

Governance in the Health and Fitness Industry

Professional regulations, standards, and guidelines are beneficial to the health and fitness industry because they offer a framework that protects the client, the exercise professional, and the exercise facility by defining the "rules of engagement" between the participating entities. Standards, guidelines, and regulations also provide a structure for the entities to share in the responsibility of risk assessment and management. Governance in health and fitness should not be seen as a roadblock, but rather as a map for success and an opportunity to elevate the industry.

Regulations, standards, and guidelines define the "rules of engagement (interaction)" between the client, the exercise professional, and the exercise facility by explicitly outlining professional conduct between the entities, expected professional educational competencies/qualifications, and scope of practice and services (Ciccolella, Van Ness, & Boone, 2008). With such full disclosure, all entities are privy to reasonable expectations and outcomes.

Regulations are rules enforceable by law (West's Encyclopedia of American Law, n.d.). Standards (legally enforceable), "standards of care", and "duties of care" refer to the base requirements, expectations, and obligations of the exercise professional to render services (Triplett, Williams, McHenry, & Doscher, 2009).

Professional standards may include maintaining current field knowledge via certifications or continuing education through an accredited organization such as the Commission on Accreditation of Allied Health Education Programs (CAAHEP); screening clients, obtaining a health history and medical waiver for participation in exercise activities; and requiring member orientation in facility policies and usage (Triplett et al., 2009). Guidelines are recommendations for best practices and procedures (Triplett et al., 2009).

Mindful adherence to regulations, standards, and guidelines limits liability (individual or institutional) and reduces the risk of a client being able to argue for "negligence" (Triplett et al., 2009) under four preconditions: failure of legal duty of care, breach, proximate cause, and damage (Chandler & Miller, 2013).

In the case of *Pineda v. Town Sports International, Inc.* (rhabdomyolysis after a personal training session), Pineda failed to fully disclose his health status and signed a medical disclaimer (Ciccolella, Moore, Van Ness, & Wyant, 2014). Negligence by Town Sports International, Inc. was not proven, and the case was dismissed.

In the case of *Turner v. Rush Medical College*, Turner suffered from rhabdomyolysis after a timed mile run for his school's pathology class. Turner argued that the school failed to perform a physical examination of him and failed to provide adequate supervision during the run (Ciccolella et al., 2014). Failure and breach of duty of care were not proven, and the case was dismissed in favor of Rush Medical College.

"Rules of engagement" also protect the client from disreputable exercise professionals and facilities. In the California Supreme Court case of *Blecher v. 24 Hour Fitness* in 2012, the court ruled that the trainer employed by 24 Hour Fitness was grossly negligent by dropping a

145-pound barbell on Blecher's face during a bench-press exercise (Chandler & Miller, 2013). Blecher was awarded \$892,650 in damages (Chandler & Miller, 2013).

In the case of *Makimba Mimms v. Ruthless Training Concepts*, Mimms suffered from rhabdomyolysis after a CrossFit training session during which the trainer utilized exercises known to produce and facilitate onset of rhabdomyolysis (Ciccolella et al., 2014). Mimms was awarded \$300,000 (Watkins, 2009).

Regulations, standards, and guidelines (and the disclosure thereof) distribute the responsibility of risk assessment and management among the participating entities. A client assumes some responsibility and risk in voluntarily participating in exercise activities. In the case of *Cox v. U.S. Fitness* (severe broken wrist suffered during exercise session), Cox disputed the liability waiver she signed and the contract for training services (Gimbert & Sawyer, 2014). The courts upheld the waiver and ruled in favor of U.S. Fitness. Likewise exercise professionals and facilities share the responsibility of reducing as many risks as possible such as providing and maintaining adequate documentation, program supervision, maintaining environmental health and safety standards, and planning for emergencies (Triplett et al., 2009).

Governance can play a positive role by elevating the health and fitness industry as well as protecting the public. In the case of *Rostai v. Neste Enterprises*, Rostai suffered a heart attack after the "certified" trainer failed to appropriately consider Rostai's complaints during exercise and assess Rostai's health risks (Ciccolella et al., 2008). The courts ruled that ordinary negligence (failure accurately assess Rostai's health status and abilities) was not enough to enforce liability (Ciccolella et al., 2008). However, a licensed professional exercise physiologist commented on the Rostai case stating that the "certificate" by Rostai's trainer was "not a professional certification by any reasonable standard" (Ciccolella et al., 2008, p. 5). Regulations, standards, and guidelines can minimize the likelihood that underqualified individuals pose a threat to the public and that qualified individuals are "perform[ing] up to the level of their professions" (Gimbert & Sawyer, 2014). Governance can offer a certain amount of freedom and "peace of mind" for the legitimate exercise professional and facility as long as they are vigilant in upholding all regulations, standards, and reasonable guidelines.

References

- Barnes, M., & Plisk, S. (2002). NSCA strength and conditioning professional standards and guidelines. *Strength and Conditioning Journal*, 24(1), 7-8.
- Chandler, J., & Miller, J. J. (2013). Personal-fitness instructor: Gross negligence case. *JOPERD: The Journal Of Physical Education, Recreation & Dance*, 84(7), 18-20.
- Ciccolella, M. E., Moore, B., Van Ness, J., & Wyant, J. (2014). Exertional rhabdomyolysis and the law: A brief review. *Journal Of Exercise Physiology Online*, 17(1), 19-27.
- Ciccolella, M. E., Van Ness, J., & Boone, T. (2008). A public at risk: Personal fitness trainers without a standard of care. *Professionalization Of Exercise Physiology*, 11(7), 10.
- Gimbert, T. L., & Sawyer, T. H. (2014). The Impact of a Waiver. *JOPERD: The Journal Of Physical Education, Recreation & Dance*, 85(5), 46-48.
- Regulation. (n.d.). In *West's Encyclopedia of American Law, Edition 2 online*. Retrieved from <http://legal-dictionary.thefreedictionary.com/regulation>
- Triplett, N. T., Williams, C., McHenry, P., & Doscher, M. (2009). *Strength & conditioning professional standards & guidelines*. Retrieved from <http://www.nasca.com/WorkArea/DownloadAsset.aspx?id=638>
- Watkins, J. (2009). Caution: Intense workout ahead. *Air Force Times*. Retrieved from <http://www.airforcetimes.com/apps/pbcs.dll/article?AID=/200907290600/OFFDUTY03/907290303>