreation risk management systems in the 21st century. Eight characteristics embody a quality 360-degree risk management system:

1. Comprehensive understanding of the varied risks common to a campus recreation department;
2. Broad based, multi-functional risk management responsibilities expected of all campus recreation staff, student workers, and volunteers;
3. Ongoing communications with central administration, supervisors, subordinates, community partners, volunteers, facility lessees, and students;
4. Collection and analyses of internal data (e.g., participant usage, preferences, injuries, staff performance) and external data (e.g., legislation, professional standards, economic climate, demographic trends);
5. Routine review, updating (if needed), and communication of campus recreation policies and procedures;
6. Relevant risk management trainings and professional development opportunities;
7. Campus recreation job descriptions and rewards that include defined risk management responsibilities and corresponding performance assessment; and
8. Overt administrator commitment to an established quality risk management culture.

Part I of this article discusses the important risk management role associated with the first four characteristics (i.e., #1-4), and Part II of the article, covering the latter four characteristics, will be included in the next issue of the Risk Management Newsletter. The following paragraphs describe the first four elements found within a quality 360 Degree Risk Management System.



360°

Directors Corner

360-Degree Risk Management, *Part I*

continued page 1

21st century recreation professionals now associate risk management practices with specific strategies adopted and implemented to reduce or eliminate any type of possible loss

1. Comprehensive understanding of the varied risks that permeate a Campus Recreation department

Risk management practices adopted by recreation and non-recreation entities during the mid-20th century typically focused only on the prudent management of financial risks (van der Smissen, 1990). Financial risk management practices, for example, include: (a) assessment, evaluation, and procured entity insurance (property, protection and indemnity, personal injury, etc.), (b) responsible asset investment strategies (bonds, certificates of deposit, stocks, etc.), and (c) oversight, guidance, and monitoring of all entity budgets.

Increasing recreation industry insurance and litigation expenses, competition for the participant/consumer, and customer service expectations all contributed to the recreation industry's expansion and breadth of applied risk management strategies throughout the latter part of the 20th century. Risk management practices gradually evolved to encompass those strategies that could eliminate, transfer, or mitigate financial losses, as well as any and all other non-financial losses. For example, 21st century recreation professionals now associate risk management practices with specific strategies adopted and implemented to reduce or eliminate any type of possible loss, e.g., physical injury to participant, property damage, poorly maintained equipment, employee turnover, participant/consumer dissatisfaction, promotional misrepresentation, poorly worded contracts, inadequate personnel and program assessment.

2. Broad based, multi-functional risk management responsibilities expected of all campus recreation staff, student workers, and volunteers.

As noted above, risk management has evolved into a broadly applied organizational imperative relating directly to an organization's ability to achieve both short and long-term success. This holistic risk management culture must permeate throughout an entire recreation program and involve all recreation personnel, regardless of one's department or specific job assignment. Similarly, risk management practices include both seemingly 'important' loss prevention actions and behaviors (e.g., up-to-date policy manuals, personnel orientation trainings), as well as the seemingly 'less important' loss prevention actions and behaviors (e.g., picking up trash on the floor). In other words, the combined risk management actions and behaviors of every recreation entity constituency are synergistic in nature, resulting in a sustained risk management culture that contributes significantly to an organization's ability to deliver efficient and effective recreation offerings.

The value inherent within the 3600 Risk Management notion can be exemplified by a quote from the book, *2120...The Extra Degree* (Anderson, 2007).

At 211 degrees, water is hot. At 212 degrees, water boils. With boiling water comes steam. And steam can power a locomotive. It is that one extra degree, just one, that makes all the difference. And so many times, it is that one extra degree of effort in business, and in life, that *separates the good from the great*.

The 360-degree risk management concept embodies all efforts and initiatives to create and successfully maintain a quality risk management culture.



Directors Corner

360-Degree Risk Management, *Part I*

continued page 2

3. Ongoing communications with central administration, supervisors, subordinates, community partners, volunteers, facility lessees, and students.

The ability to create and maintain an exemplary 360-Degree Risk Management system is contingent upon the fluent, multi-directional, and welcomed communication among campus recreation constituencies. Communication obstructions resulting because of organizational structure or departmental competition (e.g., aquatics v. fitness), staff infighting, and supervisory ego or elitist perceptions represent communication impediments leading to the demise of internal campus recreation communication and a thwarted 360-degree risk management system. In comparison, communication that encourages and respects ongoing constituency input and feedback fosters a more harmonious environment where constituencies uniformly possess a genuine commitment to quality 360-degree risk management practices and procedures.

