

REWARD CARRIES RISK: A LIABILITY UPDATE

As the popularity of personal training grows, so does your liability risk. How do you protect yourself and your business?

According to the 2003 IDEA Trendwatch Survey, three different kinds of personal training topped the list of general fitness trends: one-to-one training, partner training (two clients sharing one trainer), and small-group training (three to five clients sharing one trainer). Client categories that seem to be growing include people who are interested in postrehab or “prehab” training and those who have special medical conditions. These trends mirror, and are influenced by, a number of social factors. The population at large is aging as Baby Boomers approach older adulthood. Boomers represent a new type of older adult—one who continues to enjoy active recreational pursuits that can have a high risk of injury. With advances in sports medicine technology, joint repair and continued activity are more feasible into older age. But they require physical conditioning. Finally, more people are seeking guidance and support to achieve basic fitness and weight loss goals.

If these trends continue, personal fitness training is likely to remain a strong category of profitable business for the fitness industry. But as any activity grows in popularity, the risk of litigation for professionals providing the service also increases. This discussion offers an overview of the numerous areas of potential liability for personal fitness trainers (PFTs). The information covers liability *specifically related to clients*. Because of the broad scope of information, no one issue is addressed in depth. To learn more about individual topics, consult “Resources” as a starting point, or consult your attorney.

Case Studies: What’s Going On in the Trenches?

The sources for the case studies in the first part of this article are case law and anecdotes from industry professionals. Today most cases are settled out of court and therefore never actually create case law. These examples are valuable because they illustrate typical day-to-day areas of risk exposure in personal training. The second part of the article addresses risk-management strategies for each of these concerns.

1. Safe Premises

Many insurance providers indicate that the number one claim against fitness facilities and professionals is for injuries related to falls on the training premises. Since professional trainers include those who own studios or train in studios, this is an important issue. Courts have consistently held that clients are entitled to “safe” conditions.

2. Equipment Use

Insurance providers say that the second leading reason for claims against PFTs is injury resulting from the use of equipment.

Free Weights. A common scenario involves an experienced trainer supervising a regular client who is performing a squat or similar exercise with free weights. The trainer encourages the client to use a heavier weight and to perform more repetitions even though the client complains of fatigue. The client suffers a debilitating back injury and sues the trainer and fitness facility.

Weight Machines. Even though machines carry a reduced risk of injury because the client’s body is more stable and movement is more restricted than with free weights, injuries still occur. Most injuries happen when a client is encouraged to handle a weight that is too heavy; a weight plate slips and falls because a pin was not properly inserted; or a cable breaks. Weight plates have fallen and crushed ankles and feet, or hit people in the head. Clients suffer physical injuries and sue the trainer, fitness facility and equipment manufacturer.

Cardiovascular Machines. Treadmills are currently among the most popular form of exercise equipment in fitness facilities. Numerous cases feature instances where a client loses control and falls from a treadmill. These cases often involve middle-aged or older adult clients who are unfamiliar with the machine’s workings and unable to keep up with the movement speed. Consequences from falls include back, neck, shoulder and other joint injuries, broken bones and even death. Clients (or their survivors) sue the trainer, fitness facility and

This article provides general, practical information on how to protect your personal fitness training business from client lawsuits and how to manage risk. It is not intended to be legal advice and should not be considered a substitute for legal counsel or other professional services. If expert advice is required for your specific situation, please consult your legal counsel and other qualified professionals for answers to your questions.

equipment manufacturer.

Of course these examples should not discourage you from using equipment to condition your clients. These incidents simply underscore that whenever equipment is being used, you must remain alert to the special risks presented and take proactive steps to manage and minimize these risks.

3. Scope of Practice

Supplements. A high-profile case brought against a personal trainer and a large fitness chain involved a scenario in which a PFT sold supplements, including one that contained ephedra, to a client. The client, who had hypertension, died. Survivors filed a suit. In another example a trainer sold steroids to a client, who later suffered adverse consequences and filed a claim against the trainer.

