

Perceived Liability and Risk Management Trends Impacting Recreational Sports into the 21st Century

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Introduction

Recreational sports programs provide a wide variety of opportunities for people of diverse skill levels, ages, and interests to pursue in their leisure. The purpose of recreational sports programs, according to Mull, Bayless, Ross and Jamieson (1997) is to provide sport for all people of all interests. The popularity of recreational sports in the United States has resulted in a marked increase in the number of individuals participating in such programs. The Sporting Goods Manufacturing Association (SGMA) stated that the number of people who participated in sports and fitness activities since 1987 has increased by 25.9% and 37.4%, respectively (Riddle, 1997). While the increase in participation is positive in terms of individuals becoming more active and getting involved in recreational sports programs, the flip side to this phenomenon has been a comparable increase in sport-related injuries. The Consumer Products Safety Commission (1996) reported in 1995 that an estimated 3.7 million emergency-room visits were prompted by injuries from participation in sports and the use of recreational products and equipment.

Participants in recreational sports programs assume a certain degree of risk when engaging in

recreational sport activities. Yet, recreational sport administrators and legal scholars have noted an increase in the number of lawsuits resulting from injuries received during the course of participation in recreational sports activities. This increase in litigation is evidence that participants in recreational sports, not unlike the average person in the United States today, tend to be less likely to assume risk of injuries resulting from their participation. Burnstein (1994) supported this by stating "until recently, litigation was uncommon for recreational sports injuries since it was accepted that participants assumed the risks attached to participating in a sport. Yet, this trend has shifted and the result has been a dramatic increase in civil litigation regarding injuries sustained in recreational competition" (p. 994).

Although involvement in a lawsuit is one of a recreational sport administrator's greatest fears, the likelihood of involvement as a defendant in a sport-related lawsuit for administrators has increased significantly over the last 30 years. Hronek and Spengler (1997) concurred by stating "suits related to recreation and sport have increased steadily for three decades and are expected to continue to increase in the future" (p. 6). Litigation has permeated the administration

of recreational sports to the degree that risk management and a basic knowledge of liability are expected to be a part of the professional preparation of individuals seeking careers in recreational sports. Managers in recreational sport programs today must be able to develop specific risk management training procedures for their personnel that meet the elevated legal standard of care currently mandated by the courts and expected by the participants.

In light of the surge of litigation in recreational sports already witnessed in the past two to three decades, a relevant question is "What does the 21st century hold in terms of liability and risk management for recreational sports programmers?" Huber (1990) speculated that the current trend of litigation in our society will continue as "newly established legal principles are deployed to open up fresh areas of litigation" (p. 9). The tendency of many recreational sport administrators is to be reactive to liability claims and to adjust their program delivery to align with each court decision. This tendency emphasizes the necessity of understanding trends and changes in liability. Recreational sports programs must reflect a degree of stability that a knee-jerk reaction to each new court decision does not provide. The planning and preventive measures that could result from futures research would assist in the reduction of hazardous situations and potential liability while heightening the awareness of better risk management. Recreational sport administrators must become more proactive in developing risk management plans and dealing with the liability issues, as well as keep up with current trends in order to understand the implications and plan for the future. Therefore, this study investigated the future perceived trends and issues of liability and risk management impacting the delivery of recreational sport programs in public, private and commercial settings in North America up to and including the year 2020.

Methodology/Procedures

The Delphi technique was chosen as the methodology for the study not only because it

was referred to in the literature as the "cornerstone of futures research" (Ono & Wedemeyer, 1994, p. 290), but also because it was cited as the most often used technique for forecasting (Helmer, 1983; Martino, 1983). The Delphi technique was identified in the literature as a qualitative method of forecasting based upon the collective opinion of knowledgeable experts. The primary idea behind the Delphi technique was to make optimal use of a group of experts by relying upon their intuitive opinions through the iteration of two to four rounds of questionnaires dealing with the topic under study. It was believed that through the process of iteration and critique by a panel of experts, anonymous to one another, that consensus on the issues at hand could be achieved.