4. Collection and analyses of internal data and external data

Technological advancements continue to assist with and guide internal campus recreation data collection efforts. Commonly collected data, for example, includes ongoing assessment of participation per activity/event, time of day, day of the week, etc. Similarly, the number of injuries, type of injuries, injury location, and time of day reflect other routine data recorded by campus recreation staff.

In addition to the collection and evaluation of internal quantitative data, valuable internal qualitative data can be gathered for analyses, for example, by observing the cleanliness and condition of the facility, the verbal and non-verbal staff interactions, and engaging in conversation with students and other patrons regarding their perceived experiences while using campus recreation facilities, equipment, or program offerings.

Analysis of external data also provides insights contributing to the management of campus recreation risks and loss prevention efforts. External data, for example, can include consideration of national, regional, and local economic trends, proposed and amended federal and state legislation (especially related to negligence and liability issues), and being aware of criminal activity and other environmental factors which can add to existing risk exposure. Peter Drucker (1992) described the limitations associated with internal data analyses only. As stated by Drucker (p. 189), decisions based solely on internal data "... actually may lull executives into a false sense of security; it may make them believe that they have information when all they have is what their subordinates wanted them to hear." The 360-Degree Risk Management concept reflects the thoughtful adoption and implementation of risk management strategies based on the relevant analyzes of relevant internal and external data.

Conclusion

The above risk management system components reflect four of the eight elements embedded within a quality 360-Degree Risk Management system. Elements 5 through 8 will be included in the Newsletter's next published issue.

The fall 2008 academic semester presents Campus Recreation administrators and staff with a refreshing opportunity to implement or rejuvenate risk management systems to better reflect the 360-Degree Risk Management concept while realizing the resultant benefits and rewards.



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Risk Management In Intramural Sports

Matt Campbell

Student Coordinator – Intramural Sports

J.D. Candidate '08, DePaul University College of Law

'No school ID, no play.' 'No jewelry.' 'Sign the waiver.'
'Fill out an incident report for any injuries or altercations.'



Every campus recreation professional recites these intramural mantras at student staff training, but is there an understanding as to why these rules are in place?

This article seeks to help intramural professionals provide their student staff with answers as to why recreational programs must maintain rigorous policies. It will also identify risk management concerns in intramural sports in order to eliminate unnecessary risks and mitigate those which are unavoidable.

Intramural programs are unique in that the majority of the competitions and participation take place after the professional staff has gone home for the evening or weekend, leaving student staff in charge. To best facilitate the student staff to efficiently and effectively run the program, an understanding of not only what the policies and procedures are, but why they are in place, is necessary.

Intramural programs are unique in that the majority of the competitions and participation take place after the professional staff has gone home, leaving student staff in charge.

The majority of risks in intramurals arise under the legal doctrine of tort. A basic understanding of this legal concept should be included in student staff training. A tort consists of four basic components:

1. **Duty** – an obligation imposed on an individual requiring that they adhere to a reasonable standard of care while performing any acts that could foreseeably harm others.
2. **Breach** – when conduct has fallen short of the standard that was expected.
3. **Causation** – there must be a reasonable connection between the breach of duty and the injury.
4. **Damages** – the basis for tort law is to compensate for an injury resulting from a wrongful act; if there is no damage, there is no compensation.

(See SportRisk, McGregor & Associates, 2008)

One example of how a tort claim may arise in intramurals is when a student participating in intramural volleyball is hurt when colliding with an unpadded pole.

1. **Duty** – The intramural program has a duty to the student to provide a reasonably safe environment.
2. **Breach** – This duty has been breached by the clear risk of an unpadded pole, easily deemed conduct falling short of the reasonable care standard.
3. **Causation** – The unpadded pole could be a result of the program's general lack of padding on the volleyball equipment or a result of a student staff member forgetting to put up the pads prior to the start of play. The injury was closely related to the lack of padding on the volleyball pole, thus satisfying the legal threshold of causation.
4. **Damages** – The damages here is the injury to the participant. The participant may attempt to recover financially to rectify the damages.

