

2007 UPA National Meeting - Philadelphia

I. Introduction

- A. The Board of Directors – A Fiduciary Relationship
- B. Alcohol Policy Issues
- C. The Waiver

II. What is a does the fiduciary responsibility entail:

A. **A Legal duty to be loyal, prudent, and act in good faith in the best interests of the organization.**

1. Effective board members should be knowledgeable about the operations of the organization, become regularly involved in board activities and ultimately develop a trusting relationship with the organization

2. As a member of a board of directors, one has the power and obligation to act for the organization and are therefore held in a position of trust. This type of association based on trust is called a FIDUCIARY relationship. A

fiduciary is one that stands in a special relation of trust, confidence, or responsibility in certain obligations to others.

B. **Care, Diligence and Skill**

1. Regardless of the structure of an organization or its mandate, all directors face the fiduciary duty to perform with care, diligence and skill. Boards of Directors are expected to operate in good faith and with the best interests of an organization in mind.

2. the actions of a board member (i.e. the standard of care expected) will be judged according to what a reasonably prudent person would do in comparable circumstances.

3. This does not mean that all directors will be judged the same. Rather, this depends on the individual director. For example, if the treasurer of a voluntary, community-based organization (VCBO) is an accountant, he or she has a duty to practice the same standard of care required when working as a paid professional. If a member has significant business experience this higher standard of care is also applied to that member.

C. **Higher Standard of Conduct**

1. Directors of charitable organizations may be held to a higher standard of conduct than those who manage non-profit organizations that are not charitable. This is because the courts treat directors and officers of charitable organizations as TRUSTEES, setting a higher



... facilitates a variety of workshops for voluntary organizations across the province. (Above) Linda ... provides training to ... in Harbour Breton.

standard of care. A **trustee** is one who holds legal title to property, but other people have the right to benefit from that property.

2. The most effective way for a board member to ensure the proper standard of care is provided is to attend board meetings regularly, make reasonable inquiries into the day-to-day management of the organization, participate in making decisions, and ensure the selection of qualified and responsible management and staff.

3. In order to do this, directors must be prepared for meetings rather than relying on the opinions of others. To assist in preparation, directors should ask for copies of documents and reports prior to meetings. If anything is not clear, clarification and explanation should be sought.

D. **Be Prepared and Stay Informed**

1. While making decisions, a director should try to foresee any consequences of a course of action in order to avoid taking unreasonable risks. This means directors must fully understand any issues and seek outside expert advice if necessary. For example, if deciding on the purchase of new equipment, a director needs to know the financial situation of the organization, as well as future plans, in order to make an informed vote.

2. If, for some reason, a director misses a meeting, he or she should review the minutes and ensure any objections to decisions are recorded at the next board meeting.

3. Essentially, a board of directors is responsible to not only the organization itself, but to other board

III. Alcohol Policy Issues

A. Alcohol Provision - Outline of Some Potential Liabilities

Potential liability to “DISC “and its Board members stemming from the provision of beer at summer league “after-parties.” People have raised a number of questions concerning what type of liability we faced, how far that liability could reach, and what we could do to prevent or minimize future liability. The courts of each state look at these issues differently, and within each state, things change over time. As of 2004, no league of our type had been successfully sued based on an alcohol related event. That has changed since the writing of this piece. The take away for everyone is to look at each issue and determine how best to manage the risk.

In short, DISC is unlikely to face liability for the types of casual post-game drinking scenarios that are the norm for summer league. Potential liability does exist hypothetically in two types of cases: 1) DISC sponsors a party in which minors are “knowingly” served alcohol; and 2) DISC sponsors a party in which clearly intoxicated people who plan to drive themselves home are served alcohol. Note that both of these cases present potential liability, no Pennsylvania court has ever (**no longer true**) held a league responsible for injuries

or other damages suffered by a party attendee or third party under either scenario. I will go into each scenario briefly.