Medical or Dietary Advice. No cases were uncovered that involved a client suing a trainer for faulty medical or dietary advice, except in the case of supplements. However, remember that health care is a highly regulated area. The consequences of stepping over the line into the protected area of a licensed health care practitioner—such as a medical doctor, physical therapist, registered dietitian or chiropractor—vary by state. You are exposed to potential liability if your “advice” could be interpreted as the unauthorized practice of medicine and if this advice results in a client injury.

4. Sexual Harassment

This is another area that is seeing growth in the number of claims against PFTs. Since the personal training relationship can seem “intimate,” it lends itself to creating more opportunity for abusive conduct on the part of the trainer or for a misinterpretation of actions on the part of the client. Numerous cases involve a male trainer and a female client. The female client believes inappropriate touching has occurred and that she has been violated. Or a personal relationship develops between the trainer and the client that then raises questions about the legitimacy of the business services rendered. The client believes undue influence was used to create an exploitive situation.

5. Proper Qualifications

While no specific case on the books has held that PFTs have a higher standard of care based on their specific training in individual assessment, program design and supervision, clients have filed claims after injuring themselves, based on the fact that a trainer did not have the qualifications represented in a facility’s advertising literature.

The issue of trainers’ responsibility for advising appropriate levels of intensity is even more critical as more people with special needs seek to work with PFTs. Trainers who advertise their services to targeted clientele, claiming that they are trained to serve these niche markets, need to be sure they are sufficiently prepared to serve these clients’ needs.

The risk of exposure may be even greater when training services are delivered in a medical setting. In a 2003 Indiana case, a court held that even though a personal trainer was employed by a hospital and the fitness facility was owned by

the hospital, the personal trainer was not a health care provider. The case, therefore, did not qualify as a medical malpractice case. The significance of this case, however, is that the client did try to sue both the fitness club and the hospital on the basis of injuries sustained while engaged in the personal training program, and the court did examine the fact that the training occurred in a setting with a close connection to a hospital. Another court might have found that this type of training did need to meet the standards of health care practitioners.

6. Emergency Response

As yet no specific case has involved a claim against a personal trainer for wrongful death in a situation in which a client has had a heart attack or other medical emergency and died while under the supervision of a trainer. However, since most personal trainer certifications require that PFTs have CPR training (and some require first aid training), it is possible that a claim could be filed against a trainer who failed to provide an emergency response if that failure led to a death that could have otherwise been avoided.

7. Unexpected Lawsuits

In a number of scenarios, trainers are surprised to learn that a client they consider a “good friend” has filed a lawsuit. Realize that many factors can motivate the filing of claims. Today a leading one is that the cost of medical care is so expensive. When people suffer an injury, they need to cover their medical expenses and they do not want their health insurance premiums to rise. Also, they may be looking to get someone to cover the cost of copayments or expenses that would otherwise be nondeductible.

8. Do Waivers Protect You?

In numerous states, courts are more frequently holding up waivers as a valid means of protection against litigation. In a 2002 California case, a facility member filed a lawsuit when he injured his knee while trying to move a television for viewing during his workout. The court held that a waiver form signed by the member when he joined the facility protected the facility and its owners from liability. This case is consistent with other California cases.

According to Jeffrey Frick, program manager and CEO of Fitness and Wellness Insurance Agency in Solana Beach, California, other jurisdictions such as New York are much less likely to uphold a waiver. Given this variation across the country, Frick recommends that trainers find out whether to use a waiver, an “assumption of risk” document or an “informed consent” to protect against liability. (For a detailed discussion of waivers, see “Do Waivers Work?” by Doyce J. Cotten, EdD, in the April 1998 issue of *IDEA Personal Trainer*, pages 41-47.)

Practical Risk-Management Tips

The following tips provide suggestions for managing potential areas of risk. These tips are based on findings from legal cases, legal analysis and strategies used by experienced practitioners.

