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Liability releases and kids: What's a parent to do, asks reader

Published: Saturday, December 08, 2012, 12:00 PM Updated: Saturday, December 08, 2012, 12:06 PM



By **Amy Wang, The Oregonian**

An average of 30 U.S. children a day go to emergency rooms for **injuries suffered in inflatable bounce houses**, according to a nationwide study published online Nov. 26 in the journal Pediatrics.

Researchers found that the number of children ages 17 and younger getting emergency-room treatment for bounce house injuries was nearly 11,000 in 2010, according to an Associated Press story on the study.

The story prompted one Omamas reader to wonder: What about all those liability releases that parents sign every time kids do sports or laser tag -- or go to a party facility? Are the releases enforceable -- that is, are parents out of luck if they sign?

According to local personal injury lawyers, it depends.

Rob Kline of **Kline Law Offices** in Portland said, "They have to be drafted pretty carefully to be enforced. They need to say specifically what kinds of risks are being contracted away. If they're too broad, they will not be enforced by the courts."

Richard Vangelisti, a personal injury lawyer with **Vangelisti Kocher LLP** in Portland, has 5- and 7-year-old daughters, so he's spent plenty of time in party places with liability releases.

"Yes, they can be enforceable sometimes," he said. "But it depends on the language ... Usually they're poorly written."

Matthew Kaplan of **Kaplan Law** in Portland, who's attended and hosted kiddie parties at play facilities, said, "The onus ends up being on the parents if you're talking about pure safety, but legally the onus is on these places to make sure they're safe...I don't think these releases are the end-all that businesses would like them to be."

Vangelisti said parents are at a disadvantage because the releases are often in legalese. Add to that an excited child, and it's the rare parent who doesn't shrug, sign and hope for the best.

Joanne Devlin, who owns the busy **Pump It Up and Pump It Up Junior** play facilities in Beaverton, said she

hasn't had a parent question her liability releases.

"We very rarely have injuries, and we've never had an insurance claim," she said.

Mellanie Heniff, co-owner of **Westside Dance & Gymnastics Academy** in Tigard, another popular party site, said, "Our insurance carrier requires that we have those release forms signed so that parents understand that there is a risk and that we take all safety precautions."

"I've definitely had parents want to talk to me about it," she said. "But in the end, they usually don't decline to sign because it doesn't waive our liability as a facility to provide a safe environment."

The lawyers cited these specific problems with liability releases they've seen:

Indemnification -- Some releases ask signers to indemnify the facility for other people's negligence, Vangelisti said. That means, he said, that a parent essentially becomes the insurance company for the facility if something goes wrong.

Total release -- If a parent is asked to release a facility from responsibility even if it is careless or negligent, "that's where the mischief lies," Vangelisti said.

What's not a problem -- simple negligence or failure to take ordinary precautions. Kline said a liability release that applies only to simple negligence is enforceable. However, gross negligence is a different matter, he said. That would include not increasing safety after having a serious injury or after publicity about serious injuries at a similar facility, he said.

The lawyers' tips for parents:

Assess the facility -- Kaplan said he thinks facilities where staff lead activities are safer than facilities where children are turned loose.

Focus on your kid -- "I wouldn't worry about standing there trying to figure out the release," said Vangelisti. "I sign it, and I'm more focused as a parent on supervising my own child."

Customize the release -- Vangelisti said he'll cross out language he disagrees with before signing. Kline pointed out, however, that parents who do so might end up having their child prohibited from entering the premises.

Check the staffing levels -- "They're the ones holding themselves out as knowing the risks of the equipment," Vangelisti said. "They've got to have sufficient people to make sure that everyone is being properly supervised."

Kaplan said that some facilities, in his view, have insufficient staff-to-child ratios, which leads to inadequate supervision.

"Obviously parents have a part in that but ... they're trusting these businesses with their children," he said.

Speak up -- "If I see anything that I'm uncomfortable with...I bring it to the attention of the facility," Vangelisti said. Or he intervenes.

Know the risks -- With bounce houses, the danger arises when bigger kids or adults jump with little ones. Vangelisti recalled a 2007 case in Castle Rock, Wash., in which **two adults fell off an inflatable slide at a party facility and knocked down a 3-year-old Longview boy**, causing a fatal head injury.

Kline noted that the American Academy of Pediatrics recently **recommended against recreational trampoline use** for children.

Go home -- Vangelisti said if he really doubts a facility's safety, he takes his kid home.

Don't go at all -- Kline, who suggested this, acknowledged that "it's going to be hard to say no" to a child excited about a party.

All three lawyers said they would consider taking cases involving liability releases.

"If the facility were careless and the child was seriously injured, I would take the case," Vangelisti said. He said liability releases have been successfully challenged in Oregon.

Kline warned that parents who want to sue on a child's behalf must do so through a third party known as a **guardian ad litem**. And when the guardian ad litem files suit, "the facility is almost certain to turn around and sue the parents," requiring them to get their own lawyer.

In such cases, parents might end up paying the facility's attorney fees as well as any judgment or verdict.

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