In an attempt to conduct the Delphi process efficiently as well as explore the advantages of new technologies, the Internet was implemented as the medium for collecting the data. The questionnaire for each of the Delphi rounds was placed on an Internet web site to which panel members were given the address, a password, and a group code number in order to post their responses. The implementation of an electronic medium as the primary method of data collection was recommended by Turoff and Hiltz (1996) but had been limited in its use. By utilizing this method the panel members were required to have access to the Internet in order to participate. This method was not viewed as a limitation of the study because the overwhelming majority of participating jurors did have access to the Internet and indicated they were fairly comfortable in navigating it.

Selection of Panel of Experts

The panel of experts chosen for this study consisted of two groups: recreational sports administrators representing the commercial, private and public settings; and scholars who had studied liability and risk management in recreational sports settings. The panel of experts were selected from both of these groups in order to gain a wider perspective of the most pressing lia-

bility and risk management issues impacting recreational sports. The administrators' perspective was important because of their involvement in the delivery of recreational sports programs for their respective user groups, their role as the primary decision-makers for their programs and their responsibility for developing long-range plans for their organizations. The perspective of the scholar group was equally important because of their advanced study and research contributions in the area of liability and risk management.

The panel members were identified through the network sampling method because the individuals sought did not "form a naturally-bound group but were scattered throughout the population" (McMillan & Schumacher, 1997, p. 398). As a result, key informants from five different professional organizations that dealt with recreational sports and its legal aspects were asked to identify, on the basis of pre-determined criteria, those administrators and scholars whom they felt were experts in the area of liability and risk management relating to recreational sports. The development of criteria for the selection of the panel of experts strengthened the study by validating the credibility of the jury. Delbecq, Van de Ven, and Gustafson (1975) suggested that criteria may include published contributions, established practice and reputation in the field, membership in professional organizations, and peer recognition. The criteria for both groups in this study included:

- Employment at the time of the study as either an administrator in a recreational sports setting, or a scholar, researcher, and/or educator;
- Published in a professional journal, or had made presentations in liability and/or risk management;

Recommended by the executive director as suitable for effective contribution to the study (i.e., able to discern liability and risk management trends and issues of importance to recreational sports programs).

In keeping with the network sampling method, each identified expert was also asked in

the letter of invitation to identify colleagues who fit the established criteria. Based upon this method of sampling, a panel of 69 experts consented to participate in the study. The panel was composed of 36 administrators and 33 scholars representing 32 states and Canada, and consisted of 48 men and 21 women.

Rounds of the Study

A classical Delphi was implemented in the first round of the study since the panel of experts were asked to list what they thought would be the liability and risk management trends impacting recreational sports into the 21st century. A classical Delphi, recommended by Martino (1983) simply meant that the panel of experts generated the data (trends) in round one as opposed to the researcher providing the panel with the data. A total of 270 trend statements were generated by the panel in round one of the study. A qualitative analysis of the data was conducted by grouping similar statements together by topic. This method of organizing qualitative data was referred to by Neuman (1997) as open coding. Open coding is an analysis technique that identifies a particular theme represented by a group of data in order to condense masses of data into categories. Trends were categorized under 17 different liability and risk management topics relating to recreational sports. Another qualitative analysis technique referred to as constant comparison by Henderson (1995) was also used to eliminate duplicate trend statements and condense the data into a list of unique trends. Constant comparison involves reading through the coded data and developing major themes or key conclusions, and then, reading through all the data again to see if it fits within the themes. The goal of constant comparison is to maximize credibility through the comparison of groups and data. Through this technique the number of trends was reduced from 270 to 110 and the categories from 17 to 13. The final step of the qualitative analysis was to have an auditor review the organization of the trends. Guba and Lincoln (1981) suggested that an auditor be implemented

in order to enhance the consistency and accuracy of the analysis. The auditor was asked to review the content of the categories, the concise meaning of the trends, and to identify any trends that were duplicate statements. Upon completion of the qualitative analysis, the number of trends had been condensed into 100 statements which were to be included in round two of the study.