Risk Management In Intramural Sports *continued page 1*

In this situation, the intramural program would be considered negligent and the student would have a *prima facie* cause of action against the program. Nevertheless, there are defenses to negligence, many of which are embedded in program policies and procedures – hence the need for them!

DEFENSES TO TORT CLAIMS

Contributory negligence, assumption of risk, and waiver/consent are the defenses most frequently raised in recreation and sports injury cases. (*SportRisk*, McGregor & Associates, 2008).

1. **Contributory Negligence** – conduct on the part of the injured party which falls below the standard to which they are required to conform for their own protection.
2. **Assumption of Risk** – a party who voluntarily assumes a risk of harm arising from another's conduct cannot recover if said harm results.
3. **Waiver/Consent Form** – a voluntary relinquishment of a claim, right or privilege by a person to someone against whom it might be enforced.

(*SportRisk*, McGregor & Associates, 2008)



Contributory negligence is important when there is an altercation or injury. Recording the information at the time it happens is essential where the injured party may have contributed to their injury, as this documentation may bar any future claim against the program. Using the example from above, the volleyball participant may have contributed to their own injury by a number of factors, including wearing inappropriate footwear, being pushed, being inebriated, or even being reckless. In this situation, a timely and descriptive incident report is critical.

Assumption of risk and waiver/consent are similar defenses to a tort claim. Generally, courts will uphold these agreements only if it is unmistakable that the parties' intent was to shift the risk of loss. This is why it is important that the waivers are well drafted and all participants have signed the waiver prior to participating in any intramural competition. In the volleyball example, the participant may be barred from bringing an action so long as they have signed the waiver and it is clear that they intended to absolve the intramural program from any liability arising from negligence.

Risk Management In Intramural Sports *continued page 2*

WHAT CAN MY PROGRAM DO TO ENSURE ADEQUATE RISK MANAGEMENT IN OUR INTRAMURAL PROGRAM

It is essential to identify risk management concerns in intramural sports to eliminate unnecessary risks, and mitigate those risks which are unavoidable.

It is essential to identify risk management concerns in intramural sports to eliminate unnecessary risks, and mitigate those risks which are unavoidable. In order to mitigate the unavoidable risks, there are certain measures which must be implemented. Prior to the start of a new academic year it is important for the intramural director to:

a. Develop A Risk Management Plan

Meet with university General Counsel/Risk Management Team

1. Discuss any changes or rulings in tort liability which may affect the program
2. Draft or review the waiver/consent form
3. Establish minimum certification standards for student employees
4. Establish a exact minimum threshold for incidents requiring documentation

b. Train & Instruct Student Staff

1. Identify all safety training protocols necessary for the specific needs of the program
2. Make sure all supervisors are trained and certified in appropriate emergency protocol (e.g. 1st Aid/CPR/AED/Blood Pathogens/MRSA)
3. Develop an emergency action plan where all staff positions are given specific roles in the event of an emergency
4. Demonstrate the importance of documentation
 - a. Rehearse competent written communication between student and professional staff
 - b. Ensure a process to implement waivers is in place
5. Continually update and refresh employees in safety protocol
 - a. Communicate changes or issues to student staff
 - b. Integrate resultant examples from the program into instruction
 - c. Test staff understanding of policies and procedures through interactive situational illustrations
6. Ensure all referees are properly qualified and trained

c. Document Everything

1. Keep copies of each supervisor's certification/ qualifications on file
2. Ensure facilities and equipment are checked daily through the use of daily checklists
3. Have a general log of the daily activities regardless of any incidents
4. When there is an incident, the appropriate forms must be completed by program staff and given to professional staff for review and filing
5. Continually update & evaluate program policies and procedures

d. Facilities and Equipment

1. Inspect and inventory all equipment to ensure that they conform with governing regulations
2. Determine who is going to conduct inspections and the frequency of the inspections of all playing facilities and program equipment
3. Identify any natural hazards which may come into play during outdoor sports and develop a plan to manage these hazards.



Risk Management In Intramural Sports *continued page 3*

Intramural programs are unique within Campus Recreation because of the high volume and level of interaction between participants. Furthermore, the majority of programming occurs under the direct supervision of student staff. Therefore it is essential that student staff be given the knowledge and training to efficiently and effectively run a safe intramural program.