Safe Premises

Frick recommends that procedures be in place for regular floor cleaning, either on an hourly basis or more frequently, depending on usage. When working with clients, routinely survey the training floor and access areas. Make sure that equipment that is not in use is properly stored. Trainers who work in aquatics facilities need to be particularly vigilant about deck conditions and pool access areas, since wet surfaces increase the likelihood of a slip-and-fall incident.

Equipment Use

Free Weights. Injured parties have filed lawsuits based on claims that trainers pushed them to use weights that were too heavy, leading to injury. To avoid this, train clients conservatively and always make safety the top priority. Lisa Garrity, MA, education and postrehab fitness specialist for Fitness Express, a fitness management company in San Diego that contracts with 35 personal trainers and approximately 100 group fitness instructors, says, “I personally have been able to sidestep potentially litigious situations, but I would be considered a very conservative trainer. Our company is very conservative in its approach to training and fitness management.”

Marlon Ransom, owner of Bodies for Ransom, formerly a personal training business with approximately 25 trainers in Chicago, emphasizes the importance of safety. “Rule number one for trainers should always be safety,” he says. “When someone signs up for training, he should be assessed and the safest exercises should be implemented based on his fitness levels. It’s not a good idea to have someone who hasn’t worked out in 10 years and is overweight start out with dead lifts and squats.”

Weight Machines. Many cases that involve injuries on machines raise issues related to whether a client has received proper instruction on how to use the equipment or adequate supervision while using it, and whether the equipment has been properly inspected and maintained. Since accidents can occur in seconds, keep your focus on training and safety. According to Frick, accidents often happen when a trainer momentarily tunes out or gets distracted by a conversation either with the client or with someone else on the training floor.

Keeping focused can be challenging when dealing with a chatty client. Use strategies to keep your client on task by reminding her of important safety cues and by bringing the attention back to breath, movement, form and alignment. Also allow yourself sufficient down-time between clients to keep your attention fresh.

Familiarize yourself with equipment maintenance, inspection, record keeping and reporting procedures used by the facilities in which you offer training, and perform safety checks on equipment whenever you use it. Contribute to a safe environment by immediately reporting any signs of wear or abuse and recommending that equipment not be used when it appears unsafe. If forms do not exist to easily report equipment issues, suggest that some be created.

According to ACSM’s *Health/Fitness Facility Standards*

and *Guidelines*, fitness facilities should use appropriate signage to alert users to risks associated with activities and provide user instructions for all equipment. While this is not the PFT’s responsibility per se, courts often examine the degree to which facilities have signage to determine whether a person was alerted to any potential risk. To protect yourself, work only in facilities that make an effort to uphold all these standards.

Cardiovascular Machines. Frick notes that a frequent problem in treadmill incidents is that people—particularly older people—are unfamiliar with how to operate the equipment. To prevent accidents, first be sure that the treadmill speed is appropriate for the client before putting him on the equipment. Second, give each client clear instructions on how to operate the equipment and what to do if it begins to move too quickly. Third, supervise—do not leave your client alone on the machine once it starts up.

Equipment and Intended Use

Another factor courts have focused on in equipment cases is whether the equipment is being used for its intended purpose. Accordingly, if equipment is not being used for its intended purpose and injury results, liability issues may arise. For example, in a case in which hotel management placed home equipment in a hotel gym, the court found the hotel liable for injuries suffered by the client. In a training facility, owners should provide commercial equipment. Manufacturers do not design home equipment to withstand the wear and tear of multiple, frequent users.

When considering how to protect yourself from liability, keep in mind that exercise is an activity that includes the risk of injury. Therefore, you can never ensure that an accident will not happen. Your responsibility is to provide safe and proper instruction and safe and appropriate exercise program design. The best way to reduce exposure to liability is to document that adequate instruction is provided and to document the specific training instructions.

