

Tripping and Travel Camps: "Thinking Outside The Gate"

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I. Introduction

Our subject is an increasingly popular phenomenon: the travel camp. "Travel" and "Camp" would seem to be incompatible terms, but the industry has figured it out — camps that travel out of a single site or move at intervals from site to site — urban and front country, and domestic and international. An organization that calls itself a "travel camp" must be diligent in preserving the "campness" of what it is doing. Otherwise, it becomes only another in a long list of adventure travel opportunities for children.

The travel camp combines the important benefits of traditional (fixed—site) camps and adventure and educational travel. Leaving the familiarity and comfort of the traditional camp at the gate, travel campers carry with them the intimate personal relationships and balanced risk taking and adventure of the traditional camp, and add the excitement and learning that come with new places, new populations, and new activities.

But with these new opportunities come new risk management challenges and, importantly for the purposes of this article, considerations of how these challenges impact the legal duty of care the camp owes to its families. As a reminder, legal duty is to act as a reasonable person (or organization) would under the same or similar circumstances.

The traveling camp will address these enlarged challenges as it would any new set of circumstances: What are we doing and why?; What can go wrong? How do we reduce the chances of something going wrong? When something does go wrong, what will we do?

Importantly, the camp should keep its eye on the goal of running a quality program. In this endeavor, the camp will take care to identify, consider, and manage the risks — risks that can result in a loss to the camper and to the camp. This means taking into consideration important legal, risk management, and practical elements of the travel program.

II. Your Duty Of Care

Generally, 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 duty of care owed by a camp (and its staff) weaves in and out of the camp experience, changing with activities, circumstances, relationships, and environments. Whether a duty exists, and the nature and scope of that duty in a given situation, is determined by a court, as a matter of law. Whether that duty is breached is determined by a fact finder (judge or jury).

A camp's duty arises from its decision to provide certain services — an implicit obligation to protect the camper from unreasonable risks of harm. If the camper is a minor, the duty of care owed by a custodian — like a camp — to a child is among the highest recognized in the law ("in loco parentis" — in the place of the parent). However, we have noted that even in jurisdictions that articulate the duty in this fashion, courts emphasize that a camp or other provider is not an insurer of safety and that accidents can happen.

Further, in many jurisdictions, courts hold that providers have no duty to protect persons — including minors — from the inherent risks of recreation and adventure activities. The rationale is that inherent risks — whether the 'good' or the 'bad' risks — essentially come with the territory, and those who voluntarily participate assume and accept those risks. In some courts, that inherency includes the ordinary carelessness (negligence) of the actor — courts often rationalize that to allow claims for ordinary negligence will spawn litigation, and create a chilling effect, for example, on vigorous participation in the activity or the learning between an instructor and his or her student. It is a powerful doctrine. These and other laws and legal doctrines affecting the camp's duty of care are worth careful consideration by your legal counsel (in your jurisdiction).

Common duties of care include the duty to hire, screen and train staff, and the duty to supervise campers, and instruct them on how to use equipment or otherwise engage in an activity. When using a subcontractor, the camp is required to exercise reasonable care in the effort to select a competent contractor.

A variety of factors can affect duty of care and a fact-finder's determination of whether that duty was breached. These factors include a camp's representations in its marketing materials, federal and state laws, a staff member's words or conduct, a camp's own policies, and industry accreditation standards or practices. Depending upon applicable law, a camp may eliminate or change its duty of care via a written participant agreement containing a 'release' or other 'exculpatory' language.

A camp can be directly liable for a breach of its duty of care, and alternatively, can be vicariously liable for a camp staff member's breach of duty in the course of his or her employment with the camp. Liability can also arise if the camp is controlling an independent party as it would its employee, or if the camp's actions made it appear to the public that an individual was acting under the camp's direction and control (in the law, termed "apparent authority").

Travel camps that are accredited by the American Camp Association® (ACA) — and those that are not — should carefully consider the application of ACA standards as they develop and implement their programs. U.S. or international programming may create unique challenges for the camp in its compliance efforts. Camps should provide input in response to ACA's announced goal to revisit these standards in its effort to address the unique nature of these travel camps as compared with a traditional residential camp.

