**Chapter 10: Managing Facility Risks**

**The information covered in Chapter 10 is essential to understand given the many legal liability exposures (risks) that exist in the daily operations of a fitness facility. Applicable federal and state laws are described as well as legal cases to appreciate the importance of managing these risks. Risk management strategies are provided that can effectively minimize these legal liability risks.**

Review the learning objectives listed on page 395 in the text. After reading this chapter, complete the following study questions. **Instructions:** **Click on the shaded box provided - then type in your answer.**

**Study Questions**

1. A variety of OSHA standards are described in various chapters of this textbook. Why should fitness managers and exercise professionals take the OSHA “general industry” online training course (10-hour or 30-hour options) as well as review other standards and resources on the OSHA website?
2. The OSHA specifications for accident prevention signs/tags and OSHA standard for noise exposure limits were briefly described. Answer the following questions regarding noise exposure limits.
3. The “noise dose” is based on       and      .
4. What type of exercise programs may exceed the noise dose?
5. Why should fitness managers have a policy that limits the volume of music in exercise classes or other loud noises in the facility?
6. Numerous requirements are specified in the 2010 ADA Standards of Accessible Design including spacing and design specifications.
7. Studies have shown that fitness facilities have a high degree of inaccessibility. What can facilities do to improve their access to individuals with disabilities? Hint: See Risk Management Strategy #1, pp. 427-428.
8. List the only two questions that fitness staff members can ask of individuals who have service animals.
9. T or F: The number of website accessibility lawsuits is increasing.
10. Referring to state statutes in Massachusetts and New York regarding membership contracts and unfair/deceptive practices, respectively, explain why fitness facilities need to follow similar laws in their jurisdiction (state).
11. A special relationship is formed between fitness participants and the land owner/occupier (e.g., facility owner/manager). Because of this special relationship, fitness participants are classified as invitees. Describe the duties fitness owners/managers have toward invitees.
12. Premise liability claims against fitness facilities occur when an injury was caused by some type of unsafe or defective condition on the facility’s property. As demonstrated in the majority of cases described on pages 403-406, the facility was not liable for the injuries due to the waiver/release. The injuries were due to “ordinary negligence” and, thus, the waiver provided protection.
13. Under what circumstances would a waiver/release not protect the facility for these types of injuries?
14. Why did the plaintiffs in *Crossing-Lyons, Roer*, and *Lik* prevail in their lawsuits?
15. The cases described trip and falls and slip and falls involving (a) improper storage of equipment, (b) locker-shower areas, (c) basketball courts, and (d) exterior areas. To minimize these types of injuries and subsequent premise liability lawsuits, what risk management strategies should fitness managers and exercise professionals develop and implement? Hint: See Risk Management Strategy #2, p. 428.
16. A facility orientation should cover various topics. Briefly describe the content to be covered and why for each of the following:
17. Purpose
18. Facility Safety Policies
19. Instruction on the Proper Use of the Equipment
20. Facility Safety Signage
21. Principles of Safe Exercise
22. Programs/Services Offered and Credentials of Exercise Professionals
23. Describe administrative tasks that need to be completed before offering a fitness facility orientation. Hint: See Risk Management Strategy #3, p. 428-429.
24. Answer the following questions regarding the spotlight case, *Miller v. The YMCA of Central Massachusetts et al.*
25. Why was the wavier/release the decedent signed ineffective in protecting the YMCA?
26. If the YMCA had Thomas Miller sign its own waiver/release, why would it not be effective for Count 1 (wrongful death) and Count III (gross negligence).
27. What was the court’s ruling regarding the YMCA’s failure to follow the YMCA recommendations – The Use of Saunas, Steam Rooms and Whirlpool/Hot Tubs?
28. Explain how the YMCA Director of Operations and President breached their duties?
29. List the risk management strategies that should be in place for fitness facilities that provide steam rooms, saunas, and whirlpools/hot tubs.
30. (1) Why did the courts in *Manerchia* and *Pecora* rule that the fitness facilities were not liable for the bacterial infections the plaintiffs claimed came from exposure to the facility’s hot-tub and sauna, respectively?

(2) Describe the “theory-practice” conclusions made by the authors in the study that showed an increase in the number of community-associated MRSA (CA-MRSA) cases in high school and collegiate athletes?

(3) In *Tynes v. Buccaneers Limited Partnership*, place kicker Tynes alleged premise liability claims (Count 1) and negligent misrepresentation (Count 2). Count 1 involved the failure to carry out duties owed to invitees. (A) List the four elements he needed to demonstrate negligent misrepresentation?       (B) What did the court indicate regarding negligent misrepresentation?

(4) Describe risk management strategies regarding proper maintenance and cleaning of the fitness facility. Hint: See Risk Management Strategy #4, pp. 429-430.

**NOTE:** See: [COVID-19 Employer Information for Gyms and Fitness Centers | CDC](https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/gym-employers.html)

for more information regarding CDC Guidance for Gyms and Fitness Facilities regarding COVID-19. See also: (a) ACSM Resources: [COVID-19 Updates and Resources (acsm.org)](https://www.acsm.org/learn-develop-professionally/covid-19-updates-resources) and (b) NSCA Resources: [NSCA COVID-19 Taskforce Return to Training Resources](https://www.nsca.com/education/tools-and-resources/covid-19-return-to-training/).

