
Risk Management in Sport

ALSO BY THE EDITOR

From the Gym to the Jury (1970)

Athletics and the Law (1975)

Physical Education and the Law (1978)

Sports and the Courts (1980)

The Right to Participate (1983)

Sport and the Law (1984)

Successful Sport Management (1985)

Sport and Law: Contemporary Issues (1985)

Pride in the Past (1987)

Managing Sports and Risk Management Strategies (1993)

Risk Management in Sport: Issues and Strategies (1998)

Successful Sport Management, 2nd Edition (2000)

Managing Sport and Risk Management Strategies, 2nd Edition (2004)

Risk Management in Sport: Issues and Strategies, 2nd Edition (2005)

Cheerleading and the Law: Risk Management Strategies (2008)

Successful Sport Management, 3rd Edition (2008)

Ethical Behavior in Sport (2011)

Risk Management in Sport

Issues and Strategies

Third Edition

Edited by
Herb Appenzeller

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2012
Herb Appenzeller
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Appenzeller, Herb.

Risk management in sport : issues and strategies / Herb Appenzeller. -- 3rd ed.
p. cm.

Rev. ed. of: Managing sport and risk management strategies. c2003.

Includes bibliographical references and index.

ISBN 978-1-61163-107-4 (alk. paper)

1. School sports--United States--Management. 2. Risk management--United States.
I. Appenzeller, Herb. Managing sport and risk management strategies. II. Title.

GV346.A67 2012

796.068--dc23

2012019057

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Dedication

To: Our contributing authors who during this important project, I could never have asked for better partners who shared their experience and expertise with unusual enthusiasm and

To: Ann Terrill Appenzeller who through her efforts, I have been able to complete this task. Her valuable suggestions, patience, encouragement, and helpful insights made this book a reality. Ann became the 33th author of the book.

*With admiration and appreciation to all 33 authors.
Herb Appenzeller*

Contents

Preface		xix
Acknowledgments		xxi
Part I	Introduction	1
Chapter 1	Risk Management in Sport	3
	Diversity of Lawsuits	3
	Sport Publications: A Response to Sport Litigation	4
	The Rise of Sport Management	4
	Center for Sports Law and Risk Management	5
	Importance of Risk Management	6
	References	6
Chapter 2	The Legal System	7
	Types of Laws	8
	The Court System	9
	Jurisdiction	10
	The Legal System in Action	11
	In My Opinion	14
	References	14
Chapter 3	Glossary of Legal Words and Phrases	17
Part II	Tort Liability Issues	21
Chapter 4	Warnings, Waivers and Informed Consent	23
	Duty to Warn of Risk	23
	Injury Prevention	24
	Risk vs. Benefit	25
	Informed Consent	26
	Application to Sport	26
	Alternatives to Accepting Risk	27

Binding Contract	27
Standard of Care	28
Legal Expectations	29
Ineffective Approaches	29
Appropriate Methods	30
Mandatory Preseason Meetings	30
Sport Specific Information	31
Other Topics to Address	33
Standardized Materials	34
Alternative Opportunities	34
Annual Review	35
Complete Documentation	36
Evidence for the Defense	36
Waivers and Releases	36
In My Opinion	38
References	39
Chapter 5 Product Liability	41
Potential Defendants	41
Origin of Legal Theory	42
Basis of Liability	42
Jurisdiction Over Lawsuits and Applicable Law	44
Common Allegations	44
Defenses to Product Liability Claims	46
Liability for Negligence	47
Solutions for Manufacturers	48
Litigation Outcomes	50
Impact Upon Sport Programs	51
Liability of Programs Related to Equipment	52
Solutions for Programs	53
In My Opinion	54
References	54
Chapter 6 Safe Transportation	55
Duty to Provide Safe Transportation	55
Transportation Options	56
Personal Vehicles	60
Youth Drivers	60
Hierarchy of Risk	61
State Law	61
Driver Training	62
Vehicle Maintenance and Inspections	62
Budget Issues	63
Resources	63

