Swimming Pool Liability Concerns

And How to Minimize Them

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At a glance...

- Florida ranks in the top 3 in # of swimming pools and spas (with CA and AZ)
- Over 1M residential pools and spas
- Over 37,000 public/commercial pools and spas, include:
  - Hotel pools
  - Water parks
  - Municipal pools
  - Association pools

Why is this important to you?

- Pools = fun, relaxation, fitness, a gathering place
- BUT there are RISKS:
  - Recreational Water Illnesses (RWI)
  - Drownings
  - Suction Entrapment/Evisceration
  - Diving Injuries

Laws & Regulations must be followed to decrease/eliminate associated risks

- Federal laws (VGB Act)
- State laws (barrier law)
- Public Pool Code (DOH: 64E-9, F.A.C)
- FL Building Code

Virginia Graeme Baker Pool & Spa Safety Act

- Federal law, signed December 19, 2007
- Named after former Secretary of State James Baker’s granddaughter
- Aimed at reducing child drownings and suction entrapment injuries and deaths by enhancing the safety of public and private pools/spas

VGB Act cont.

- Public Pool Mandates
- Voluntary State Grant Program for residential pools
- The U.S. Consumer Product Safety Commission is the lead agency in implementing and enforcing the VGB Act
Public Pool Mandates

- The VGB Act required that ALL public pools and spas have installed 2007 ASME A112.19.8 compliant drain covers by December 19, 2008.
- Also required that ALL single drain, other than an unblockable drain, public pools & spas have an additional device installed (or disable the drain).
  - @ 7,000 public pools require an additional device
  - @ 30,000 have one of the approved additional devices (gravity drainage or vent line).

Civil & Criminal Penalties

- VGB Act public pool requirements treated as a consumer product safety rule under the Consumer Product Safety Act (CPSA).
- As of 12/19/08 unlawful to manufacture for sale, offer for sale, distribute or import into the US a drain cover that is not 2007 ASME compliant.
- A person who knowingly violates the public pool requirements could be subject to a civil penalty; the maximum penalty for one or more related violations is $15 million.
- A willful violation of the drain cover standard could also result in criminal penalties, including fines or imprisonment.

State Regulations

- Public Pools/Spas regulated by the DOH
- 64E-9, F.A.C. (Revised rule in effect 5/24/09)
  - Additional barrier and suction entrapment avoidance requirements.
  - More restrictive than federal law, requires 1.5 fps and gravity drainage phase-in
  - Water quality requirements

Recreational Water Illnesses (RWI)

- Floridians and tourists frequenting these types of pools are in possible danger of contracting a recreational water illness (RWI) if water quality is not regularly maintained.
- Inadequate chlorine levels in pools leave the water vulnerable to a variety of microorganisms such as E. coli bacteria or noroviruses, causing symptoms ranging from normal gastric distress to rare cases where an RWI can be fatal.

RWI cont.

- 2006: class action suit filed against the state of NY for monetary compensation by victims of the spraypark cryptosporidium outbreak of July 2005, where 3,297 cases of crypto were reported.
  - Cryptosporidium (crypto) is a parasite that causes gastrointestinal illness that can produce symptoms that include watery diarrhea, stomach cramps, dehydration, nausea, vomiting, fever, and weight loss.
- 2008: Orlando, FL, a local hotel is closed down after 2 people were diagnosed with Legionnaires' disease; the hotel pool was found to have inadequate chlorine levels.
- This Sunday the Orlando Sentinel reported on “Is your hotel or neighborhood pool safe?”
  - Improperly filtered water can cause disease
  - Improper chlorine levels
  - Record-keeping is another common problem.
How can we limit risks?

- **The Importance of having certified pool operators**
  - Those who become certified, through NSPF or similar course, are taught about the VGB Act, entrapment protection, water quality and state regulations during the course
  - It is a 16 hr course with handbook
  - Gives them the knowledge needed to properly maintain a pool; therefore, lowering RISKS.

How can we limit risks?

- A recently published study evaluated the association between pool operator certification and chemistry violations
  - Water quality violations were twice as likely in locations without certification.
  - This was consistent with previous studies and again proved that pools without required operator certification pose greater health risks.

How can we limit risks?

- FL law gives DOH the authority to establish a rule that a public pool must be serviced by a certified pool service technician.
  - The DOH requires at a minimum that a pool service technician be certified by an approved 16 hour course. Unfortunately, FL law has also provided exemptions from the requirement of having a certified pool operator in some cases, increasing risks for those pools.

How can we limit risks?

- A certified person will have a greater knowledge to ensure compliance with both federal and state requirements, decreasing liability and risk.
  - It has been reported that many insurers are already requiring VGB compliance on their pools or they will not insure.

Possible Suggestions

- Price differential concept for those clients with swimming pools and spas who employ or contract with a certified pool operator. Lower price for those facilities due to a reduced risk based on them having trained and certified staff members.
  - A blanket requirement to hire certified pool operators; decreasing your (the insurance company’s) liability.

Conclusion

- We want your feedback, recommendations, and questions on what you consider viable options.
- Hope to discuss possible options at Fall FIC meeting. Our goal is to increase safety and limit liability in our pools and spas.
- For additional information on safety and water quality concerns email: Jennifer@floridapoolpro.com