1. Describe risk management strategies that should be considered for facility activities such as indoor trampoline parks, climbing walls, and obstacle training courses (e.g., Ninja Warrior gyms).
2. Several risk management strategies were described on pp. 417-418 for unsupervised and partially supervised fitness facilities. Describe how implementing these strategies may minimize legal liability?
3. (1) Describe the two ACSM guidelines regarding general supervision of a fitness facility?

(2) For professionally supervised fitness facilities, do you think these two ACSM guidelines should be “standards” versus recommendations? Why or why not?

(3) Describe the responsibilities of facility supervisors. Hint: See Risk Management Strategy #6, pp. 432-433.

1. **Matching:** Indicate the correct response in the space provided from the list of terms below.

      Case in which the plaintiff claimed the high volume of the stereo in the indoor cycling class caused acoustic trauma to his inner ear and associated nervous system.

      A prestigious recognition that fitness facilities can be awarded for facility design and management policies that consider an aging population, individuals with disabilities, and others with physical challenges.

      A health club that violated the Washington D.C. Consumer Protection Procedures Act (CPPA) that specifies requirements for membership contracts.

      A legal concept that typically applies when an injury was caused by some type of unsafe or defective condition on one’s property.

      Case in which the Michigan Supreme Court stated, “duty owed to an invitee considers whether a defect is open and obvious. The possessor of land owes no duty to protect or warn of dangers that are open and obvious because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid.”

      Health club named as a defendant in two cases involving slip and fall injuries in locker/shower areas.

      Case in which the court stated, “members of health clubs are owed a duty of reasonable care to protect them from injury while on the premises… [This duty] necessarily includes a general responsibility to ensure that their members know how to properly use gym equipment.”

      Federal law that prohibits, among other things, unfair trade practices.

      Professional staff member who has the responsibility to oversee the facility’s daily operations during all open hours.

      The standard of care to which an unsupervised fitness facility will likely be held.

A. Universal Global Design F. Premise Liability

B. Town Sports International G. FTCA

C. *Hoffner v. Lanctoe* H. Fitness International

D. MOD I. *Levine v. GBG, Inc.*

E. Reasonable Person J. *Thomas v. Sport City, Inc.*

1. Describe the risk management strategies that managers of outdoor unsupervised fitness areas should consider.
2. Fitness facilities are contracting with vendors who provide on-demand virtual fitness classes. List and describe the safety and legal liability issues that fitness managers/owners should consider.
3. A fitness facility can face large fines for violating its state’s data breach notification law.

(1) Describe the type of personally identifiable information (PII) these laws may include.

(2)What can fitness managers do to help protect a fitness participant’s PII? Hint: See Risk Management Strategy #5 on p. 432.

1. Certain states have a Biometric Information Privacy Act (BIPA) and more may follow. What type of data do these Acts generally include, e.g., see the Illinois Act at:

<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3004>?

**Note:** Also see IHRSA’s article: [Tapping into the Biometric Revolution in a Shifting Landscape | IHRSA](https://www.ihrsa.org/improve-your-club/tapping-into-the-biometric-revolution-in-a-shifting-landscape/) that describes five principles to help fitness facilities (e.g., those who control access to the facility using a biometric identifier) comply with BIPAs.

1. Certain types of biometric data are being collected on student-athletes at colleges and universities. BIPAs may not be applicable to universities/colleges (e.g., the Illinois Act applies to “private” entities, not public). However, other data privacy and security laws may apply. What are some of the potential legal liability issues that athletic administrators should consider prior to collecting student-athlete data, such as biological or physical performance data through the use of wearable technology?
2. What lessons can fitness managers and exercise professionals learn from *Lister v. Fitness International, LLC, d/b/a LA Fitness?*
3. Describe steps that fitness facilities can take to protect the physical safety and security of participants.
4. Inappropriate behaviors of fitness participants occur in fitness facilities.

1. Describe steps that can be taken to help prevent inappropriate behavior.
2. Once facility management becomes aware of a fitness participant’s inappropriate behavior, what should management do and why, from a legal perspective?
3. If a discrimination lawsuit occurs after an individual’s membership has been revoked (e.g., due to not following the facility’s policies/procedures), how can the facility best refute the lawsuit? Hint: See example published by IHRSA, pp. 423-424.
4. Several standards and guidelines published by professional and independent organizations were briefly describe in this chapter – see Risk Management Strategy #8, p. 433 for a summary. Explain why, from a legal perspective, it is important for fitness facilities to comply with these published statements.
5. In addition to general and professional liability insurance, as described in Chapter 5, what other types of insurance should fitness facilities consider? Hint: See Risk Management Strategy #9, p. 434.
6. **True or False:** Place a T or F in the space provided.

      A) Emotional support animals are considered service animals under the ADA.

      B) Many premise liability lawsuits occur when individuals are injured from trip and falls or slip and falls on the fitness facility’s property.

      C) Standards of practice published by ACSM and MFA describe the specific topics to be covered in a fitness facility orientation.

      D) Facility signage may need to be in languages other than English, depending on the facility’s clientele.

      E) There are no potential legal consequences when a fitness facility falsely promotes the credentials and expertise of their employees.

      F) The ASTM has published a standard specification for unsupervised public use of outdoor fitness equipment.

      G) Major liability concerns with today’s fitness technologies involve data privacy and security.

      H) Fitness facilities that are a sponsor (e.g., a financial or controlling sponsor) for an event such as marathon cannot face any potential legal liability risks.

      I) In *Sa v. Red Frog*, the court ruled that the waiver/release protected the defendant from negligence, gross negligence, and willful and wanton conduct.

      J) Fitness managers/owners should consider purchasing cyber security insurance that covers cyber-related incidents including data breaches.