The primary purpose of round two was to obtain the opinions of the panel as to the degree of impact each trend might have upon the delivery of recreational sports over the next 22 years. Jurors rated each of the 100 trends on a seven-point Likert scale ranging from no impact (1) to extreme impact (7). A summary of information was compiled for each of the trend statements consisting of frequency of response, the mean impact score based upon the rating of all jurors, and standard deviation. On the basis of the data collected in round two, areas of perceived agreement and disagreement of the impact of particular trends upon recreational sports were identified. Since the goal of the research was to focus upon those trends perceived to have great or extreme future impact, only those trends with a mean impact rating of 5.4 or higher were selected for inclusion in round three of the study. A cut-off score of 5.4 represented the upper most limit of the "above average impact" category (4.50 - 5.49) along with the "great impact" (5.50 - 6.49) and "extreme impact" (6.50 - 7.00) categories. Identifying the trends rated in these categories was the goal of the study, so a cut-off score encompassing these categories and eliminating the trends that were not rated as important was chosen.

In the third round of the Delphi study, the purpose was to more clearly define a consensus of those liability and risk management trends perceived to have the greatest impact upon recreational sports. Jurors were asked to review the ratings of the 34 trends from round two and then re-rate the impact of those trends on the seven-point Likert scale. The idea behind the reiteration of the top-rated trends and the feedback of

results from round two was to see if the jurors would change their rating of those trends. If jurors chose to rate any of the trends in round three differently than how the group had rated the trend in round two, they were asked to state their reason(s) for doing so. This type of feedback was identified as dissent statements. The dissent statements provided added insight into issues that might affect the impact rating a juror assigned to a particular trend. While dissent statements were suggested by Martino (1983) as a method for jurors to voice their objections to the rating of a particular trend, they are not a requirement of the Delphi technique. However, Whyte (1992) recommended using dissent statements because they serve as a "useful barometer" (p. 75) to revealing a consensus for each trend.

In an analysis of the results from round three, both the mean impact rating and the standard deviation score were the focus of attention. Similar to the analysis of the data from round two, those trends with the highest impact rating were identified but in considering a consensus of the jury on that impact rating, the variability of the rating, indicated by the standard deviation score was also taken into consideration. If a trend was rated with a mean impact score of 5.7 or higher and had a standard deviation score of less than 1.00, then the trend was considered as a top-rated trend on which some degree of consensus had been gained. Based upon this criteria, 11 trends emerged from round three as being perceived by the panel of experts to have the greatest potential impact upon the delivery of recreational sports into the 21st century.

The fourth round of the study was not considered by the literature as a part of the Delphi method, but was implemented as a way to obtain further clarification on the top 11 trends emerging from round three. Because of the high rating and low variability of the mean impact scores for the 11 trends emerging from round three, there was no justification for a fourth Delphi round. A clear consensus for the study was revealed by the level of impact ratings and the cluster of scores

Table 1
Highest Degree Earned

| Degrees | All Jurors | | Scholars | | Administrators | |
|---------------------------|------------|----|----------|----|----------------|----|
| | n | % | n | % | n | % |
| Ph. D., Ed. D., or Re. D. | 25 | 51 | 18 | 75 | 7 | 28 |
| M. S. | 12 | 24 | 0 | 0 | 12 | 24 |
| J. D. | 9 | 18 | 7 | 29 | 2 | 8 |
| B. S. | 7 | 14 | 1 | 4 | 6 | 24 |

around the mean for each trend statement as indicated by the standard deviation scores. In this final round, the panel of experts was asked to indicate what they perceived as the implications of the top rated trends as well as to suggest possible issues which might evolve as a result of these trends occurring. Whyte (1992) recommended this round as a method of clarifying the perceived meaning of the jurors in regards to the top-rated trends. Additionally, this final round helped in gathering valuable expert opinions as to what the results of the study might mean to recreational sport practitioners. More specifically, the data gathered in this round could indicate how recreational sport practitioners might best begin to anticipate the key trends into the 21st century and perhaps prepare for consequential issues of the trends.