References	65
Websites	65
Chapter 7 Youth Sport and the Law	67
Youth Sport and Litigation	67
Court Cases Involving Facilities	68
Areas of Concern	69
Instruction	70
Landmark Case in Soccer	70
Equipment	70
Supervision	71
Violence	71
Sexual Abuse	72
Recommendations	73
Two Revolutions	74
Gender Equity in Youth Sport	75
Individuals with Disabilities	76
Special Olympics and Challenger Program	77
Recommendations for Individuals with Disabilities	78
In My Opinion	79
References	79
Part III Risk Management Issues	81
Chapter 8 Liability and Risk Management Principles for Property Owners' Associations	83
Introduction	83
History and Background	83
Legal and Statutory Foundations	84
Association Board Member Liability	87
Risk Management Considerations	87
Assistance in Risk Management Planning and Legal Decision Making	89
In My Opinion	89
References	89
Appendix A	90
Chapter 9 Risk Management Strategies for Physical Educators	93
Supervision	94
Instruction	95
Training	96
Medical Care	96
Facilities and Equipment	97
Accident and Injury Data	98

Training Workshops and Seminars	99
Emergency Care Drills	99
CPR and First Aid Training	99
References	100
Chapter 10 Risk Management for Cheerleading	103
Developing a Risk Management Plan and Strategies	103
Implementing Risk Management Strategies	104
Personnel Management: Questions for Cheerleading Personnel	105
Risk Assessment Audit: Suggestions for Administrators and Coaches	111
References	114
Chapter 11 Playground Risk Management and Safety	115
Introduction	115
History of Playground Risk Management and Safety	115
Playground Injury Statistics	117
Data Collection	118
Safety Committee	118
Supervision of the Playground Area	118
Selection and Installation of Protective Surfacing	120
Selection and Installation of Equipment	123
Signage	124
Steps to Solve Common Playground Hazards	125
Summary	127
References	127
Chapter 12 Risk Management in Motorsports	129
Introduction	129
Historical Perspectives	129
Categories of Motorsport Stakeholders	131
Categories of Motorsport Facilities	132
Types of Motorsport Risks and Related Injuries	134
Addressing the Risks	135
Conclusion	136
References	137
Chapter 13 Liability and Property Insurance for Sport Organizations	139
All Sport Organizations Must Carry Adequate Insurance	139
Concerns of Management of Larger Sports Organizations	140
Important Steps in the Risk Management Decision Making Process	140
Important Steps in the Insurance Process	141

Choosing the Most Qualified Insurance Agent and Carriers/MGA's	143
Selection Criteria	144
Types of Policies Needed	146
Accident	157
Business Auto	159
Workers' Compensation	161
Umbrella/Excess Liability	165
Liquor Legal Liability	167
Management Liability	170
Directors & Officers Liability (D&O)	170
Employment Practices Liability (EPLI)	172
Fiduciary Liability	174
Professional Liability (i.e., Errors & Omissions)	174
Media Liability	175
Cyber Liability	175
International	177
Property and Equipment	178
Business Income and Extra Expense	179
Crime	179
Conclusion	181
Disclaimer	181
References	182
Part IV Medical Issues	183
Chapter 14 Administering a Sport Medicine Program	185
Personnel Administration	185
Facility Management	188
Record Keeping	189
Chapter 15 Blood Borne Pathogens	193
Facts about Hepatitis B	193
Types of Hepatitis	193
What Is Hepatitis B?	194
How BIG Is the Problem?	194
HIV-AIDS Issues	195
In My Opinion	197
References	197
Chapter 16 A Catastrophic Injury Plan	199
The Importance of Planning	199
In My Opinion	202

Chapter 17 The Preparticipation Physical Examination	203
Can Athletes Be Excluded from Sport If They Fail Their Physical Examination?	203
Athletic Association Guidelines	205
Medical Associations	207
American College of Cardiology	214
Legal Right to Participate in Sport	215
In My Opinion	222
References	223
Chapter 18 The Problem of Sudden Death in Competitive Athletes	225
Introduction	225
Scope of the Problem	226
Causes of Cardiac Sudden Death in Competitive Athletes	228
Specific Conditions Known to Cause Cardiac Sudden Death	229
Screening Programs	230
History and Physical Examination	232
Ancillary Testing	233
Genetic Testing	234
AED's and ICD's	235
Limitations and Problems of Screening Programs	236
Specific Limitations of Screening and Diagnostic Evaluation	237
Medical-Legal Implications	241
Practical Aspects of Screening Programs	243
In My Opinion	244
Glossary of Medical Terms	247
References	251
Chapter 19 Emergency Medical Preparedness	259
Personnel	259
Equipment	260
Emergency Plan	260
References	262
Chapter 20 A.T.,C. and EMTs — Confrontation or Cooperation?	265
EMT and A.T.,C. Certification	265
Preseason Meeting	267
Advances in Equipment	268
In My Opinion	269
Chapter 21 Who Should Provide Medical Care: Athletic Trainer or First Responder?	271
High School Athletic Participation and Injury	271
Athletic Trainer vs. First Responder	272