III. Considerations in the Endeavor to Run a Quality Program

A. What Are We Doing and Why? Mission, Programming, and the Value of Information Exchange.

The first inquiry may be the most important. What is your mission? Does your "travel" programming serve that mission? Have you shared that mission and appropriately described the nature of your trips and activities? Do the campers and parents understand their responsibilities associated with the camper's participation in the camp?

And, as we emphasized in our Winter 2016 The CampLine article, effective information exchange between the camp and its camper families is a critical element of the bond of trust and understanding important to a successful camp experience. Camper families need honest and accurate information about activities, the inherent and other risks, and their responsibilities — in order to assess and prepare (physically, emotionally, and psychologically) for the camp experience. Similarly, the camp needs accurate information from the camp family to assist in understanding the camper's health and readiness for the experience. A breakdown in this exchange, such as a camp's inaccurate, inconsistent, or unrealistic communications can result in not only disappointment and low quality programming, but in increased risks that can lead to injury or other loss and ultimately, potential legal exposure.

B. What Can Go Wrong — and How to Reduce the Chances of Something Going Wrong? Preparation.

This isn't a fatalistic exercise, but a helpful way to consider the "points on the map" in your preparedness effort. What elements of your travel program planning will facilitate 1) staff and camper readiness for the territory and activities, and 2) a quality program aligned with your mission? Consider the following areas, among others:

1. Trip planning and pre-scouting.

This planning component includes developing an understanding particularly if the camp is traveling outside the U.S. — of, among other matters, the local culture, geography, climate, flora and fauna, unusual diseases, social tensions, local rules and regulations, transportation options and the availability and quality of medical care and facilities. The camp should investigate local resources in evaluating these pieces. The careful camp will inquire of local medical clinics and law enforcement agencies to determine unique local issues and other insights that come only with frequent, current, and intimate familiarity with a place. (Reports of the Zika virus in South America, or flesh eating bacteria on a beach in Central America, for example, may be known only locally, but will certainly influence a camp's plans). In addition, national and international sources such as the Centers for Disease Control (CDC), World Health Organization (WHO) and U.S. State Department contain many resources useful for a camp in the context of trip planning, trip delivery and emergency response — particularly for planning taking place in international locations. These and certain government agencies track developments around the globe and can provide information regarding local health, political, and/or travel issues. If the camp hires other organizations to assist with medical care and emergency response (see section B.3.) those organizations may provide additional information.

In this process, the camp will identify reasonably anticipated risks, and determine which of those it can comfortably accept, those that it can reasonably manage, and those that it can perhaps eliminate (by, for example, not conducting a certain activity or avoiding a certain location). The camp can endeavor to shift or transfer certain risks by, for example, hiring a contractor to conduct an activity. Note this risk assessment is a "live" process as conditions and risks in various trip locations can change over time (permit cancellation, terrorism, disease, natural disaster). A camp should have appropriate methods in place to monitor conditions and risks, and agreements with camper families and contractors that identify the means by which a camp might cancel a program or change locations, for example.

2. Program Delivery

In addition to camp staff who will travel with a group and provide program content, activities and instruction, the camp may consider hiring the services of others who it believes may be better able to deliver a portion of the program content. This may include use of sub-contractors to provide certain services or activities, such as transportation, specific program activities, or accommodations.

In terms of this contracting, the contractor — and not the camp — should be responsible and liable for activities happening under the contractor's 'watch' (preferably articulated in a written contract between the camp and its contractor, identifying the responsibilities and liabilities of each of the parties). However, there are exceptions. As stated earlier, under the law, an organization — including a camp — that utilizes the services of a contractor has a duty to exercise reasonable care in its effort to select a competent contractor. A camp may find that it is more challenging to select and "vet" a contractor located in a foreign location (versus one located in the U.S.) for qualifications, skills, equipment or otherwise. In addition, it may be difficult to secure a written contract outlining the respective responsibilities and liabilities of the camp and contractor (including securing insurance from the contractor, with provision to add the camp as an additional insured), or to facilitate communication on roles between attending camp staff and subcontracted staff — considering differences in culture, language, and legal and insurance doctrines. These and other factors must weigh into the program planning and delivery. Certainly, if the camp ultimately believes it cannot adequately screen a contractor and/or does not reasonably believe that the contracted activity will be responsibly run, it should find another activity or contractor.