Jury Profile

Central to the Delphi process was the credibility of the jury. The first round questionnaire not only solicited the opinions of the jury as to liability and risk management trends, but also asked questions regarding the credentials of each individual jury member. Length of service as either a scholar or administrator was one such

question. The average number of years of service for both groups was 22.6 years. Jurors were also asked to indicate the highest educational degree they had obtained. Over 50% of the jury had obtained terminal degrees and nearly one-fifth had earned law degrees. Table 1 shows a distribution of the highest degree(s) earned for both the scholar and administrator groups. In an attempt to illustrate the professional activity and connectedness of the jury, participants in the study were asked to indicate the professional organizations to which they belonged. Three professional organizations (National Recreation and Park Association, National Intramural-Recreational Sports Association, and Society for the Study of Legal Aspects of Sport and Physical Activity) emerged as the most frequently mentioned in which jurors indicated membership. Jurors were also asked to indicate the number of refereed publications they had authored and the number of professional presentations they had made related to liability and risk management in recreational sports throughout their career. Table 2 shows a composite of the number of both publications and presentations by group. As a result of these questions, the jury selected for this study was judged as having the appropriate credentials

Table 2
Publications and Presentations in Liability and Risk Management

| | All Jurors | Scholars | Administrators |
|---------------|------------|----------|----------------|
| Publications | 204 | 157 | 47 |
| Presentations | 1,397 | 893 | 504 |

Table 3
Most Frequently Mentioned Trend Topic Areas from Round One

| Trend Topic | Frequency of Response | Percent of Total Responses |
|------------------------|-----------------------|----------------------------|
| Programming | 32 | 11.8% |
| Societal attitudes | 22 | 8.1% |
| Participants | 21 | 7.8% |
| Employees | 17 | 6.3% |
| High-risk activities | 15 | 5.6% |
| Facilities | 15 | 5.6% |
| Youth Sports | 12 | 4.4% |
| Professional attitudes | 11 | 4.1% |
| Certifications | 10 | 3.7% |
| Other topic areas | 115 | 42.6% |
| TOTAL | 270 | 100.0% |

to serve as a panel of experts on the topic of liability and risk management trends impacting recreational sports.

Results

The first round of the study was designed to gather a comprehensive range of trends and to test the first null hypothesis that there were no discernable key liability and risk management trends in recreational sports for the 21st century. Of the 270 trends that were generated by the jury, 207 trends related specifically to liability and risk management. In a qualitative analysis of these trends, key words and phrases in each trend statement were used to establish the grouping of trends into topic areas. The topic areas were assigned a label which represented the common theme of the trends in that particular category. The most frequently mentioned topic areas supported by jurors are presented in Table 3. Through the course of the qualitative analysis (which was described in detail in an earlier section) the number of trends was condensed to 100 statements. As a result of the data collected in round one which formed the basis of the trends relating to liability and risk management in recre-

ational sports, the first null hypothesis was rejected.

A second null hypothesis of the study stated there were no discernable levels of impact between identified key liability and risk management trends. This hypothesis was tested over the course of both rounds two and three of the study by having the jurors rate the impact of each trend on a seven-point Likert scale. In round two the mean impact scores for the trends rated by all jurors ranged from a low score of 3.43 (Recreational sport professionals will need to seek training and education in how to testify in depositions or at trial) to a high score of 6.35 (Liability issues will continue to manifest themselves as problems that require sound risk management plans). In round three, the range of mean impact scores for the overall jury was from a low score of 5.00 (Increased demand for use of recreational sports facilities will negatively affect the ability of the recreational sport manager to adequately maintain safe facilities) to a high score of 6.53 (Liability issues will continue to manifest themselves as problems that require sound risk management plans). As a result of the

Table 4

Independent Samples t-test for Round Three

| Trend | t Score | Significance |
|---|---------|--------------|
| Education in risk management strategies will continue to be in demand by sport managers in order to provide safer programs. | -2.034 | .044* |
| Recreational sport services designed for participants of 65 years and older will require changes to risk management plans. | -2.955 | .025* |

* $p < .05$.

wide range of levels of impact illustrated by the Likert scale in both rounds two and three of the study, the second null hypothesis was rejected.

Another focus of the study was to determine the degree of consensus between the administrator and scholar groups. The third hypothesis of the study, "There is no degree of consensus between the administrators and the scholars surveyed in this study on the key trends perceived to impact recreational sports programs into the 21st century" was tested as a result of this focus. This third and final hypothesis was tested with an independent groups, two-tailed t-test to identify any statistically significant (alpha .05) difference in mean scores between scholars and administrators for both rounds two and three.

