Recent Verdict Against Personal Trainer – Lessons to be Learned

written by David Herbert | June 15, 2016

The Litigation

In April of this year, a jury in Erie County, New York returned a verdict in a case against a personal trainer for $1.4 million, which included $1million for future pain and suffering and $400,000 for past pain and suffering. However, since New York is a comparative negligence state where fault is balanced among the parties, the verdict was reduced to $980,000 due to the jury's finding that the plaintiff was 30% at fault. The verdict may well represent one of the largest awards issued by a judge or jury related to the provision of service by a personal trainer to a client.
Essentially, the action alleged that the plaintiff client began personal training in an effort to stay active as recommended by her physician. That physician had previously performed back surgery on the plaintiff. In her court filings, she alleged that she informed the defendant trainer of her condition and was assured by him that he could train her in safe exercise activities given her physical condition from the surgery. She was later injured during her last workout with the personal trainer on March 4, 2008 when she claimed to have suffered severe and permanent injuries to her back.
The complaint and later the plaintiff's Second Supplemental Verified Bill of Particulars specified the allegations put forth in this action. The following allegations were made against the personal trainer wherein the plaintiff alleged that the trainer recklessly, negligently and carelessly failed:

• to perform a proper fitness evaluation of the plaintiff before devising an exercise routine;
• to devise a safe and proper exercise routine for the plaintiff;
• to consider the plaintiff's prior injuries and physical condition before preparing an exercise routine;
• to conduct a health risk appraisal;
• to take the necessary and proper steps to minimize the risk of injury to the plaintiff;
• to identify the plaintiff as someone with an increased risk of injury;
• to provide adequate supervision of the plaintiff at . . . [the facility].

The allegations against the health and fitness facility also included the following similar claims:

• ignoring the plaintiff's concerns about the prescribed exercise routine; failing to provide proper instruction;
• failing to evaluate the plaintiff's medical condition before preparing an exercise routine;
• encouraging and instructing the plaintiff to exercise after she expressed concern about the exercise routine;
• encouraging and instructing the plaintiff to continue to exercise despite complaints of pain;
• failing to provide a personalized exercise routine as promised;

• failing to meet the representations made to the plaintiff and to the public at large;
• failing to follow internal rules, employee manuals, regulations, and operating and training procedures;
• failing to follow operating and training procedures, and rules and regulations generally accepted in the industry;
• failing to follow industry standards;
• encouraging the plaintiff to perform an exercise routine beyond her physical capabilities;
• failing to properly evaluate the plaintiff's exercise experience before creating an exercise routine;
• failing to properly train and instruct the plaintiff on the use of equipment and lifting techniques;
• failing to ensure the plaintiff had adequate rest periods during her exercise routine;
• holding himself out as a trainer with expertise sufficient to devise a training program that was safe for a person with physical injuries, limitations and a history of surgeries when he did not have adequate education, training and/or experience to do so;
• failing to warn the plaintiff about the risks of injury associated with her exercise routine;
• failing to adjust the plaintiff' s exercise routine despite the knowledge that such a routine caused injury to others in the past;
• failing to distinguish those exercises that were safe and appropriate for the plaintiff from those that were dangerous and inappropriate; and
• being otherwise careless, reckless and negligent.

Prior to trial, the plaintiff's lawyer, New York lawyer, Joseph D. Morath, Jr., took the trainer's deposition. This pre-trial testimony indicated that the trainer graduated from college with a degree in health/wellness exercise physiology and had taken classes over a four year program in anatomy, physiology, exercise physiology, kinesiology and sports nutrition. He had previously been certified as a strength and conditioning specialist by the National Strength and Conditioning Association (NSCA) but had let that certification lapse by the time he trained the plaintiff. Apparently, this trainer never had the plaintiff fill out a medical questionnaire since he felt he knew the client's "body, inside and out." However, he did candidly admit, "I knew her for a year and a half and I guess I wasn't thinking that maybe I should have her fill this out [a medical questionnaire] to cover my ass." During his pre-trial testimony, the trainer admitted that he had no contract document with the plaintiff, that he had not used any medical questionnaire in connection with training her, and that he had no "written records whatsoever of any of the workouts [the client] . . . ever participated in [at the defendant facility]."

On the day the client was injured, the plaintiff, who weighed 125 pounds, was directed by the personal trainer to perform sets of burpees, jumping jacks and dead lifts with a seventy-five (75) pound weight load. Apparently, no rest between each exercise was provided to her by the trainer.