Greg Mack, CEO of Physicians Fitness in Columbus, Ohio, and 2003 IDEA Personal Trainer of the Year, advises, “Documentation, documentation, documentation.” Mack uses a medical-like process to record training sessions. (See “A Model for Communicating With Physicians” in the September 2001 issue of *IDEA Personal Trainer*, pages 32-43.) It is a good idea to maintain notes from every training session that document that you provided both instruction on how to use a particular piece of equipment and warnings regarding the risks of inappropriate use.

Breaching Scope of Practice: Nutrition Advice

Numerous incidents of liability involve supplement cases. In one incident a personal training company combined supplement sales with its fitness packages to increase revenue. The company eventually had a client who was allergic to an ingredient in the supplement. The problem was compounded when the client assumed that if she took more than the recommended dosage, she would see more results. She ended up in the hospital, and even though she had been a loyal client for some

time, she sued the trainer and the business. The case was settled out of court and the trainer lost his business. The problem was not that the trainer had sold the client the products, but that he had given her a written plan specifying what to eat and when to take the supplements. The fact that the client overdid it didn't matter.

According to Frick the problem with supplements is worsened by the fact that most supplement manufacturers do not carry any insurance coverage. Therefore the people selling the supplements do not have any products liability coverage. Furthermore, most of the insurance policies for fitness professionals do not include protection for products liability.

Kristine Clark, PhD, RD, director of sports nutrition for Pennsylvania State University's athletic department and an assistant professor of nutrition in the university's department of nutritional sciences, strongly recommends against trainers selling supplements. "No one, including professional registered dietitians, can be certain about the ingredients in many supplements," Clark points out. "Like drugs, many supplements contain ingredients that can negatively affect individuals. With drugs, a physician asks, 'Are you allergic to penicillin?' but with supplements, no one asks, 'Are you allergic or could you have a reaction to ephedra?' For the sake of safety, I strongly discourage the sale of supplements. In most cases clients consider their trainers expert advisors as well as in trainers. Clients are vulnerable victims who rely on trainers to be 'experts.' To me, when it comes to supplements, that's frightening. No one is an expert."

The message is clear. Do not sell supplements or give nutrition advice. Ransom adds, "Only a nutritionist should make specific diet plans; a trainer may share basic knowledge that will not make him liable."

Sexual Harassment

Since sexual harassment is difficult to prove and often rests on credibility, exercise care to conduct yourself professionally at all times. One strategy to protect against a claim of inappropriate touching is to always ask the client for permission to use tactile spotting, and to avoid it unless absolutely necessary. Some trainers do not touch clients directly, but spot them through the use of another prop, such as a ball. Also, avoid situations behind closed doors where no one else is present. For example, if you offer a skinfold body composition assessment, conduct the procedure in a room with other trainers, perhaps behind a folding screen, or have another trainer or staff member present. If a personal relationship develops with a client, discontinue the professional relationship and refer the client to another trainer.

Providing Specialized Training Services

Most industry leaders agree that a growing concern for trainers is in the area of academic preparation and qualifications for working with people who have special medical conditions. "Any problems a trainer runs into in this area legally will most likely be placed up against the medical standards of care, specifically those found in physical therapy," Mack says. His experience includes testifying in a court case as part of

Industry Standards and Guidelines

Two key publications address standards for health and fitness facilities. First, the American Heart Association (AHA) and American College of Sports Medicine (ACSM) issued a joint statement, "Recommendations for Cardiovascular Screening, Staffing, and Emergency Policies at Health/Fitness Facilities" in 1998, and then updated this statement with a supplement in March 2002—"Automated External Defibrillators in Health/Fitness Facilities."*

The second important publication is ACSM's *Health/Fitness Facility Standards and Guidelines* (2nd ed.), published in 1997. These standards govern issues related to the prescreening of facility users, qualifications of facility personnel, and use of written emergency policies and procedures that are regularly reviewed and practiced. All trainers should be familiar with these publications.