The t-tests on round two trends revealed differences between the two groups on only two statements of which neither had high enough impact ratings to be included in round three. Because differences between the scholars and administrators were most important to note on the trends which rated high on the impact scale, the significant differences of the two trends from round two was a moot point. The results of the t-tests in round three also indicated significant differences between the administrator and scholar groups on two trends. The results of the t-tests for round three are shown in Table 4.

The differences revealed by the t-tests on the

trend dealing with education issues might be explained by looking at the impact ratings from each group. The scholar group rated the impact of the trend regarding education issues as having an extreme impact while the administrator group rated the trend as having only a great impact. The trend dealing with education in risk management strategies was rated high enough on the impact scale to be included in the top 11 trends emerging from round three of the Delphi study. As a result, the scholar and administrator groups held statistically different perceptions of the impact that education in risk management strategies would play for sport managers in the provision of recreational sports programs. Because of the very few statistically significant differences between the two sub-groups in the study on the trends, the third hypothesis was rejected for all but one of the top trends.

Another type of data collected in round three consisted of the dissent statements. The actual number of dissent statements that a trend received was also helpful in determining the degree of consensus by the jury on a particular trend (Whyte, 1992). For example, a large number of dissent statements would typically indicate more disagreement on a particular trend compared to a trend with no dissent statements. In round three, jurors were asked to include a dissent statement if they chose to rate any of the top

Table 5

Top Ranked Trends from Round Three

Extreme Impact (Mean Impact Rating = 6.50 - 7.00)

- . Liability issues will continue to manifest themselves as problems that require sound risk management plans.

Great Impact (Mean Impact Rating = 5.50 - 6.49)

- . Sport managers must continue to educate themselves in risk management in an attempt to provide safer programs.
- . Risk management will continue to be a key element in the design of recreational sport facilities.
- . Increase in the number of people with disabilities participating in recreational sports programs.
- . Professional preparation in liability and risk management will become more important for students pursuing careers in sport management.
- . Risk management planning will take on increased importance to recreational sports programs.
- . More recreational sports programs/agencies will develop comprehensive risk management plans.
- . There will be an increase demand for employee certification in specialized activity programs (i.e., aerobic leaders, aquatics personnel, etc.).
- . Sport equipment manufacturers and recreational sport managers will continue to provide safer and more protective equipment so that individuals do not suffer as much risk of injury from potential defects in products.
- . Increase in willingness of participants to engage in litigation to resolve issues related to participation in recreational sports.
- . Increase demand for the requirement of safety equipment to be worn by recreational sports participants.

34 trends differently than how the group had rated the trend. This resulted in a total of 157 dissent statements for the 34 trends in round three. The key liability trends that emerged from the study averaged only 2.36 dissent statements while the remaining 23 trends from round three averaged 5.69 dissent statements. The fewer number of dissent statements for the top 11 trends of the study tended to confirm a greater degree of consensus for these key trends.

At the completion of round three of the study, it was determined on the basis of mean impact scores, standard deviation scores, and the

number of dissent statements, that a consensus of the key liability and risk management trends impacting the delivery of recreational sports into the 21st century had been achieved. The results from round three were not likely to be significantly altered with another Delphi round. As a result, a list of the top 11 trends (located in Table 5) was compiled, which became the major product of this Delphi study.

Discussion

Of the top 11 trends emerging from round three (those with a mean impact rating of 5.7 or higher, and a standard deviation score of less than

1.00) only one trend was identified as having an extreme impact (mean impact score of 6.50 or higher). The fact that only one trend emerged as extreme is noteworthy of discussion. The argument could be made that because a number of liability trends did not emerge from the study as having an extreme impact upon the provision of recreational sports into the next century, that perhaps the litigious environment related to recreational sports has lost some volatility. In fact, the range of impact ratings for the study varied from "moderate" impact to the "extreme" impact category. The bulk of the impact ratings for the trends generated in this study ranged from "average" impact to "great" impact.

While there certainly exist important aspects of legal liability and risk management that still must be dealt with, the results of this study might indicate those issues or trends are not so extreme as to demand immediate solutions. This is not to suggest that recreational sports practitioners can ignore or back away from their responsibility to provide the safest possible programs. Rather, it suggested two perceptions: 1) that the jury selected for this study was conservative in their judgments of the trends impacting recreational sports into the future; and/or, 2) that due to the attention recreational sports service providers have given to liability issues were perceived as something that can be managed effectively by the recreational sports practitioner. Another way to view the trend ratings being clustered around the "average" to "great" impact areas was that the jury felt all those trends will have an impact upon the future of recreational sports programming. The fact that no trends were rated by the collective jury as having "no" impact, or even a "slight" impact reflected some degree of support for this argument.