Medical Coverage in High Schools across the United States	274
The Growing Issue in North Carolina	275
A Closer Look at First Responders in NC	275
Where We Go from Here	277
In My Opinion	277
Conclusion	278
References	280
Chapter 22 Six Minutes to Live or Die: Automatic External Defibrillators	283
AEDs	283
AEDs and Sport Medicine	284
Regulatory and Legal Implications of AED Use	284
Public Access Defibrillation Programs	285
Legal Trends	286
Statutory Immunity Provisions	287
References	288
Part V Event and Facility Management Issues	293
Chapter 23 ADA and Sport Facilities	295
Purpose Behind ADA	296
ADA Requirements for Sport Facilities	297
What Disabilities Are Covered by ADA?	299
What Constitutes a Reasonable Accommodation?	301
Do I Have to Prepare for All Potential Disabilities?	302
How Much Will It Cost?	303
What Will Happen If I Just Do Nothing?	304
Practical and Inexpensive ADA Solutions for Sport Facilities	305
Employment Concerns	308
In My Opinion	309
References	309
Chapter 24 Event Management: A Practical Approach	311
Introduction	311
Planning and Organization	312
Organizational Chart	312
Sales—Ticket Sales	313
Sponsor Services	313
Contestant Services—Special Consideration of Accommodations, Security, and Transportation	314
Hospitality—Liquor Liability	314
Operations—Crowd Management	315

Site Management—Construction, Electrical, Maintenance, and Signage	316
Concessions—Licenses, Taxes	316
Finance	317
Support Services—Health and Safety, Communications, Traffic Control, Transportation, and Parking	317
Advertising, Promotions, Media Relations	319
Insurance	319
Waivers	321
Contingency Plans	321
Anticipation	321
Unforeseeable	322
In My Opinion	323
Chapter 25 Security Issues at Sports Events	325
The Effects of Terrorism on Security	325
Risk and Security Management	327
Security Assessments	328
Enforcing Security Plans	330
Security as a Value-Added Element	333
Conclusion	334
References	335
Part VI Risk Management Concerns	339
Chapter 26 Drug Testing and the NCAA	341
Introduction	341
January 2012 NCAA Study of Substance Use Habits of College Student-Athletes—NCAA Research Staff	344
Fourteenth Amendment	345
Fourth Amendment	347
Interscholastic Sport	351
In Our Opinion	352
Risk Management Strategies	353
Court Cases	354
References	355
Chapter 27 Fitness Center Safety	357
Introduction	357
Facility Layout	357
Overall Facility Safety	362
Emergency Planning & Equipment	364
Member Issues	366

Facility Documentation	367
Equipment Maintenance	368
Locker Rooms	369
References	369
Chapter 28 Title IX Fundamentals	371
Fundamentals of Title IX	371
Title IX Enforcement	373
Legal Developments and Challenges to Title IX	374
Title IX and Reverse Discrimination	377
Additional Causes of Action under Title IX	378
In My Opinion	379
References	379
Chapter 29 Accommodating Individuals with Disabilities in Regular Sport Programs	381
Public Accommodations	381
People with Disabilities Defined	382
Sport Rules Discriminate	382
Rule Changes during the 1970s	383
Progress and Needs in the 21st Century	383
Some Recommended Rule Accommodations	385
Concluding Comments	387
In My Opinion	388
References	389
Chapter 30 Aquatics and the Law	391
Headfirst Entry Injuries	392
Legal Theories	392
The Occupational Safety and Health Act (OSHA)	395
Risk Management System	396
Emergency Action Plan	399
Research	399
Planning	400
Learning the System	400
Follow-Up	400
References	401
Chapter 31 Expert Witnessing: Definition of an Expert	403
Types of Experts	403
Percentage of Plaintiff vs. Defendant Cases	404
The Initial Telephone Call	404
Credentials of an Expert	404
Credibility of an Expert	405