NOTICE:

A number of jurisdictions may have rules, regulations, constitutional provisions, legislative enactments, or judicial opinions bearing upon this subject. Because this article is meant to provide a general position on risk management in intramural sports, the reader is advised to consult the appropriate statutory or regulatory compilations for their appropriate jurisdiction. For a further understanding please consult *SportRisk*, 3rd Edition, McGregor & Associates (2008)

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The Lightning Controversy

Judith Sperling

Assistant Director - Risk Management,
Training & Development
UCLA Recreation

Over the years I have received many inquiries asking what the standard is for closing indoor pools during thunder and lightning. There is no singular school of thought – in fact there are two very strong sides to this issue, one that wants to play it absolutely safe and another that is more practical. In the end, it is going to boil down to what risks you perceive in your particular situation, which risks you are willing to accept and which you are not. Consideration should be given to the typical weather patterns that you experience in your state or province, and whether or not you have a safer place than the pool to locate patrons if you do decide to evacuate. If litigation were to occur, it is clear that you will be able to find an expert to advocate for either position.

The following articles represent the two sides of the lightning debate – both written by experts in the aquatics field.

The Myth around closing Indoor Pools when there's Lightning

Tom Griffiths, Ed.D.

Director of Aquatics and Safety Officer
Department of Athletics
Penn State University

Closing Indoor Pools during Lightning Storms is THE Great Urban Myth in Aquatics. It rates right up there with Blacks can't Swim, Snapple supports the KKK, McDonalds put worms in Big Macs, Coca-Cola rots your bones and the Kentucky Fried Rat.

Why then do so many water safety professionals and organizations prescribe to this myth?

According to Heath and Heath in their popular and informative book, 'Making it Stick', Urban Myths stick like this one, because they have five important

Closing Indoor Pools during Lightning Storms is THE Great Urban Myth in Aquatics.

elements: simple, unexpected, concrete, credible and emotional. When it comes to the indoor lightning myth, credibility and emotion based on fear are two important and predominant traits making this particular myth stick.

This debate gained momentum when the National Lightning Safety Institute falsely claimed that both the NCAA and US Swimming required indoor pools to stop swim team practices and meets during electrical storms. Still to this date, the NCAA and US Swimming have yet to address the closing of indoor pools during lightning storms. To make matters worse, both the American Red Cross and the YMCA's have recommended indoor pool closures during electrical storms, even though there is no scientific or medical evidence or even case studies indicating swimming indoors during electrical storms is dangerous. It must be emphasized that there has never, ever been one reported hospitalization of an indoor pool patron during an electrical storm. By way of comparison, since 1990 the Consumer Product Safety Commission, has reported scores of electrocutions and shocks at indoor swimming pools because of improper use of hair driers, power washers, power equipment, underwater lights and radios and other faulty electrical equipment, but NONE have been caused by electrical storms.



The Myth around closing Indoor Pools when there's Lightning *continued*



This debate has been a hot topic of discussion for decades yet during the past twenty years, the doom and gloom advocates for closing indoor pools have not revealed one case of a lightning strike, either directly or indirectly, to an indoor pool patron. Just as it is recommended to sit in a car or in a house when there is lightning outside, so should it be for indoor pools.

The National Electrical Code (NEC), which has been adopted by every governmental agency in the United States, requires electrical systems in buildings to effectively shunt the voltage generated by a lightning strike to the building or ground. If the electrical wiring/grounding in the aquatic facility meets code, the Indoor Pool should not close during outdoor electrical activity. Indoor pool closures during electrical storms is a violation of the NEC section 250.4 (A)(1) according to Vicki Weiss, Ph.D. She also believes closing indoor pool during electrical storm is an OSHA violation. To close an indoor pool during an electrical storms takes the patrons from a protected environment and places them more at risk, that is, on telephones, on computers and driving in storms, all of which have produced fatalities during electrical storms. Keep in mind that the Empire State Building in New York City gets struck approximately 100 times a year without injuries or incident.

The good news is that the tide is changing. Montgomery County Maryland Health Department no longer requires their indoor pools to close and the State of Delaware is likewise considering rescinding their policy. At Penn State University we keep our four indoor pools open during electrical storms with the approval of our Environmental Health and Safety Department, the Risk Management Department and our High Voltage Experts on campus.

