

Legal & Risk Management Concerns for Fitness Professionals

So far in 2015, at least two significant cases against personal fitness trainers have concluded. One resulted in a substantial mediation settlement and the other in an even more substantial jury verdict. The sums to be paid amount to \$750,000 as to the mediation and \$980,000 as to the jury verdict.

At about the same time as these two case results were announced, a well-known executive for an online service provider was found unconscious in an unspecified Mexican location when he reportedly slipped on a treadmill, hit his head and suffered a severe brain trauma. He later died at a local Mexican hospital where he was transported after he was found on the floor. Injuries or other untoward events including deaths, associated with exercise equipment use, particularly treadmills, are a somewhat serious concern in the fitness industry. For example, almost 25,000 injuries occurred in 2014 which were associated with treadmill use. Many of these events wind up in litigation against treadmill manufactures, health and fitness facilities and fitness professionals.

Lastly, the District of Columbia has become the first jurisdiction in the United States to begin the regulation of personal fitness trainers providing service in D.C. Regulations under development by the D.C. Board of Physical Therapy will almost certainly be adopted in 2015 to set the requirements for personal fitness trainers practicing in that locale who will now be required to register in order to provide service. Other states may soon follow D.C.'s lead. The state of Massachusetts, for example, is now considering a bill to require licensure of personal fitness trainers in that state.

Why should fitness professionals be concerned about these recent developments and other similar ones? Simply put, these issues will continue to impact the fitness profession so as to require the development of various strategies and risk management techniques to address them in efforts to reduce risk and potential liability for fitness professionals.

In this monthly column, we shall keep fitness professionals current on a variety of evolving developments about claims and suits, licensure efforts and other governmental regulatory issues impacting their delivery of service. We shall report and comment upon a literal explosion of litigation in this industry and provide strategies and risk management suggestions to deal with those matters. In this regard, we will analyze case examples and describe and elaborate upon a number of risk management strategies for implementation by fitness professionals to reduce, eliminate, manage or offset selected risks and to address liability concerns. We will also strive to keep professionals up to date about existing and developing standards and guidelines which will impact their delivery of service in the fitness industry and how various laws interact with those parameters of practice. While such standards statements can be used as shields to protect against liability, such statements can also be used as swords to attack the services which are provided in some circumstances. As a consequence, fitness professionals need to fully understand and

appreciate such standards statements in their delivery of service to clients.

To be sure, we live in a litigious society. If coffee spills, if bad results occur, if something goes wrong, many people are ready to point a finger, reject self-responsibility and sue for damages. This process occurs in all aspects of life – from the fast food industry to the delivery of medical services. The provision of fitness services is no different in this regard. Risk management in all of these areas can help reduce the risks of claim and suit.

Risk management is an initial and then an ongoing process to assess the delivery of services for the purposes of identifying risks which may occur to those to whom services are delivered. The process begins with an assessment of those risks so identified which can then be eliminated, reduced or minimized. As to those risks which can't be dealt with in that fashion, those risks must be managed through other means.

Participation in sport, recreation, exercise and fitness activities carries with it certain inherent risks of injury and even death. Some of these untoward events cannot be eliminated despite the delivery of the best of care. However, certain tasks can manage the relevant risks. For example, the implementation and use of pre-participation physical examinations has been used for many, many years to determine if children and young adults can safely participate in various athletic activities. In the fitness arena, pre-participation screening is generally used for the same reasons.

The use of pre-participation screening instruments for fitness activity is designed to determine if the risk of injury or even death might be eliminated or at least minimized by the proper use of screening information. Likewise, as to those risks which cannot be eliminated or reduced, the use of documents like an express assumption of risk or a prospectively executed waiver of liability can be used to transfer those risks to the participant or to have such persons waive their right to sue. A participant's execution of such an assumption of risk document with an acknowledgment and acceptance of the known risks of participation amounts to an individual's written assumption of self-responsibility if something goes awry. Likewise, if a prospective waiver of liability is properly used then the participant waives or gives up, in advance of service delivery, his or her right to successfully sue for any negligently caused injury. While there are specific legal requirements for each of these processes, both options can be used as risk transference devices which along with liability insurance, can be used to defend against claims which can't be eliminated or reduced through the risk management process.

The use of risk management techniques is at the very core of helping fitness professionals stay out of court and out of potential legal trouble. Through this column, we will strive to cover each part of the process and highlight what needs to be done to minimize the fitness professional's involvement with the legal system.

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