

Nutritional Advice by Personal Trainers: Is it Legal?

Recent litigation as well as an examination of the practices of many personal trainers raises a number of questions about what fitness professionals may lawfully do to provide nutritional advice to their clients. These questions and the matters to consider include the following:

1. Many personal trainers seem to provide nutritional advice or at least nutritional counseling to their clients as part of their provision of fitness services. Is this activity lawful?

– **Maybe.** Almost all of the states in the United States have laws dealing with the regulation of dietitians, nutritionists or other such individuals with similar titles. Three forms of credential are typically provided: licensure, statutory forms of certification or required registration. In many states, the practice of dietetics or some other similar classification is defined by reference to specified titles or by reference to the provision of specific delineated services which prohibit the use of these titles or the provision of those services except by those who meet specific state regulatory requirements. The provision of such defined services or the use of listed statutory titles is frequently prohibited when provided or used by non-regulated individuals. Sometimes the practice of nutritional or dietetic counseling or the use of defined titles is made criminal so as to expose offending parties to fine or imprisonment as well as legal action to prevent further violations of law. As a consequence of the foregoing, personal trainers and other fitness professionals may not use titles reserved for use by those who are licensed or otherwise regulated by state law. Moreover, fitness professionals may not render those services which are defined by law to be carried out only by licensed or regulated professionals.

2. Can personal trainers advise clients on what to eat to maintain a healthy lifestyle, as opposed to providing medically based nutritional advice?

– **Probably,** but the answer to that question depends on the particular state law in effect in the jurisdiction where services are provided to fitness clients. In Ohio, for example, the Ohio Board of Dietetics has issued a rather comprehensive Guideline¹ on the subject (see Guideline *infra*) which specifies the following: “The [Ohio] Board suggests that fitness professionals who are not licensed dietitians but who provide general non-medical nutritional information, describe the service with words like ‘general nutrition or weight management information.’” In this regard, the Ohio Guideline states: “General nonmedical nutrition information (the application of basic principles of nutrition to food selection for purposes of maintaining health) may be provided by anyone so long as they do not [use titles regulated by law] . . . tending to indicate the practice of dietetics.” General non-medical nutritional information is defined in the Guideline as information on:

1. Principles of good nutrition and food preparation;

2. Food to be included in the normal daily diet;
3. The essential nutrients needed by the body;
4. Recommended amounts of the essential nutrients;
5. The action of nutrients on the body;
6. The effects of deficiencies or excesses of nutrients; or
7. Food and supplements that are good sources of essential nutrients.

The Ohio Board of Dietetics also issued further information on the provision of nonmedical nutritional information in Bulletin #8 dated September 7, 2004 as revised in 2008. If a personal trainer intends to provide service in Ohio, both the Guideline and the Bulletin should be reviewed along with Ohio state law and regulations before service is provided.

Laws and regulations in some other states make similar distinctions between what is prohibited and what is not prohibited. For example, in the state of North Carolina, the Board of Dietetics/Nutrition published a Guideline A For Unlicensed Persons Who Are Not Otherwise Exempt, *infra*, to address the previously mentioned issue. In this regard, the Bulletin states:

As discussed in greater detail below, one does not engage in the practice of dietetics/nutrition unless that person provides certain nutrition-related services in the context of a professional-client relationship. It is neither the purpose of the Dietetics/Nutrition Practice Act nor the intent of the Board to restrict the expression of general information, guidance or encouragement about food, lifestyle or dietary practices, whether through general publication—including books, television, radio, articles or website posts—or in one-on-one interactions. Thus, individuals are permitted to express information, guidance or encouragement about food, lifestyle or dietary practices to the public generally and to any willing and competent adult listener directly without first obtaining a license so long as they do not hold themselves out as a dietitian/nutritionist and they do not provide such information, guidance or encouragement (for free or for compensation) as part of a professional-client relationship formed to assess individual nutritional needs and then develop and achieve a specific nutrition-related goal, objective or outcome.

This Guideline was first adopted in 2010 but was apparently last updated in February of 2015 in conjunction with the dismissal of a lawsuit filed in United States District Court which had been filed by a non-licensed individual who provided, among other things, a web-based advice column on a variety of subjects including food and meal plans.² This party challenged the North Carolina regulatory scheme for Dietetics/Nutritionists and

claimed he was entitled under the First Amendment to the United States Constitution to provide such advice even though he was not licensed in that state. His suit was initially dismissed on procedural grounds but he appealed to the United States Court of Appeals which reversed the trial court's ruling and sent the case back to the District Court for further proceedings.³ Thereafter the lawsuit was dismissed by the plaintiff in conjunction with some changes to the North Carolina guidelines.

3. How should fitness professionals proceed if they want to provide general, non-medical advice to clients on diet and nutrition?

- First, fitness professionals need to understand that the law differs from state to state. A review of specific state laws and regulations is needed. Individualized legal advice on those laws and regulations is required before service is provided to clients by fitness professionals.
- Second, fitness professionals need to stay away from medical type nutritional advice. Instead, professionals should offer educational type guidance on good nutrition and diet.
- Third, fitness professionals need to check with their insurance agents to make sure they have proper insurance coverage for their activities in the event that a claim or suit arises out of this area of service provision.
- Lastly, personal trainers may want to review the services they contemplate providing with their state's regulatory agency in advance of service provision so there is no question on what is permissible and what is not.

This publication is written and published to provide accurate and authoritative information relevant to the subject matter presented. It is published with the understanding that the author and publisher are not engaged in rendering legal, medical or other professional services by reason of the authorship or publication of this work. If legal, medical or other expert assistance is required, the services of such competent professional persons should be sought. Moreover, in the field of personal fitness training, the services of such competent professionals must be obtained.

Adapted from a Declaration of Principles of the American Bar Association and Committee of Publishers and Associations

Author:

David Herbert