At Penn State University we keep our four indoor pools open during electrical storms

If you want to manage your aquatic facility against the risk of electrocution and electrical shock, have a qualified and certified electrician inspect your pool and ancillary areas on a regular basis. Both the Institute of Electrical and Electronic Engineers (www.ieee.org) and the National Fire Association (www.nfpa.org), who develop the National Electrical Code, have education departments which can provide assistance. As Aquatic Risk Managers we have much to be concerned about in and around our indoor pools. Worrying about lightning near an indoor pool is a waste of time, energy and emotion. Let's pick our risk management battles wisely and stop following 'Urban Legends'.

The Lightning Debate. The case in support of a lightning policy

Kevin Johnston, M.S.

Graduate Faculty, University of Idaho

Senior Consultant, Professional Aquatic Consultants International

The most conservative perspective is to close both outdoor and indoor pools due to the potential risk.

Why is there even a debate? The most conservative perspective is to close both outdoor and indoor pools due to the potential risk. The most liberal perspective: the pool is a safe place based on its design and there hasn't been a documented 'in the water' injury or death in an indoor pool as a result of lightning. Our society has become what Beck calls a 'Risk Society'. Risk is out there lurking in the shadows but is obscure and abstract: global warming, terrorist attacks and nuclear disasters waiting to happen. Lightning and the indoor pool can be seen in these same terms.

Existing State and National Standards

A number of national codes and standards specifically apply to and explicitly state indoors pools in their regulations. These include the American College of Emergency Physicians, National Lightning Safety Institute, National Athletic Training Association (NATA) and the Young Men's Christians Association (YMCA). There are also a number of national organizations with lightning standards having relevance to pools which may not differentiate indoor and outdoor but plainly state swimming pools. These include the National Weather Service, American Meteorological Society and the NCAA Guideline #1D.



The NATA lightning position statement specifically governs all outdoor activities and indoor pools:

"Even though a swimming pool maybe indoors and apparently safe, it can be a dangerous location during thunderstorms. The current can be propagated through plumbing and electric connections via the underwater lights and drains of most pools...following these pathways to the swimmers through the water."

Six states have codes related to lightning. Washington Administrative Codes requires the operator to take the appropriate action during environmental conditions like lightning. Delaware's code states that, 'during electrical storms use of a pool (indoor or outdoor) shall be prohibited.' Nebraska requires that pools be closed during electrical storms.

Actually Documented Lightning & Indoor Pool Incidents

The YMCA, owner of more swimming pools than any other single agency in the United States, recorded lightning entering into one of their natatoriums. Fortunately they had been following the YMCA's national guideline to clear their pools thus averting the potential for a lightning injury or death. There have been other near misses: structural damage of an indoor pool's roof; minor injuries to an indoor pool employee due to contact with a breaker panel; destruction of a main circulation pump motor; injuries sustained while on a telephone and in the showers. Additionally, there are records of visible lightning in natatoriums located in Florida, Georgia and Tennessee. Given these examples, one must take precautionary action.

The Lightning Debate. *continued page 1*

The Potential Risks

Lightning protection should include a continuous conductive system with air terminals and ground terminals installed.

The following are some questions to consider. Could swimmers in an indoor pool be injured or killed by a lightning strike? Would it be one swimmer or all of the swimmers in contact with the water? Is it just luck that we haven't had an accident, or is it because of building design? Could it be that the lack of an accident is due to the preventive measures that many operators have taken, such as clearing indoor pools during lightning?

Conduits (electrical, gas, water, sewer, phone, recirculation system) can carry the electrical charge of lightning and distribute it elsewhere. Building design can mitigate this factor by bonding and grounding the pool. However, electrical bonding and grounding is designed for manmade voltage gone astray and most strikes, while the larger lightning strikes can be 25,000 to 50,000 amps, 2 million volts and over 50,000 degrees F. The risks are high with lightning of this magnitude and scale as it may not take the path of least resistance (as usual), rendering bonding and grounding ineffective.

It is also well documented that those in contact with domestic water sources (sinks, bathtubs and showers) are at risk. There are known deaths and injuries in these environments associated with household water in homes that were bonded and grounded to code. Therefore you have to ask if this could happen in an indoor pool as well.