Retention of an Expert	405
Fee Schedules of an Expert	406
Local Expert vs. National Expert	408
Standard of Care	408
Discovery Techniques for the Sport/Recreation Expert	410
Written Reports by the Expert	411
Testimony	413
In My Opinion	416
Case Study	416
References	417
Chapter 32 Cheerleading and the Law: A Statistical Report	419
Direct Cheerleading Fatalities (1982–83 to 2009–10)	420
Disability Injuries in Cheerleading (1982–83 to 2009–10)	421
Serious Injuries in Cheerleading (1982–83 to 2009–10)	423
Consumer Product Safety Commission Data	423
In My Opinion	427
References	427
Chapter 33 Expecting the Unexpected: Preparation and Leadership in Emergencies	429
The Basics	431
Specific Emergencies	432
Procedure for Severe Weather Detection	441
Documentation	442
Crisis Leadership, Communications and Public Relations	442
Post-Incident Follow-Up	445
In Our Opinion	445
References	445
Part VII Risk Management Forms, Checklists and Surveys	447
Chapter 34 Necessary Medical Protocols for College Athletics	449
Athletic Forms for Student-Athletes	449
Emergency Management Plan	455
Chapter 35 Safe Facilities: Conducting a Facility Risk Review	457
Introduction	457
Legal Duty	457
The Basis for Hazards	459
Facility Risk Review	460
Initial Inspection	460
Risk Treatment	462

Periodic Inspections	462
Safety Rules	464
Establish a Preventative Maintenance Program	465
Train Staff	466
Documentation	466
Common Hazards	467
In My Opinion	467
References	468
Chapter 36 A Safety and Risk Management Audit for Secondary School Athletic Programs	469
Who Should Use the Self-Appraisal?	469
Directions for the Evaluator	470
Chapter 37 Athletic Department Drug/Banned Substance Awareness, Education, and Screening Policy	485
Program Purpose	485
Prohibited Drugs/Banned Substances	485
Educational Activities	486
Voluntary Admission and Request for Counseling	486
Screening Program	486
Consequences of Impermissible Drug/Banned Substance Use	489
Confidentiality of Information Concerning Drug/Banned Substance Use	490
Violation of the Code of Student Conduct or Team Rules	491
Improper Provision of Drugs by Institutional Personnel	491
Appeal to “Non-Negative” Test Results	491
Catawba College Athletic Alcohol Consumption Statement	492
Appendix A: NCAA and/or Catawba College Drug/Banned Substance Classifications	493
Appendix B: Drug Screening Notification	494
Appendix C: Administration of the Drug/Banned Substance Screening Program/Test	494
Part VIII Trends in Risk Management	497
Chapter 38 New Approach to Resolve Disputes	499
Risk Management: The ECT Approach	501
In My Opinion	502
References	502

Chapter 39 Trends and Issues in Risk Management for Recreational Sport Programs	503
Key Liability and Risk Management Trends Study	504
Trend Implications	504
Summary	510
References	511
About the Authors	513
Index	523

Preface

Sport-related lawsuits continue to escalate in the 21st century. Pressure in the multi-billion dollar sport industry has increased against all who are engaged in the operation of sport. Risk management, long a vital part of business, medical and insurance industries, has become a valuable addition to law and sport in the sport industry. It is obvious that risk management has a vital role in combating the flood of lawsuits that confront all organizations associated with sport on every level. It seems that any adverse decision against an athlete or sport organization results in a costly lawsuit or the threat of a lawsuit. Risk management attempts to curb this trend by providing policies, procedures, safety audits, risk assessments and emergency action plans. Risk management for sport is not easy to define because it deals with complex issues. Herb Appenzeller, a pioneer in sport law and risk management, defines sport risk management as follows:

Sport risk management is a process that develops a comprehensive risk management plan to eliminate or minimize loss exposure for injuries to participants and spectators and avoid financial loss. Sport risk management strategies need constant reevaluation, compliance with legal duties, and the responsibilities to create a safe environment (*Successful Sport Management* 2008).

John T. Wolohan, professor of sports law, Syracuse University writes in *Athletic Business* that,

One of the most important tasks is to control or limit an organizations exposure to financial risk—either by insurance or by taking corrective measures that mitigate risks. While there are many ways to reduce an organization’s exposure, one of the best is to develop a risk management plan.

He adds:

In developing an effective risk management plan—which can include everything from the frequency and type of maintenance required on equipment to proper emergency procedures and training for personnel—it is essential that sports and recreation administrators try to identify any and all risks that may be associated with an activity. As a result, one of the first steps is to conduct a risk audit during which administrators walk around the facility and inspect for potential dangers. Inspection of all equipment for wear and tear is important, since the facility is liable for injuries suffered on defective and broken equipment that it knows, or should have known, poses a danger to users.

