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Q: Is having a participant sign a "waiver" meaningless or enforceable?

In some cases, courts have upheld "waivers" and in other cases they have not. There's a difference between a "waiver of liability" agreement and "assumption of risk" or "informed consent" participant agreement. The former is a release from liability for negligence while the latter asks the participant to acknowledge that he or she understands and accepts the inherent physical risk of sports participation, unrelated to accepting responsibility for third party negligence.

Minors can sign either document. However, in the case of a "waiver", which is a contract, because minors may void contracts, it is very likely that the minor would act to void the contract in the case of an injury. Thus, there are few instances when a waiver can be enforced against a minor. Also, a parent or guardian cannot waive 3rd party negligence on the child's behalf.

In the case of an "assumption of risk" document, if the minor is sufficiently mature to know and understand the nature of the risks, the assumption of risk agreement may, in most jurisdictions, provide protection for the program provider, if the assumption of the risk was voluntary. Assumption of risk is a defense which does not require that the participant be an adult. Also, with regard to an "assumption of risk", a parent or guardian can consent for the child.

Neither document will protect the organization or sports team from a lawsuit, but such documents might help if the organization is sued, depending on the facts of the case. When organizations take the trouble to issue such documents and require them for participation, the courts are more likely to believe that the organization has been responsible with regard to educating participants about risk and the possible consequences of sports participation.

The bottom line is that such documents are advisable, they should be drawn up or reviewed by an attorney and they should never be an excuse for a sports organization's responsibility to provide a safe participation environment. It should also be noted that the construction and validity of a waiver document is a matter of state law. A valid waiver in California may not be a valid waiver in Connecticut.

Good examples and resources:

- California State University San Bernadino Liability Release procedure and liability release form

- Arena Sports Release Form
- Corbett, Rachel. (2002) Risk Management for Sport Organizations and Sport Facilities. A paper presented at the Symposium "Sports Management: Cutting Edge Strategies For Managing Sports as a Business", August 2002, Toronto
- Sharp, L.A., A.M. Moorman and C.L. Claussen. (2007) Sport Law: A Managerial Approach. Holcomb Hathaway, Scottsdale, AZ. See excellent chapter on the use of waivers and exculpatory clauses (pp.531-557).

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