**Chapter 5: Hiring Credential and Competent Personnel**

**As demonstrated in many of the cases described in this textbook, fitness facility managers and owners are often named as defendants in negligence cases when their employees have been negligent. Hiring “credentialed” employees is important. However, more important is hiring “competent” employees to help minimize employer vicarious and direct liability. Therefore, understanding and applying the information in this chapter is essential.**

Review the learning objectives listed on page 159 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. Describe the difference between a government-regulated profession and a self-regulated

 profession.

1. Given the exercise profession is self-regulated, what challenges does this create for

 employers?

1. Both ACSM and ASEP list important, required academic courses an exercise professional

 must have completed to be eligible to sit for their exercise physiologist examinations (see

 Table 5-2, p. 162). To prepare exercise professionals for their many legal duties and job

 responsibilities, additional courses such as those in Exhibit 5-1 (p. 163) are recommended. Review the job responsibilities in each of the job descriptions listed in Exhibit 5-2 (p. 165). Then list the specific courses described in Exhibit 5-1 that correspond to these job responsibilities. **Note:** Most of these jobs reflect entry-level professional positions requiring a bachelor’s degree.

1. Fitness Manager
2. Assistant Fitness and Spa Director
3. Assistant Fitness Manager
4. Coordinator, Group Exercise
5. Assistant Strength and Conditioning Coach
6. (1) Describe the difference between obtaining accreditation for an academic program and

 accreditation for a fitness certification.

(2) Certifying organizations must complete a job task analysis (JTA) to obtain NCCA

 accreditation. The results of the JTA are used to create the competencies covered on

 certification examinations. Describe the potential limitations of the JTA.

1. List the typical requirements that a licensed professional must complete before qualifying for state licensure.
2. Given state licensure efforts for personal fitness trainers and group exercise leaders have failed in recent years, it is unlikely that states will continue with such efforts given ACSM’s position (*ACSM Exercise Professional Licensure Statement*). It states that it does not support licensure for non-degree personal trainers working in nonclinical/community settings with apparently healthy clients but it does support licensure for “exercise professionals with at least a bachelor’s degree in exercise science and related, accredited certification, assuming these professionals are working with patients and clients with medical conditions that require clinical support.”

If licensure does occur for these exercise professionals in the future, how will that affect the scope of practice for the many non-degree personal trainers and other fitness instructors who are leading exercise programs for people with medical conditions?

1. Several levels of accredited certifications were described on pp. 170-171. Describe the major limitations of accredited personal fitness trainer and group exercise instructor certifications from a legal liability perspective.
2. (1) Explain how the lack of practical skills can lead to negligence.

(2) What is meant by the theory-practice gap?

1. One author stated “competence is not about mileage or years; it’s about

demonstrating abilities in a confident manner. A deep knowledge and understanding a person has gained within a period of time is what defines them as experienced and ultimately competent for their line of work.” How does an exercise professional obtain a deep knowledge and understanding?

1. Regarding competence, Aristotle stated “For the things we have to learn before we can do them, we learn by      .”
2. Studies have shown that students graduating from college are not being adequately prepared for the real world, i.e., they are not acquiring the knowledge and skills they need to be successful professionals. Although several possible reasons were described in this chapter, one reason is that colleges have no legal incentive, i.e., it is likely that courts will not find them liable for educational malpractice. However, employers can be found liable for employees who lack of competence (e.g., lack knowledge/skills to teach in a safe manner).
3. Explain how accredited academic exercise science (or related) programs are likely better at preparing an exercise professional than those that are not accredited.
4. Most undergraduate academic programs in exercise science, that are currently accredited, are accredited though CAAHEP. A few of the competencies for CAAHEP domains IV (Legal/Professional) and V (Management) were listed on p. 175. Go to the following website and review the remaining 32 and 31 competencies in these two domains, respectively. Take note how many of these competencies are covered in this textbook.

 [Commission on Accreditation of Allied Health Education Programs (caahep.org)](https://www.caahep.org/CAAHEP/media/CAAHEP-Documents/ExerciseScience2017final.pdf)

(A) Do you believe that fitness managers and exercise professionals possess the knowledge and skills listed in all of these competencies?