Transportation deserves special attention. Whether traveling in the U.S. or in international locations, vehicles should meet required laws and regulations. However, when traveling in international locations, particularly in a third world or developing country environment, laws and legal systems will be different than those in the U.S., and vehicles generally do not meet U.S. safety standards. Camps are well advised to investigate these issues via informed sources, to understand transportation issues in-country and determine an appropriate way to transport campers. Importantly, camps should inform camper families of these issues and risks — typically in a participant agreement, signed by the camper and/or parent (see below).

3. Emergency and medical response

The camp must consider emergency and medical response — particularly in remote locations — and coordination with local authorities. Staff should have appropriate knowledge, medical training and certifications to handle medical emergencies whether in front country or back country settings. If operating internationally, or even in areas of the U.S., the camp may consider hiring a service such as International SOS or Global Rescue to coordinate or handle emergency and medical response, where specialized knowledge of — and access to — transportation, evacuation services, medical resources, and facilities may be appropriate for the location.

4. Camper registration, forms and other information

The camp's 'messaging' should be internally and externally consistent. The camp's website may contain a 'statement' regarding risk management and safety — identifying some of the unique aspects of the program, but clarifying, for example, the presence of inherent risks and the fact that the camp cannot assure the camper's safety or eliminate all risk. Variations on this theme should flow throughout the camp's messaging. Effective information exchange, discussed above, includes items such as registration and emergency contact information, collection of appropriate camper health and medication information, and consent to treat; trip itineraries; terms of agreement detailing terms of payment, cancellation, trip insurance, camper separation and other provisions; participant agreements containing (among other important provisions) information regarding activities, risks, an acknowledgment and assumption of risks, and depending upon the applicable law, a release of liability. (Other key provisions include choice of law and venue (the law to be applied to a dispute, and the location or 'place' of any suit or legal proceeding)). If traveling internationally, the minor camper must carry a passport, and will likely need a signed parental consent to travel outside the U.S.

The camp would be wise to have the camper and parent sign a 'behavior contract' — informing the family of expected behaviors and conduct, and identifying, as well, those that are unacceptable, including for example — considering age or cultural norms — limitations on certain dress or jewelry. The camp must be clear with camper families about local or in-country cultural norms and laws.

Behavior acceptable "back home" may not be well-received — or allowed — elsewhere whether in certain parts of the U.S. or in international locations. And, importantly, it may simply be dangerous.

In addition to articulating camper and camp family responsibilities in your messaging and written agreements, consider ways to involve your campers — regardless of age — in ongoing risk management. For example, while traveling and engaging in activities, develop ways to engage campers in a discussion of risks and risk management. Campers need to understand that they are a part of the risk management equation and actively share in the responsibility for their own wellbeing — and the wellbeing of the group. In the camp's collection of health and medical information, camper families should understand the importance of honest disclosure — and the ramifications of submitting information that is incomplete, inaccurate, or untrue (no interest is served by deliberately misleading the camp in these important matters). Families should understand the purpose for the camp's collection of that information (what the camp is — and importantly, is not — doing), and the family's responsibilities in considering, in conjunction with the camper's physician, whether the camp is an appropriate fit for the camper.

A camp will want to understand — and stay current on — the nature of a trip location's health and security risks. So too, camper families should be clear about their responsibilities in investigating travel resources (such as the CDC, U.S. State Department or WHO), particularly when travelling internationally. Camps can recommend or require that campers sign up to receive STEP (Smart Traveler Enrollment Program) notifications — sent to travelers by the U.S. State Department, regarding in-country safety and security issues.

A camp may choose to notify campers and their families of known and recent health threats in the planned trip location (being careful, of course, to articulate that other problems can occur, and that camper families should consult other sources). This can be done in the registration process or otherwise, before trip departure. This announcement alerts camper families to the issues (and may ultimately influence a camp's decision whether or not to travel in certain locations). However, rather than dictate or recommend a particular prophylaxis for in-country travel ("you should definitely get x vaccine") the camp will want to inform camper families that they should see their own medical professional or a travel doctor (who should be appropriately informed via CDC, WHO and other sources), well before the start of camp, to consider in-country prophylaxis (e.g. vaccine or other medication) appropriate for the camper, considering the camper's unique health and medical condition. The camp should have a method to receive documentation from the camper, informing the camp of any prophylaxis the child will be taking to address in-country health issues.