In reviewing the findings of this study it was important to remember that the trends emerging were perceived by the selected jury to have the greatest impact upon the delivery of recreational sports programs within the next 22 years. The 11 trends emerging from the study cannot be inter-

preted as a rank-order of the most important trends because of the overlap of the confidence intervals of the mean impact scores for each of the trends from round three. Trends one through six from Table 5 were all from the same confidence interval so they cannot be ranked in order of importance. As a result, it was essential to maintain a perspective that the findings of this study were interpreted as a sample of the trends perceived to have the greatest impact upon future recreational sports programming.

The validity of the results was largely based upon the qualifications of the expert jurors involved. However, some sense of relevancy of the top-rated trends impacting the delivery of recreational sports programs into the 21st century can be gained by noting the number of authors who have identified and discussed similar trends as impacting this area. Two of the key trends revolved around the topic of education in liability and risk management, both in terms of continuing education for current recreational sport managers and professional preparation of new sport managers entering the field. Rankin (1991) stressed the importance of preparing recreational sports professionals for a litigious society while van der Smissen (1997) emphasized the importance of professionals approaching liability by being well-equipped with the appropriate knowledge. Furthermore, Carroll (1994) recommended involvement by sport managers in continuing education to stay abreast with the changing scene of liability and risk management as it related to sports.

Another key trend discussed the tendency of participants to rely upon litigation as a primary method of resolving issues related to participation in recreational sports. Yasser (1995), Burnstein (1994), and DeAngelis (1994) all suggested that the amount and frequency of litigation regarding recreational sports participants will increase. This trend was related to two other top-rated trends on the topic of risk management. The trends dealt with the growing awareness by recreational sport professionals of the impor-

tance of implementing risk management and developing comprehensive plans. Herbert (1997), Cooper (1997) and Mulrooney and Green (1997) all made recommendations on the implementation of sound risk management procedures and advised the development of comprehensive plans. Additionally, Maloy (1991) developed a number of steps that facility managers could follow in implementing an effective risk management plan.

The topic of sports equipment with the roles that manufacturers will play in the provision of safer equipment, and the development of more protective equipment was the focus of two top-rated trends. Eager (1996) reinforced the idea that manufacturers are in the best position to discover product dangers and warn consumers of these dangers. Fried (1994) and Gaskin (1991) provided guidelines for the safe and proper use of equipment in the provision of recreational sports programs. Herbert (1994) discussed guidelines for use of equipment in recreational sport programs as well as provided information to heighten the self-responsibility of participants.

Conclusions

While the primary purpose of the study was to identify the key liability and risk management trends impacting recreational sports programs into the 21st century, some additional conclusions as a result of the study were also relevant. First and foremost, the challenges created by liability in society will continue to impact the delivery of recreational sport programs. In taking a proactive position to face these challenges, recreational sports managers and administrators should establish sound risk management plans. These risk management plans must be functional and implemented by staff members as standard practice in the delivery of recreational sports programs.

A second relevant issue that emerged from the study dealt with professional preparation in the area of liability and risk management. Professional preparation and opportunities for continuing education in liability issues and risk

management strategies will be the expectation for those individuals serving in administrative roles for recreational sport programs. Colleges and universities providing this training and curriculum for recreational sport practitioners will need to offer a comprehensive risk management curriculum which is aligned with current court decisions and standards. The importance of proper education in risk management and liability issues will create opportunities for more collaboration between scholars and practitioners which can assist in providing the best possible instruction in the classroom.

Finally, certification for recreational sports employees in specialized programs may very likely become a requirement for employment. The results of the study indicated that certification of employees, especially those in specialized activity programs will increase based upon the demand for more trained specialists. As more specialized certifications are made available, the quality and value of certifications will likely increase. A greater awareness of risk management will lead recreational sports administrators to look for employees who have received additional training through certification in areas such as fitness and aquatics.

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