B. Provision of Alcohol –In General

Assume for our discussion that putting together a Friday night party makes DISC a “party host,” a term of art used in Pennsylvania case law. In Pennsylvania, liability for party hosts (in our case—summer league) is usually based upon a three-pronged “negligence” theory, where the host 1) serves alcohol, 2) knows the guest will be driving afterward, and 3) knows that the guest is intoxicated. However, liability does not generally extend to an entity such as a league that permits the consumption of alcohol, but does not furnish the alcohol.

Under this theory, a potential plaintiff (either a partygoer, or someone injured by a partygoer) could claim that DISC, as party host, had a duty to ensure that about-to-drive, visibly drunk individuals were not served alcohol. Several factors will make this theory a long shot in terms of law, and practice. First, it seems likely that DISC will be permitting the consumption of alcohol, not furnishing the alcohol. Giving team captains a break on league dues, and then asking them to coordinate parties, among other things, does not make DISC a furnisher of alcohol. Thus, it is extremely unlikely that a court would find DISC liable under the first “serves alcohol” prong of the negligence test.

Second, most sports league, like DISC, do not have much money. The only reason a potential plaintiff would take on a likely loser of a legal battle (see paragraph above), and go after DISC instead of, or in addition to the driver, is because they are looking for deep pockets. DISC is not Exxon. We do not have deep pockets, even counting our limited insurance, and thus, present a rather poor target for a plaintiff's attorney. **However, even one lawsuit would greatly increase insurance coverage or even make it impossible to attain in the future.**

C. Provision of Alcohol to Minor

Liability for alcohol consumption by minors is somewhat different. Pennsylvania and other states find liability for a category of people, that could include DISC, called “social hosts.” The phrase “social host liability” involves a claim in negligence against a person who provides alcoholic beverages to a minor. Luckily, the Pennsylvania Supreme Court takes the position that a social host must have “knowingly furnished” alcoholic beverages to a minor. Social hosts include individuals who participate in the planning and the funding of social events where alcohol was consumed by minors. In each instance the social host was aware of the degree of consumption by the minors. Cases generally find that a social host is not liable for injuries sustained by minor in traffic accident after drinking beer at party, absent evidence that host had actual knowledge that minors were drinking beer.

What does this mean for DISC? Our planning a party could make DISC a social host. However, part of the summer league guidelines, and the rules that we will enforce, includes prohibitions against underage summer league participants drinking alcohol at DISC parties. These prohibitions will make it virtually impossible for a potential plaintiff to come after

DISC (much less the board) under the theory that DISC knowingly furnished alcoholic beverages to a minor.

Where does this leave us? On the minor front, liability stems from knowingly serving. If nothing else, we need to write in to our summer league guidelines some type of policy that states teams can't let minors drink, and that minors caught boozing are out of the league. Furthermore, if we plan to actually provide the kegs for parties ourselves, we should consider having a licensed caterer do the serving, so that they can cut off visibly drunk people. Likely the safer course is to let individuals bring their own beer, and cut off our responsibility at that pass.

D. Alcohol Policy

1. Anyone under the age of 21 is strictly prohibited from drinking any alcoholic beverage at a [name of your organization] event.

2. Any [name of your organization] member under the age of 21 found drinking any alcoholic beverage will be appropriately disciplined.

3. Any [name of your organization] member providing alcohol to a person under the age of 21 will be appropriately disciplined.

4. Penalties for underage drinking could include suspension or expulsion from [name of your organization] leagues and events.

5. [name of your organization] will not provide any alcohol at any event or venue outside Pennsylvania.

E. Guidelines for those running events:

1. On occasions when [name of your organization] does provide alcohol, a volunteer will be present to check ID. The volunteer should not serve the alcohol; the person seeking alcohol should be checked for age, but then allowed to serve themselves if over 21. A prominent sign will also be posted in proximity to the [name of your organization] -provided alcohol stating that those under 21 are not allowed to drink alcohol.

2. All Summer League captains will receive a list for distribution of those players on their team under the age of 21.

3. [name of your organization] will also post information about internal disciplinary actions for individuals that provide alcohol to an underage persons at Pada events, and of their potential personal civil and criminal liability if they knowingly furnish alcohol to a person under age 21. Specifically, according to Pennsylvania law, furnishing alcohol to an underage person is a 3rd degree misdemeanor punishable by fines and/or imprisonment up to one year.