Buildings constructed using steel beams, steel roofing, with no windows are safer than others. For example, the University of Minnesota Natatorium remains open even during severe lightning activity, and has been directly struck half a dozen times. However, they are in the fortunate situation of being able to afford a lightning protection system.

A lightning protection system consists of air and ground terminals connected by a conductive system, which must be continuous to work. A building's structural steel is sometimes part of this conductive system. Since lightning takes the path of least resistance, discharges are attracted to air terminals, which extend 18" above the top of the building. The current passes through the conductors to the ground terminals, where it is dissipated to the earth. Lightning protection should include a continuous conductive system with air terminals and ground terminals installed. Most pools do not take all these protective design measures into consideration.

When evaluating the risks at your indoor pool, ask the following questions: Is your bonding and grounding system intact? What is the maximum voltage that your grounding system can sustain? Do you have a functioning lightning protection system in place?

I contend that the erring on the side of caution by completely clearing the water/showers and preventing the use of phones is the only near-failsafe way of reducing the risk of electrocution during lightning's threat at indoor pools.

Important lightning safety policy elements:

- Generate an action plan and communicate to everyone involved.
- Devise a plan to alert people when they need to seek shelter.
- Create a system to identify lightning and monitor weather
- Identify safe-shelter locations before warnings.
- Notify all persons when the threat has passed.
- Have persons trained in First Aid and CPR.



The Lightning Debate. *continued page 2*



Lightning Response Action Plan

1. See lightning hear thunder = Clear pool
2. Avoid risks: avoid poles, metal fencing, lifeguard stands, ladder entrances, diving board stanchions
3. Close pool area
Guards secure entrance to pool deck
4. Create holding area for patrons
Dry, with no windows and avoids metal door frames
5. Prevent use of showers, landline telephones (except in an emergency)
Cordless & cellular phones are acceptable.
6. Create monitoring procedure
Signal all clear, leave holding area, reopen pools

Warning and Monitoring Systems need to be in place and could include:

1. Weather radio: National Oceanic and Atmospheric Administration (NOAA).
2. Weather pager
3. Weather services: Use the World Wide Web
4. Sensing devices (structure mounted, remote handheld)

Lightning Liability Concerns

Here are some additional questions to consider:

What is your current lightning policy?

Is your facility manager or head lifeguard trained in weather observation?

How is training conducted?

How would current policy hold up in court?

While lightning may legally be seen as an act of God, advances in technology make lightning a much more foreseeable event. Hence we should act to avert the potential risk at indoor pools related to lightning. We have a professional responsibility to manage that risk and not wait for it to create unnecessary injuries or deaths.

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The Ball is in Your COURT: Good Swimmers Don't Drown

Katharine M. Nohr, Esq., Nohr Sports Risk Management, LLC

Multiple athlete drownings in triathlons have recently puzzled the multi-sport community.

Multiple athlete drownings in triathlons have recently puzzled the multi-sport community. In July of 2008, a 60 year old male and a 52 year old male drowned in two different triathlons on the same weekend. A 32 year old male died during the swim of the New York City Triathlon the previous weekend.

Why do well-conditioned athletes die during the swim portion of the three discipline event, rather than during the more hazardous cycling portion or when they are more fatigued on the run? As aquatics safety expert Tom Griffiths has said, "good swimmers don't really drown---they die of other specific causes, known as 'drowning triggers,' that predispose them to death in the water." The trigger that commonly causes these mysterious drowning deaths is Jervell and Lange-Nielsen syndrome and Romano-Ward syndrome, which cause their sufferers to develop a sudden abnormal heart rhythm as a response to exercise or stress. These abnormalities can occur for no known reason in people who have "long QT" syndrome ("LQTS"), which refers to an interval seen on an EKG (electrocardiogram). Not everyone who has LQTS will develop a dangerous heart rhythm. However, when this does happen, it can be fatal.



Sports and recreation programs that include swimming pools, swim teams, water polo, diving, triathlon, open water swimming and recreational swimming may face drownings despite vigilant efforts of prevention. In reality these drownings may be better characterized as pool or ocean deaths, as they are related to the swimmer's health condition rather than negligence by lifeguards, event directors, facilities or facility managers.