Also look to the IDEA Opinion Statement on the "Benefits of a Working Relationship Between Medical and Allied Health Practitioners and Personal Fitness Trainers," which clearly outlines and defines scope of practice issues for personal trainers. (See June 2002 *IDEA Personal Trainer*, pages 26-31, or download the statement from www.ideafitmember.com/member.asp).

While industry standards are not the same as legal duties, they can be introduced as evidence to evaluate whether a defendant met the relevant standard of care. Prescreening, therefore, should be an essential part of every personal trainer's practice.

Prescreening alerts you to clients who may need a medical clearance and protects you against future claims related to aggravation of preexisting injuries, since existing conditions are well documented. According to Mack, "The hottest areas of liability I see for personal trainers are training clients with existing diagnosed metabolic and orthopedic disease, and training clients with subclinical or undiagnosed and symptomless disease." In addition to obtaining a medical clearance, trainers may want to determine whether they can request a medical release to increase communication with a client's health care providers. With recent changes in health information privacy rules, trainers need to be particularly careful to maintain privacy and protect confidentiality.

*Obtain a single reprint of these recommendations from the American Heart Association by calling (800) 242-8721 or writing to AHA, Public Information, 7272 Greenville Ave., Dallas, TX 75231-4596. These statements can also be found at www.acsm.org.

the team that provided care for a client involved in a motor vehicle accident. "The defending attorney attacked my credentials and asked to have my testimony thrown out. Fortunately I document everything by medical-like processes and the judge allowed my testimony," Mack explains. In this case, the trainer's services were not a target of litigation. Instead, his expert opinion as a personal trainer that was part of the health care team was admitted into evidence.

Mack adds, "The mandate to improve the health of our communities, combined with the strain on the medical field that has essentially paralyzed [the people in this field, preventing them] from addressing the problems of sedentary behavior and its contribution to numerous diseases—along with the need individuals have for personalized programming due to their unique combinations of diseases—will push the trainer into a critical role of responsibility in the health care continuum."

Garrity agrees. "I believe that the next step for trainers is to work more closely with the medical community and the aging population," she says. "But we will need a much higher standard of knowledge to operate effectively at this level."

Certifying organizations such as the American College of Sports Medicine and the National Strength and Conditioning Association, among others, are involved in evaluating these issues carefully and considering whether degree requirements that indicate a certain minimum level of relevant education should be a prerequisite to certification.

While the issue of minimum qualification standards continues to be evaluated, you can best protect yourself against liability by being certain you are trained specifically for the types of training you do and the clients you serve. Since medical knowledge is always growing, regularly participate in continuing education for your specialty area. Frick adds, "Trainers should focus on what they do best."

Protecting Your Business

In today's litigious environment and with the increasing number of clients with special needs, take specific measures to protect your business from liability.

Suggested steps include maintaining professional certifications; obtaining professional liability insurance; requiring clients to sign waivers or equivalent documents, depending on the state; conducting prescreenings and health histories; keeping detailed records; and following established policies and procedures. If the asset value of your business is very high, consult with legal professionals and consider incorporating your business to avoid personal liability.

In addition to observing all the essential administrative requirements, work on building strong client relationships based on a foundation of good communication. Clients are much less likely to sue if they perceive you as caring, responsible and responsive to their needs. In the event that any accident or injury occurs, always ensure first and foremost that the client immediately receives all essential medical care. Then ensure that the incident is thoroughly documented, and contact your insurance claims provider for further guidance.

New Opportunities = New Responsibilities

The personal training industry is in a rapid state of growth and redefinition as more health care providers acknowledge the need for exercise training as part of a program of preventive care. Mack believes that "a confluence of factors, mainly financial, will drive the need for trainers to step in and solve the problems of rising health care costs by preventing disease through exercise and fitness programming." While these trends present tremendous growth opportunities for PFTs, these opportunities come with a higher level of responsibility that can lead to a larger probability of risk exposure.

At the same time, however, doors are opening with opportunities to achieve even greater personal rewards for providing training services that can make a powerful difference in the lives of clients.

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