The camp should have a clear protocol for the administration of camper medications outside the residential camp setting, understand the 'street' value of certain drugs, and be clear about which medications the camper can and cannot carry on his or her person during the program. The camp should have an adequate system in place to assure the security of these 'held' medications over the course of the trip. Several organizations are now available that facilitate the ordering and receipt of camper medications directly from the pharmacy in a prepackaged and pre-dosed container — assisting the camp with these issues during trip and travel. International locations may pose problems in obtaining, carrying, or resupplying certain medications, another critical element of a camp's preplanning.

5. Crisis Response Plans

The camp should examine the unique aspects of its trip locations, and investigate (including local, regional, and global resources) how those locations inform and direct its immediate incident/emergency response, and, how that response interacts with the camp's larger serious incident/crisis response plan.

If the camp is operating trips in many different locations, there should be a central response plan that identifies and describes, for example, a camp spokesperson, communication with the family of the injured camper, and media response. However, the geographic location, culture, laws (including permitting requirements), or other factors unique to a particular trip, specifically those in international locations, may raise specific issues that require differences in response (see, e.g. B. 3, above). These elements might be addressed in a supplemental piece, with clear direction to staff on how the in-country plan meshes with the camp's larger response plan. Crisis response plans should provide appropriate direction to camp office staff (those in the office receiving communications and facilitating portions of the response) and field staff (those dealing with the incident in the field) to facilitate a smooth and coordinated response.

6. Insurance

The camp should work closely with its insurance broker/representative and legal counsel to consider important aspects of its insurance coverage, and importantly, any gaps or exclusions in that coverage — whether operating in the U.S. or internationally. A camp must understand that insurance coverage is very different when operating in international locations. The camp should investigate ahead of time, for example, the application of workers' compensation coverage to its staff working in foreign locations, and any unique application of its liability insurance coverage for injuries or loss occurring in foreign locations. In addition, foreign contractors may not offer up insurance and additional insured status to the camp (for a variety of reasons) — and even if they do — that insurance may be difficult to interpret and in the event of an incident — difficult to track down or enforce. Further, in the event of a U.S. based lawsuit, it may be impossible to legally force a foreign contractor into a U.S. court. A camp should endeavor to obtain sufficient coverage from its own liability insurance carrier in the event it is ultimately held responsible for incidents occurring to campers on a contractor's 'watch.'

C. If Something Does Go Wrong — What Will the Camp Do?

As discussed above, in its preparation, the camp will have developed an incident and emergency response plan, sufficiently unique to the trip location, but feeding into the camp's larger crisis response plan, as needed. This plan will likely reflect a variety of local resources (appropriately scouted) and their limitations, and among other things, address communications with camp management, families and local authorities, evacuation, and other key issues. Again, the plan may be implemented in conjunction with a specialized organization such as International SOS or Global Rescue. The camp will implement this plan as needed via both its field staff and office staff.

Of the camp addresses the areas discussed in this article, among its other preparation, it will likely be better able to: 1) reduce the risk of incidents occurring to begin with, 2) appropriately respond if an incident does occur — whether serious or minor — including response that sensitively considers loss to the camper and camp family and 3) limit the camp's exposure to financial, reputational or other loss. These suggestions include for a camp to:

- engage in a pragmatic and informed process in its endeavor to understand the inherent and other risks (those both common to all trip locations as well as unique to various locations);
- develop a culture of risk management — including an approach that recognizes campers as team players in the risk management equation;
- engage in appropriate information exchange with camper families;
- conduct thoughtful staff training;
- obtain insurance sufficient in types and amounts;
- endeavor to secure responsible contractors (and obtains appropriate protection from them);
- craft informed incident and emergency response plans.

IV. Conclusion

Align with your mission, and learn the laws, standards and prevailing practices pertinent to your planned activities, environment and client population. Understand — and communicate to your camper families — the risks, inherent and otherwise, and be clear with them regarding their responsibilities.

Develop a culture of risk management. Adhere to the standard of "reasonable care under the circumstances" and your camp will travel, teach, and play with some confidence that you are reducing the risk that something bad will happen, and that if it does, your camp is prepared to handle it well in its ongoing effort to run a quality program.

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

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