Wolohan concludes with important advice to all responsible for a safe sports environment:

It is not enough, however, to conduct only a single or annual audit. For a risk management plan to be effective, it is essential that the plan incorporate a regular, systematic, inspection program that includes a written record of the inspection, including who conducted the audit, the date, any defects found, and any remedies taken to correct them (*Athletic Business* 2010).

Todd Seidler, a risk management expert and director of the sport administration program at the University of New Mexico, emphasizes the need for risk management plans, but cautions those who use such plans when he writes: “Every risk management plan is unique and must be designed specifically for each organization and activity” (Seidler, 2011). Seidler advises personnel responsible for administering the sport program: “not to merely copy other risk management plans when developing a plan for their venue or organization.” Later in this book, he suggests that established plans can serve as a guide for a plan, but suggests a specific one for each individual venue or sport organization — not one copied.

Ann Franke, a risk management specialist, writes: “By being prepared and implementing a risk management plan, it is important to make certain that nothing is left to chance” (Franke, 2006).

Scott Clark, Risk Benefits Officer, Miami-Dade County School Board said: “Too often the organizations, which have delegated risk management to middle management positions, are looking to solve their strategic risk management issues with outside consultants.” He advises risk managers to get the tools from the Risk and Insurance Management Society (RIMS) and make resources available to the risk managers within the organization (*Risk Central*, 2011).

The purpose of this book is to enable sport administrators to develop risk management plans and procedures, thereby making the sport industry safer. The book provides valuable resource material that, while not an exhaustive list of contracts, forms, laws and risk review guidelines and other important information, can be an effective guide on practical and useful information. The material can be adapted and modified to meet the needs of sport at every level.

In conclusion, Ronald Baron, a risk management pioneer, who started the Center for Sport Law and Risk Management in the early 1970s, said: “Risk management helps those who direct a sports program comply with their legal liabilities, provide safe programs, and enable sports personnel to defend themselves and their programs in the event of a lawsuit” (*Risk Management in Sport*, 2004).

Acknowledgments

Risk management in sport has become a vital factor in promoting safety for all who participate at every level of sport. It is important, even crucial, that resources for risk management are available to set policies and procedures for sport organizations and administrators.

Thirty-two authors with expertise and experience in risk management have contributed to the Third Edition of *Risk Management in Sport: Issues and Strategies*. The list of sport risk management authors reads like a “Who’s Who” of sport safety. I am indebted to these experts who so willingly shared their knowledge and practical experience to set guidelines for all who are associated with sport. It is true that no one is immune from litigation; it has escalated beyond belief. As the editor I am grateful for such support for a resource for sport risk management.

Appreciation is due to the following people and sport organizations who also made this important book a reality:

- Linda Lacy and Keith Sipe, publishers of Carolina Academic Press, who have promoted a series of books dealing with sport management, sport risk management and other publications dealing with sport. Their vision as pioneers of sport safety has been a source of encouragement to many authors in a field of study that needs attention.
- Ann Terrill Appenzeller for her outstanding effort in every phase and detail of the book. Her knowledge of the legal aspects of sport and risk management greatly enhanced the preparation of the book.
- Todd Seidler, Director of Sport Management at the University of New Mexico, for his constant assistance in the development of the book. His understanding of the law and risk management has improved the book and his spirit of cooperation and friendship is invaluable.
- Ronald L. Baron, Co-Editor of *From The Gym To The Jury* newsletter who invited me to join him as a consultant with the Center for Sport Law and Risk Management. This enabled me to join him in conducting risk assessments nationwide. He is a valued colleague and friend.
- David Harlowe, Director of the Sport Management Group, for his expertise and dedication to sport safety and risk management.
- Thomas Appenzeller, my son, who has contributed so much to the welfare and safety in sport. His practical background and mission to teach sport safety has been outstanding. His research has contributed to improving all aspects of sport and his dedication to promote safety for all who participate in sport has been important to everyone associated with sport.

- Substantial portions of Chapter 1 and Chapter 20 from J.D. Hawkins, *The Practical Delivery of Sport Medicine Services: A Conceptual Approach*, PRC Publishing, Canton, Ohio, 1993. Such excerpts were reprinted with permission, all other rights reserved. Copyright, 1993, PRC Publishing, Inc., Canton, Ohio.
- *American College of Sport Medicine, Resource Manual for Guidelines for Exercise Testing and Prescription*. Philadelphia, Lea and Febiger, 1988. Reprinted with permission for use in J.D. Hawkins's chapter on "Emergency Preparedness."