Specialized Activity Program Leads to Suit Against Personal Trainer and Gym

written by David Herbert | May 1, 2018

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In a very recent case from New Jersey,[1] the Plaintiff, a wheelchair bound quadriplegic, attended a personal training program at the Defendant fitness center in 2014. He came under the care and direction of another Defendant, a certified personal trainer, to help improve his bone density and help get his body "back in shape."

The personal trainer held a Bachelor of Science degree in exercise science and had four years' experience in the program offered at the gym. The personal trainer was certified as such by the "American School of Sports Medicine"[2] and was additionally certified in CPR and in the use of AEDs. She started at the Defendant's program as an "aide" and assisted "neuroexercise trainers"[3] in their rendition of service to clients. She received on-the-job training at the program as an aide but was not provided with any written materials to read and no videos to watch. Once she completed sixty hours of on-the-job observation and then seventy-five hours of hands-on work, she then began to work as a neuroexercise trainer. The Plaintiff contended the personal trainer received no further training. The personal trainer countered that she received advanced training in functional electrical stimulation. In this regard, the Court noted: "She was not, however, a physical therapist."

While the Defendant personal trainer began to work with the Plaintiff in April of 2013, sometime before the incident which led to the suit, the Plaintiff made a request to change trainers because he was not comfortable with her understanding of his condition and autonomic dysreflexia. The Plaintiff was subsequently injured. The incident occurred on May 22, 2014 when the Defendant personal trainer wanted the Plaintiff to try a kneeling technique to improve the Plaintiff's balance while isolating his core. The Defendant personal trainer stated that she had been taught the technique by another trainer but she was not sure of the name of the technique. She believed the technique had helped other clients improve their balance although she admitted she did not know of any objective test for gauging improvement in balance. Apparently, she was not concerned about the risks to the Plaintiff because she felt it was a gradual progression. Even though the Plaintiff agreed to the technique, he expressed nervousness about trying it. As to this issue, the Court noted that the Plaintiff:

> admitted that "some part of' him wanted to be kneeling for the first time in twenty years because he did not "want to be a chicken" and was "willing to try." According to . . . [the Plaintiff], the Push to Walk employees: rotated me over onto my stomach, which was already uncomfortable because I had not laid on my stomach in ten years, and when you do that with a spinal cord injury, … it's very painful and very uncomfortable. You're then pulled into a kneeling position backwards …. They grab

> you from behind by the hips and literally pull you back upward up in a kneeling position, and immediately when I was on my knees, it was much worse than when I was in the standing frame. I was lightheaded. There was some stronger dysreflexic symptoms. I knew that this was not a good situation. I could tell that they did not have control of my body, just because of my size, and I needed to lay down. I did not feel well and I asked them to put me down, and they did, and when I laid down, I was tingling, I was lightheaded and I was nauseous.

According to the Plaintiff, the personal trainer asked the Plaintiff to try the technique one more time.

> Although he protested some, he relented. He claimed he was then injured. According to the Plaintiff:when the employees proceeded to get him in position, his hips buckled to the left, he fell forward to his right, and his hips went to the left. . . . The employees righted him, but he felt that he was going to vomit, and they placed him down on the mat. . . . [The Plaintiff] . . . believed he had cracked a rib because he felt a pain shooting up his right side. . . . He believes he was in the kneeling position for "no more than a minute" on the first attempt, and for less time than that on the second attempt. [The Plaintiff] . . . had never ended a training session early. . . . He usually ended his training session on a positive note and would ride the electrical stimulation bicycle for a half hour. . . . This time, however, [the Plaintiff] . . . felt lightheaded and experienced early symptoms of dysreflexia. . . . He was in pain and had a hard time breathing, particularly on his right side.

> Two days later, the Plaintiff alleged he was experiencing spasms, panic attacks and could hardly breathe. He went to the hospital but was discharged. By June of that year, however, it was determined that he had suffered a fractured leg which had started to mend in a fractured position which would require dangerous surgery to repair because of his condition. Ultimately, his physicians sent him home in a brace without surgery due to the risks. The Plaintiff contended that the injury prevented him from pursuing electronic stimulation and other types of physical therapy. Since he stopped exercise, his bone density lowered and he had increased pain.

> In 2015, he filed suit alleging negligent service provision and negligent hiring by the facility. He later filed an amended complaint alleging gross negligence.

In response to the Plaintiff's complaint, the Defendant moved for summary judgment asserting that a release/waiver the Plaintiff signed was a bar to his complaint. The federal court analyzed New Jersey law and determined:

> The New Jersey Supreme Court has found that private health clubs owe "a standard of care congruent with the nature of their business, which is to make available the specialized equipment and facility to their invitees who are there to exercise, train, and to push their physical limits."

The Court further determined that while the Defendants' exculpatory clause in the waiver could bar the Plaintiff's action for negligence, it could not bar his action for gross negligence. In this regard, after

analyzing the record in a light most favorable to the Plaintiff, the Court ruled:

> I cannot find that the record is so-one sided that the case law standards require a verdict for the defendant on the issue of gross negligence. The issue of gross negligence is highly dependent on the context. The context here is that the plaintiff, as defendants surely knew, was highly vulnerable and that he was relying on their expertise to avoid injury. After his first kneeling attempt did not go well, they pressed him to try it a second time, and injury resulted. The case law does not permit me to conclude that a rational jury could not find gross negligence here. Drawing all all inferences in favor of the plaintiff, I must deny the defendants' motion for summary judgment on Count 3, the gross-negligence claim.

While the Court left the Plaintiff's Complaint related to gross negligence stand, the Court did not address the potential question of whether the services provided in the case amounted to the provision of medical care or physical therapy. If these issues are addressed as the case progresses, it will be interesting to see if allegations or testimony related to such practices add to the potential liability claims asserted against the Defendant personal trainer.

Personal trainers should consider how they fit into the delivery of service in situations or programs where specialty services are provided to various participants who are sometimes in need of medical care, physical therapy or other related kinds of care. If such care is needed, the delivery of service needs to be provided by properly educated, trained and most importantly licensed personnel. If personal trainers are not so licensed, additional claims related to the unauthorized practice of various health care disciplines may be involved. Fitness professionals would be well cautioned to avoid situations where the delivery of care might be characterized as "health care." While releases and waivers are an excellent first line defense from claims and lawsuits in the fitness world, claims based upon the unauthorized practice of health care or gross negligence will not protect fitness personnel deemed to have engaged in such practices.

[1] Bartlett v. Push to Walk, et al., Civ. No. 2:15-cv-7167-KM-JBC, United States District Court, D. New Jersey, April 9, 2018.

[2] A worldwide web search for this institution produced no readily apparent results.

[3] A worldwide web search for this designation produced no readily apparent results.