At trial and on cross-examination by the plaintiff's lawyer, the trainer admitted to knowing about the American College of Sports Medicine (ACSM) and the National Strength and Conditioning Association (NSCA) and their recommendations about having a client fill out a medical questionnaire prior to training. However, the trainer also admitted, despite the recommendations of at least these two "respected" fitness industry organizations as he characterized them, that he didn't have the plaintiff get any kind of clearance from her doctor. While the trainer also admitted that he should have followed the

NSCA recommendation on client medical clearance as a rule when he was affiliated with NSCA, he ceased viewing that rule as anything more than a recommendation once he did not keep up his NSCA certification and let it lapse. In this regard, he testified “What I’m telling the jury is that, when I was affiliated with the NSCA, I would follow their rules. If I am no longer affiliated with them, I don’t need to follow their particular worded rules.”
The plaintiff argued that the trainer’s workout routines for the client, given her extensive medical history, were not appropriate and caused her injuries. The plaintiff also argued that the training was done without the use of a medical questionnaire prior to activity despite the existence of standards or at least recommendations developed by the foregoing and respected fitness organizations. Lastly, the plaintiff also focused on the trainer’s lack of written records and his lack of certification when he trained the client to attack his method of training.

Points to Consider
While certification as a personal trainer is not a license issued by any governmental entity, it does provide some evidence of professional competency. Such certifications should be obtained and kept current by personal trainers. A certification should come from an accredited fitness professional certification organization such as the Aerobics and Fitness Association of America (AFAA), the International Sports Sciences Association (ISSA), the ACSM, the NSCA or another organization which is accredited by either the National Commission for Certifying Agencies (NCCA) or the Distance Education Accrediting Commission (DEAC) as recommended in 2006 by the International Health, Racquet & Sportsclub Association (IHRSA). Secondly, the standard of care for the industry specifies that written clearance documents be used for an evaluation of a client’s readiness to begin an activity program – either with or without medical consultation – before that activity starts and at intervals thereafter. Thirdly, the creation and maintenance of written or other documented form of client records is part of the standard of care for the industry and such records should be developed, used in reference to the provision of services to clients and maintained by fitness professionals.

All fitness professionals should remember, “Adherence to published standards of practice decreases legal liability exposures, whereas the failure to adhere to them increases legal liability exposures.” In practice, following these three fitness industry standards of care may help arm all personal fitness trainers with the ability to withstand a verdict like that rendered in this case.
In summation, personal fitness trainers should:
• obtain an accredited certification and keep it current;
• use pre-activity screening devices; and.
• develop, use and preserve written or documented client records.

professionals must be obtained.

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

[1] Baldi-Perry v Kiafas and 360 Fitness Center, Inc., Index No. 2010-1927, Supreme Court, Erie County, New York, 2010.

[2] New York Court Awards Injured Personal Training Client $980,000, see http://clubindustry.com/profits/new-york-court-awards-injured-personal-training-client-980000

[3] The case of Capati v. Crunch Fitness resulted in a settlement in excess of $4 Million in 2004, see, Herbert, "Wrongful Death Case of Anne Marie Capati Settled for in Excess of $4 Million," THE EXERCISE STANDARDS AND MALPRACTICE REPORTER, Vol. 20, No. 3, Page 36, May, 2006. The original filing in this case however sought a sum of approximately $320 Million, Herbert, "$320 Million Lawsuit Filed Against Health Club," THE EXERCISE STANDARDS AND MALPRACTICE REPORTER, Vol. 13, No. 3, Pages 33,36, 1999; "A review of the Crunch Fitness Complaint," THE EXERCISE STANDARDS AND MALPRACTICE REPORTER, Vol. 13, No. 5, Pages 72-75, 1999.

[4] Readers should remember that screening devices are used with clients before fitness activities are commenced and at intervals thereafter for the purpose of determining if a client may safely proceed or continue with an exercise activity program with or without a medical practitioner's approval – not solely to cover a personal trainer from potential litigation and liability. However such documents should always be used for the benefit of the client and to demonstrate the personal trainer's adherence to the standard of care as set by the fitness industry.

[5] See e.g., IHRSA Standard #8: "The club will offer each adult member a pre-activity screening appropriate to the physical activities to be performed by the member." NSCA Strength & Conditioning Professional Standards & Guidelines. May, 2001 states: "Strength and conditioning professionals must require participants to undergo pre-participation screening and clearance." ACSM's Health/Fitness Facility Standards and Guidelines, Fourth Edition, Human Kinetics, Chicago, IL, 2012, provides: "Facility operators shall offer a general pre-activity screening tool (e.g., PAR-Q) and/or specific pre-activity screening tool (e.g., health risk appraisal [HRA], health history questionnaire [HHQ] to all new members and prospective users." Standards statements of AFAA and the YMCA provide similar recommendations.

[6] Eickhoff-Shemek, J.M., Herbert, D.L. and Connaughton, D.P., RISK MANAGEMENT FOR HEALTH/FITNESS PROFESSIONALS, LEGAL ISSUES AND STRATEGIES, page 11, Wolters Kluwer/Lippincott Williams & Wilkins, Philadelphia, Pennsylvania, 2009.