Personal Trainers and Nutritional Supplements – Sell or Don’t Sell?

written by David Herbert | October 17, 2016

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The sale of vitamins, nutritional supplements, sports drinks and other similar consumables is big business in the United States. By some estimates, the U.S. nutritional supplement industry may currently approximate $40 billion. To be sure, there is considerable demand among specific consumers for these products, particularly for health club, fitness and personal training clients. As a consequence, many clubs, fitness facilities and fitness professionals, including personal trainers, have added the sale of such products to their business plans.

Despite the foregoing, fitness professionals need to consider the potential ramifications which may be associated with the sale of these products. For the most part, the sale of such supplements is not regulated by any governmental agency like prescription drugs are regulated. As a consequence, the industry is largely self-regulated which may result in the dissemination of inaccurate information about some supplements and the distribution of even adulterated products or those which don’t live up to their advertisement. Some such products may even be harmful for some clients and adversely interact with other similar products or prescription medications.

The provision of nutritional or dietary advice as we have discussed in prior articles in this column, carries with it other concerns but the sale of particular nutritional products combined with or adjunct to the provision of advice as to such products can also result in the potential for violation of various state laws governing the practice of nutrition and dietetics. Claims and civil litigation may also result.
IHRSA, the International Health, Racquet and Sportsclub Association, created a Briefing Paper on Dietary Supplements back in 1999 which was revised in at least 2004. It represented an authoritative statement issued by a respected professional association on the topic. A similar policy statement was also published on the matter in that same year by the Aerobics and Fitness Association of America (AFAA).

IHRSA’s official position on the topic as contained in its 1999 paper was that facilities should exercise some caution when selling or recommending nutritional supplements to insure that such products would not endanger consumers.
AFAA’s 1999 statement included the following statement:

[T]hose recommending nutritional supplement products to consumers, and those actually involved in providing or selling such products to consumers, may well have increased ethical, professional, and legal duties and responsibilities to ensure that the products they recommend, sell, or provide are relatively safe for consumption and/or are beneficial to the user. This conclusion is due in part to the

fact that such products are not “sanctioned” by any government agency and that there is often only limited information and research findings available from non-manufacturer sources as to the safety and efficacy of many of these products.

Perhaps the most infamous case dealing with the sale of nutritional supplements to clients is the New York case of ¬Capati v Crunch Fitness International, Inc., et al. filed in 1999. It should serve as a warning to all personal trainers of the potentially serious legal issues associated with the recommendation and sale of nutritional supplements to clients. The facts were reported[1] as follows:

According to the allegations of a significant lawsuit filed on June 28, 1999, a 37-year-old fashion designer died after working out under the guidance of a personal trainer employed by the Crunch Fitness health club chain in New York, NY. The lawsuit which sought some $320 million in punitive and compensatory damages as a result of the death, alleged that the personal trainer recommended that the decedent take a variety of over-the-counter nutritional and dietary supplements, some of which contained ephedrine, a natural stimulant often used for weight control. The substance has been linked to a number of deaths and is to be avoided by those who take medication for hypertension.

The suit alleged that the decedent informed the personal trainer that she was taking prescription medicine for hypertension but that he encouraged her to buy five supplements and allegedly gave her detailed written instructions on when to take them. No warning was provided by him, according to the allegations of the suit, not to take the supplements with the medication. The suit arouse out of the decedent’s death on October 1, 1998. Some months prior to that date she delivered a baby and thereafter apparently desired to get back in shape.

On the day of her death, she went to the Crunch Fitness facility in Manhattan for a pre-work exercise routine. She began doing light squats but complained of a headache and then became wobbly and nauseated. She ultimately stopped the lifts, vomited and lost consciousness. She was transported via ambulance to a local hospital where a CAT scan revealed that she had apparently suffered a cerebral vascular incident since there was a large hematoma in her brain. Later that night she expired. She was survived by her husband and two children.

During the discovery phase of the case:[2]

The personal trainer testified that he trained Mrs. Capati before her death and that he had given her “suggestions” or “advice” as to certain health foods and supplements during the time that he worked with her. He testified in response to specific questioning as follows:

Q: “Prior to October 1, 1998 [the date of Mrs. Capati’s death], did you ever specifically tell Mrs. Capati that it was unsafe for her to work out while she was taking the dietary supplements [some of which contained ephedra] that you recommended to her and decreasing or discontinuing her blood pressure medication?

A: Using your specific statement, no, I did not.

Q: Did you ever advise her that there might be negative health consequences, however you want to describe it?

A. To her working out?

Q: To her working out while taking these dietary supplements that you recommended to her and her discontinuing her blood pressure medication?

A: No."

The testimony taken at this and at another deposition revealed that on the date of her death, Mrs. Capati was working out at a Crunch Facility in New York under the direction of the personal trainer. At the time she was working on a horizontal leg squat machine doing sets of eight to ten repetitions with at least the second set being around forty pounds with the first set probably being less than that. After completing the sets, Mrs. Capati apparently began to moan and groan, she didn't look well, and she began to feel very badly. She vomited, and her eyes rolled back. Ultimately she became unconscious and later died.

The consultant who testified for Crunch was in charge of hiring and developing personal trainers at Crunch. The consultant testified that the public expected trainers to be certified and that Crunch had an unwritten rule for personal trainers not to give out nutritional advice. The personal trainer suggested during his deposition testimony that the reason for the advice was "to shield Crunch from product liability or negligence or other liability lawsuits such as this. "

Despite the foregoing, however, the consultant also testified that he would not "put a member with high blood pressure on a leg press with a lot of weight" because "it would elevate her systolic pressure" and perhaps lead to a "stroke." He also testified that he "wouldn't allow somebody on hypertensive medication to take Ephedra" or "to workout" because such a person might have a hypertensive event such as "stroke." The consultant also testified that if a member was hypertensive and taking ephedra, that there was something wrong with the trainer giving her a workout that involved leg presses "no matter what the weight was."

Ultimately, the case settled for just over $4 million in 2004. However, the filing created a significant stir in the fitness industry and probably contributed to the industry effort to call for the accreditation of personal trainer certification organizations. Personal trainers need to read, digest and stay current on professional statements issued on this topic, follow current litigation trends as well as relevant risk management advice and proceed with caution in this area to avoid untoward events and unnecessary legal risks.

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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

[1]Reprinted in part from Herbert, D.L., $320 Million Lawsuit File Against Health Club, The Exercise Standards and Malpractice Reporter, Vol. 13, No. 3, 33, June, 1999.
[2]Reprinted from Herbert, D.L., Update on Litigation – Capati v Crunch Fitness, The Exercise Standards and Malpractice Reporter, Vol. 15, No. 4, 56, 57, July 2001.