

Liabilities for Hazing Activities

News of the death of another student from college hazing activities serves as a tragic reminder that this long-standing practice continues to be a major problem. A Tennessee State University fraternity pledge died from physical exhaustion after his fraternity brothers required him to perform calisthenics under circumstances causing his internal body temperature to exceed 106 degrees. Such an incident raises questions about who is responsible for preventing hazing and what liabilities may be assessed in the wake of such tragedies.

In Alabama, hazing is a crime. Section 16-1-23, *Alabama Code*, defines hazing as “any willful action taken or situation created, whether on or off any school, college, university, or other educational premises, which recklessly or intentionally endangers the mental or physical health of any student.” Most people think of hazing as a type of physical abuse, but this statute makes it clear that mental abuse is also a prohibited activity. Violation of this provision is a Class C misdemeanor, punishment for which could include up to three months of imprisonment or a \$500 fine, or both.

Culpability under this statute extends beyond those who actively participate in hazing. Those who “knowingly permit, encourage, aid, or assist any person in committing the offense of hazing, or willingly acquiesce in the commission of such offense, *or who fail to report promptly his knowledge or any reasonable information within his knowledge* of the presence or practice of hazing” (emphasis added) to the appropriate university official are also in violation of the law. The statute clearly imposes an affirmative obligation to report hazing on anyone who, though not involved in the act, but has knowledge of it.

In addition to criminal sanctions, the Alabama statute provides that any person who participates in hazing or any organization that permits hazing to be conducted by its members or by others subject to its control shall forfeit any entitlement to public funds. This means that any scholarships, awards, or funds distributed by the University to support such an organization will be taken away. Furthermore, an organization that violates the statute will also lose any sanction or approval granted by the University, which could include recognition as an approved student group entitled to use University facilities or to enjoy any other benefit of University approval.

Under UAH policy, hazing is a violation of the Code of Student Conduct (Article III. X). Violation of the Code of Student Conduct may result in sanctions imposed against the individuals committing the prohibited acts. In addition, the organization itself may be held responsible where the prohibited acts are approved or encouraged by the organization or where they take place in the context of a tradition, custom, or past practice of the organization. The most serious of these sanctions is expulsion for a minimum period of two years.

Of course, the victim of hazing may have additional remedies against the perpetrators of physical abuse. The activities that constitute hazing, such as threats, beatings, and restraint of movement, may support common law tort claims of assault, battery, false imprisonment, or intentional infliction of emotional distress. These claims could result in the award of significant money damages against the individuals who engaged in those activities, damages that are

unlikely to be covered by any insurance policy owned by the individual. *See Auto-Owners Insurance Company v. American Century Insurance Company*, 739 So.2d 1078 (Ala. 1999).

In some cases, universities may also be liable for injuries sustained during hazing activities. A recent Nebraska case allowed a claim to proceed against the University of Nebraska where the evidence showed that the University was aware of the criminal hazing activities for five years and failed to enforce its policies against hazing, alcohol consumption, and abusive behavior. *Knoll v. Board of Regents*, 258 Neb. 1 (1999). The University of Vermont paid \$80,000 to settle a claim brought by a freshman hockey player charging that he had been forced to commit a series of degrading acts and to drink excessive amounts of alcohol by his upperclass teammates. The university allegedly did not take steps to stop the event after the student had informed administrators that the “party” would take place only at the risk of possible liability for the institution, and it also failed to thoroughly investigate the event after it had occurred. These cases show that university administrators can ignore this problem only at the risk of possible liability for the institution.

Hazing should not be part of any requirement to join a club, team, or other campus organization. Newspaper headlines demonstrate, however, that the practice is alive and well at institutions all across the country. Unfortunately, a significant number of the victims of this practice cannot say the same thing. As is evident from the laws and cases discussed above, the burden is on all members of the university community to be aware of these actions and to take steps to stop them before another tragedy occurs.