

December 11, 2006

Cindy Knapman
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University of Hawai'i Sea Grant College Program
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Honolulu, HI 96822

Dear Cindy,

Below is the summary of research of the Sea Grant Law Center regarding the question you posed to us by e-mail on December 6, 2006. The following information is intended as advisory research only and does not constitute legal representation of the University of Hawai'i Sea Grant by the Sea Grant Law Center. It represents our interpretations of the relevant laws and cases.

In your e-mail, you inquired whether your program had drafted the appropriate disclaimer language for the Hawaii Boating and Water Safety Program K-6 Workbook and Teachers Manual. As a preliminary matter, I conducted a search of similar Sea Grant publications for common disclaimer language. My search did not yield any examples of disclaimers in Sea Grant publications providing safety tips and advice for the general public. Alaska Sea Grant's boating safety fact sheet, *Preparing for an Emergency*, was published without a disclaimer. Similarly, Michigan Sea Grant did not provide a disclaimer in its nine-page brochure *Lightning and Boats*. The widely distributed *Break the Grip of the Rip* brochure produced by NOAA, the National Sea Grant College Program, and the United States Lifesaving Association, and endorsed by many Sea Grant Programs, was also published without a disclaimer.

One of the reasons a disclaimer may be missing from these publications is because it would be difficult for an injured party to establish a causal link between the publication and an injury. Generally with personal injury cases, a plaintiff must establish that the defendant owed a duty of care to the plaintiff, the plaintiff's injury was caused by the negligence of the defendant, and the defendant could have foreseen the likelihood of harm to the plaintiff. This would be rather difficult to prove with respect to general water safety information. In fact, I was unable to find any cases in which a state, local government, or any entity was sued for publishing safety guidelines or tips that led to injury.

Even though the above Sea Grant Programs did not contain a disclaimer in their publications, it is acceptable for Hawaii Sea Grant to do so in the Teacher's Manual. The disclaimer you provided is as follows:

The data contained herein is for informational purposes only. The University of Hawai'i Sea Grant College Program does not endorse the content of this publication and does not guarantee the accuracy, completeness or usefulness of the information.

The language you've chosen is appropriate for disclaiming the accuracy or reliability of the content. You may want to consider, however, adding an additional statement disclaiming liability for any injuries or damages caused by those acting upon or using the content contained in the manual. Here are a few examples:

The data contained herein is for informational purposes only. The University of Hawai'i Sea Grant College Program does not endorse the content of this publication and does not guarantee the accuracy, completeness, or usefulness of the information. Hawaii Sea Grant does not accept liability for any injuries or damages caused by those acting upon or using the content contained in the manual.

Or,

These tips have been provided as general information for increasing safety awareness. The Hawaii Boating and Water Safety Program K-6 Workbook and Teachers Manual is provided for information purposes only. Hawaii Sea Grant does not accept any liability to any person for the use of the information or advice contained in the manual.

Thank you for approaching us with your question. Please contact us if you have additional questions regarding the above information.

Sincerely,

Terra Bowling
Research Counsel

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