

Avoiding the 10 Major Sources of Legal Risk for Associations



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10 Major Sources Of Association Legal Risk



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|-------------------------|--------------------|
| 1. Entity/Personal Risk | 6. Damages/Injury |
| 2. Membership Access | 7. Defamation |
| 3. Price/Fee Setting | 8. IP Infringement |
| 4. Boycotting | 9. Governance |
| 5. Self-Regulation | 10. Managing Risk |

1. Entity v. Personal Risk For Association Volunteers & Staff



No Personal Liability

- Mistakes
- Bad judgment
- Mere affiliation
- Reliance on Experts

Personal Liability

- Gross negligence/fraud
- Personal/corporate
- Conspiracy
- Beyond authority

2. Membership/Access



Legitimate Exclusion

- Voluntary withdrawal
- Outside definition
- Nonpayment of dues
- Violates code of ethics

Suspicious Exclusion

- Unreasonable criteria
- Inconsistently applied
- Discrimination
- Bias

Non-member/supplier access

3. Price/Fee Setting



- Agreement Among “Competitors”
- Restraint of Trade
- Raise/Lower/Stabilize Prices/Fees
- “Agreement” Broadly Defined (even mere discussions can be dangerous)
- Exceptions/Exemptions

4. Boycotting



- Agreement Among “Competitors”
- Limit/Exclude/Control Competitor/Vendor/Patients
- “Agreement” Broadly Defined
- Exceptions/Exemptions

5. Self-Regulation



Types of Programs

- Codes of ethics
- Product standards
- Product certification
- Professional certification
- Institutional accreditation

Issues

- Reasonable criteria
- Fair procedures
- Antitrust
- Discrimination
- Defamation

6. Damage/Injury



Programs to Watch

- Standards/certification
- Safety publications
- Member alerts
- Educational offerings

Principles of Liability

- Assuming a duty or responsibility
- Mis-managing the duty to cause damage/injury

Note special insurance issues

7. Defamation



Sources of Risk

- Publications
- Education
- Web site
- Chapters

What is Defamation?

- Disparaging statement
- Person/firm/product
- Statement is untrue
- **Exemption for governance**

8. Intellectual Property Infringement



Trademarks

- Associated with product or service thru use
- Rights w/o registration
- PTO registration
- Association issues

Copyrights

- On any created work
- Acquired via creation
- Work product
- Fair use
- LoC registration

Note special web site exposure

9. Governance



- **Sarbanes-Oxley & Form 990**
 - **Destruction of documents**
 - **Retaliation against whistleblowers**
 - **Conflicts of Interest**
 - **Executive compensation**
 - **Joint ventures**

10. Vehicles for Managing Legal Risk



- Staff and Volunteer Education
- Legal Compliance Policy
- Top-Down Commitment
- Indemnification
- Liability Insurance
- Legal Counsel



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