No Escape From Release Forms

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It's officially summertime but before we know it we'll be approaching the first day of school. This is the season to participate in camps and programs run by local recreation departments — and it's nearly time to sign up for school extracurricular activities. As you and your children consider these programs, you may be asked to sign a form that claims to "release" the sponsor from liability for injuries incurred as a result of participation.

You may ask yourself: Can this release *be enforced*? Will it shield the sponsor from liability resulting *from its own negligence*? Can I, as a parent, sign a release that *binds my minor child*? As with most legal questions, the answer is: It depends.

Courts in other states (Washington, for example) have refused — as a matter of public policy — to enforce pre-injury releases that purport to shield a school district from liability for its own negligence. However, here in Massachusetts, such releases are likely to be enforced.

The leading case in this area is *Sharon v. City of Newton*, 437 Mass. 99 (Mass. 2002), in which the Supreme Judicial Court of Massachusetts enforced a release, signed by a parent on behalf of a minor student, which was a condition of the student's voluntary participation in the cheerleading program at Newton North High School. The Court enforced the release to bar negligence claims against the City of Newton filed by the student once she reached the age of majority. In so holding, the Court explained that Massachusetts law favors the enforcement of releases and that, in the absence of fraud, a party may contractually release itself from liability that it may incur as a result of its own negligence.

Contrary to other courts, the Supreme Judicial Court of Massachusetts explicitly found that the enforcement of the release (in the context of a voluntary — rather than mandatory — activity such as cheerleading) did not violate public policy. In fact, the Court held that enforcing the release furthered the public policy of encouraging athletic programs for the Commonwealth's youth. The Court noted that this policy of encouraging athletic programs is "clearly embodied" in Massachusetts statutes — such as the statute that exempts from negligence nonprofit organizations and volunteer managers and volunteer coaches who run youth sports programs (Mass. Gen. Laws Ch. 231, ¤ 85V). Unlike other jurisdictions, the Court also found that a parent may sign a legally binding release on behalf of a minor child that waives the minor child's future negligence claims.

Although the Court found that public policy did not prevent the enforcement of the release to shield a party from claims of negligence, the Court clarified that its holding was limited to claims of ordinary negligence — not gross negligence. Here the Court referred to the generally accepted principle that releases cannot shield a party from claims of gross negligence or reckless or intentional conduct.

So, what are the practical ramifications surrounding the enforceability of releases in

Massachusetts?

For sponsors of recreational and extracurricular activities:

- Realize that a clear and conspicuous release may protect you from some liabilities, but that this protection has limits.
- While a clear and conspicuous release may protect you from negligence claims, it is not likely to provide protection from claims involving gross negligence or reckless conduct.
- Because a release may provide only limited protection, the best way to avoid liability is to take proper precautions to reduce the risk of accidents.

For parents or guardians asked to sign a release on behalf of yourself or your minor child:

- Realize that this document is not simply a piece of paper; in Massachusetts, a signed release may bar you or your child from pursuing a negligence claim against the party protected by the release.
- Before signing a release, be informed about the activity at issue as well as its sponsors; inquire as to the number and nature of any prior accidents and ask what safety precautions will be taken to avoid injuries.
- After signing a release, pay attention to how the activity is conducted because your participation — or your child's — may be at your own risk.

For more information on release form issues, please contact **Faith D. Kasparian**.