The Sudden Arrhythmia Death Foundation (SADS) mission is to "save the lives and support the families of children and young adults who are genetically predisposed to sudden death due to heart rhythm abnormalities." SADS website, <http://www.sads.org>, explains that as part of their work they do the following:

- Advocate for individuals struggling to find answers due to the unexplained death of a loved one.
- Provide referral to and assistance with research projects.
- Work with other organizations - nationally and internationally - to advocate for measures beneficial to families and patients (AEDs in community, etc.)

Sports and recreation programs should consider partnering with SADS in their quest for safe swimming. One of the important elements in risk management for swimming is providing information to athletes and their parents, lifeguards, event organizers, coaches, athletic directors and facilities managers. SADS is an important resource for obtaining information and getting the word out about this unfortunate and serious medical condition. If athletes and parents are educated about LQTS, they are more likely to undergo testing to determine if they have the condition. If it is identified, medication might be prescribed that could prevent an untimely death during swimming.

Education about LQTS should also make lifeguards more aware of the risks to good swimmers, so that they focus their attention equally on all of their charges. This condition also provides further justification for investing in AED's and associated training programs. With such awareness and tools for rescue and prevention, these mysterious drowning deaths can be reduced or eliminated.

Occupiers' Liability Part III

The Trespasser

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A trespasser is one who intentionally and without consent or privilege enters another's property

The occupiers' liability series has explored the issues surrounding an "occupier", "premises" and who is considered to be an invitee and a licensee, should injury occur while they on "occupied" premises. Keep in mind that an occupier (anyone in control of premises) must use such care as may be required to protect invitees and/or licensees while they are on the premises.

So what happens if the user is a trespasser?

A legal definition of "trespasser" is "one who intentionally and without consent or privilege enters another's property". (Black's Law Dictionary). Those provinces that have codified occupiers' liability have specifically indicated that in those circumstances in which a person is trespassing, the person assumes the risks of use, both physical and legal. However, the statutes also provide that the assumption disappears if the occupier proceeds with wilful and reckless conduct that puts any user at risk.

From the perspective of the campus, this means that anyone who walks through the campus, and is not a student, employee, visitor or another with purpose on the campus could technically be described as a trespasser. However, most campuses in Canada are considered to be public institutions and therefore the argument that anyone is trespassing would be an uphill battle.

Frankly, Canadian law has taken a generous approach in the treatment of a trespasser who is injured on private property. There are few cases and the leading decision dates from 1984. It involved a snowmobiler who hit a cable hidden by snow on private property and suffered injury. The trial judge found that the property owner knew that the snowmobilers used the land, knew that the cable was in existence and knew that it could be hidden by snow. "It was unquestionably a trap, albeit not deliberately or intentionally set, but such an obvious trap that it was this reckless disregard which could be described as nothing less than gross negligence." (Mr. Justice Potts, *Onyschuk v. Silver Harbour Acres Ltd.*). The judge went on to say that "In failing to take any action, it displayed a complete lack of common sense and humanity towards these plaintiffs".

What this means is that occupiers owe a duty of care to users of property, even trespassers, in which there may be use restrictions, particularly if the occupier is aware of the use.



Occupiers' Liability Part III

The Trespasser *continued*

Canadian courts have been particularly lenient in at least two general circumstances:

1. If the trespasser is a child, a court will look at whether the use was alluring to a child and if the occupier knew that a child, or any child, might likely become a trespasser. In these circumstances, the court will look at the age of the child; the child's ability to appreciate danger and the burden on the occupiers to eliminate the danger or protect children from danger as compared to the risk of the danger to children.
1. The second circumstance has caused much research across the provinces in Canada and that is recreational users such as the snowmobiler in the above case. With so much wide open land across the country, many snowmobilers, cross country skiers, bird watchers, etc, use private land without asking permission. The burden of responsibility has been increasing upon landowners and with such cases as that above, recreational use statutes have been enacted to limit liability risks to property owners. The standard of "wilful and reckless disregard" is still in place but with greater limitations.

The bottom line for campuses is that most of its occupiers' risk will fall under the invitee or licensee risk.



The bottom line for campuses is that most of its occupiers' risk will fall under the invitee or licensee risk. Those that have acres of parkland, will find that it is considered to be "public" space. Therefore, it is important to insure that there are no obvious risks to any user, discourage uses that could be considered unfriendly such as unsupervised parties, and be sure that campus police are well aware of the high risk areas and treat accordingly.

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