F. On Alcohol and DISC-Sponsored Parties

1. Dear mom and dad, I am writing from Camp DISC to tell you how my summer is going. Things are pretty great here. We play a lot of ultimate, usually once or twice a week, and then hang out after games, grilling, talking, maybe throwing some more disc until the light runs out. People sometimes stay really late. Whoever is the last to leave has "won the fields," and gets to write their name on a board by the clubhouse. My team usually brings food and drink, but on some Friday nights, DISC sponsors a bigger party, providing grillables and some kegs of beer and root beer. Don't worry, because I am only 17, I'm not drinking any beer or anything like that because it's against DISC policy. Also, it turns out that a sports league was recently sued because a kid got some beer at one of their events, and then got into an accident. So, Camp DISC is now planning to have someone standing by the keg at DISC -sponsored parties, checking ID. You might think that all this insurance-related crap would really take away from the fun, but it doesn't, I still love playing ultimate and hanging out at the fields after the games, soaking up the great summer vibe that flows through that place. Love and Kisses, Caspar.

IV. The Waiver Sample Language--What you need depends on a conversation with your insurer

ASSUMPTION AND ACKNOWLEDGEMENT OF RISKS
AND
RELEASE OF LIABILITY AGREEMENT

In consideration of my being permitted to participate in the [name of your organization] sponsored Activities ("Activities") I agree to the following:

1. I understand that [] organizes and manages leagues and tournaments for the sport known as Ultimate Frisbee (hereinafter "Ultimate"). I understand the nature of Ultimate to be a physical activity which involves significant running and jumping. I understand that collisions between players can occur and collisions between the player and the ground can occur. I understand that participants in [] Activities range in age from 16 to 50 and that play often involves both genders on the same field at the same time. I fully understand that: (a) [] Activities involve risks and dangers of **SERIOUS BODILY INJURY, INCLUDING PERMANENT DISABILITY, BLINDNESS, PARALYSIS AND DEATH ("Risks")**; (b) these Risks and dangers may be caused by the player's own actions, or inaction's, the actions or inaction's of others participating in the Activity, and the conditions in which the Activity takes place; (c) there may be other risks and social and economic losses either not known to me or not readily foreseeable at this time; and I **FULLY ACCEPT AND ASSUME ALL SUCH RISKS AND RESPONSIBILITY FOR LOSSES, COSTS, AND DAMAGES** incurred as the result of my participation in the Activity.

2. I hereby release, discharge, covenant not to sue, and agree to hold harmless [], their respective administrators, directors, officers, volunteers and employees, all participants in [] events, even those that cause me any type of bodily damage, and if applicable, owners or lessors of premises where Activities are held from all liability, claims, demands, losses, or damages caused or alleged to be caused in whole or in part by the ir negligence, including

negligent emergent care assistance. **I also agree not to threaten or in any way initiate a lawsuit that involves contacting lawyers or insurance agents or brokers that is based on any activities that occur during an Ultimate game organized or managed by [].**

I HAVE READ THIS AGREEMENT, FULLY UNDERSTAND ITS TERMS, AND UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT. I HAVE SIGNED IT FREELY AND WITHOUT ANY INDUCEMENT. I INTEND IT TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY THE LAW AND AGREE THAT IF ANY PORTION OF THIS AGREEMENT IS HELD TO BE INVALID THAT THE BALANCE, NOTWITHSTANDING, SHALL CONTINUE IN FULL FORCE AND EFFECT.

Signature Date

Printed Name

Witness Signature Date

Printed Name

Team Name (tournament registrations only) : _____

Legal Disclaimer: sorry, but to be clear, I am trying to offer examples of previous situations, some real and some hypothetical, in an attempt to advance your understanding of issues and possible responses. What works for each organization depends on your members, your unique state or nationality (Canada eh) your insurer etc., so please do not take any of this to be a script or to be legal advice regarding how to handle your own individual sets of issues. Thanks, Marc.