(B) If you have a degree in the field, did your academic program cover all these competencies?

1. The National Board for Health & Wellness Coaches developed a professional model (see Figure 5-4, p. 176), similar to a licensing model, that requires completion of an approved formal education and practical training program BEFORE an individual can sit for their certification examination. The health & wellness coaching profession obviously believed that practical training was a must prior to becoming a certified health/wellness coach.
2. Knowing that there is connection between the lack of practical skills and legal liability, why do you believe that the exercise profession does not require practical training and assessment of practical skills to be eligible for most certifications?

1. What can fitness managers and exercise professionals do to convince certifying organizations to change their certification requirements to reflect a professional model?
2. Employers can be faced with both vicarious and direct liability. Describe each and then for each of the three spotlight cases in this chapter, identify the type of employer liability that was addressed by the court.
3. Vicarious liability
4. Direct liability
5. Cases:

*Jessica H. v. Equinox Holdings, Inc.*

*D’Amico v. LA Fitness*

*York Insurance Company v. Houston Wellness Center*

1. (1) Explain why the employer was not liable for the alleged sexual assault in *Jessica H.*

 *v. Equinox Holdings, Inc***.?**

(2) What steps should universities (or any institution/organization) take to help prevent

 paying out large sums of money to victims of sexual assault?

1. **True or False:** Place a T or F in the space provided.

       A) Statutory certification is government-regulated.

       B) The CSCCa certification is the only certification listed on pp. 170-171 that requires passing a practical examination.

       C) The requirements to obtain a certification are the same as a certificate of completion.

       D) If an exercise professional possesses a NCCA accredited certification, the employer can be assured the professional is competent.

       E) A group exercise instructor who has obtained a license to teach a trade-marked exercise program has also obtained state licensure.

       F) Sexual assault and sexual harassment are the same.

       G) The years of experience will determine the competence of an exercise professional.

       H) State and federal criminal background checks should be conducted prior to hiring employees, especially those that will work with vulnerable populations and with individuals on a one-on-one basis.

       I) Employers will always be held liable for the criminal acts of their employees.

       J) Whistle blower protections exist for employees who may fear retaliation for

 reporting a crime such as sexual assault.

1. The defendants in *D’Amico* were found in violation of the Connecticut Unfair Trade Practices Act (CUPTA) when the court ruled that the evidence met all three prongs of this statute. How did the defendants violate the second and third prongs?
2. Describe the major legal liability risks for each of the following when hiring independent contractors and what employers can do to minimize these risks.
3. Behavioral control/misclassification/pay IRS
4. Ostensible agency
5. Liability insurance
6. Direct liability

1. Fitness facilities often contract with vendors who provide all types of fitness/wellness programs and services. Why should an employer consider the criteria presented in Exhibit 5-4 (p. 191) when selecting a vendor?
2. (1) Liability insurance reflects which type of risk management strategy as described in

 Chapter 2?

(2) True or False: Liability insurance covers gross negligence.

1. List and describe two major duties of insurance companies that provide liability insurance.

(1)

(2)

1. What should the fitness managers (or employers) have done to help prevent the litigation that occurred in each of the following cases?
2. *Jacob v. Grant Life Choices*
3. *Hanover v. Retrofitness*
4. *York Insurance Company v. Houston Wellness Center*
5. **Case Study:**

Ms. Johnson is the new owner/manager of a medium size fitness facility that provides various group exercise classes and personal fitness training services. The former owner/manager, Mr. Jones, required all instructors and trainers to successfully complete his in-house classroom and practical training program before they could begin their jobs. He never had any vicarious or direct liability claims made against him as an employer. The facility had an excellent reputation in the community for providing high- quality programs/services. He had completed the continuing education course that accompanies this textbook and, thus, fully understood the importance of training his employees.

 Ms. Johnson, on the other hand, did not complete this continuing education course and had no other legal liability/risk management training. Ms. Johnson believed that instructors and trainers who possessed a NCCA accredited certification would, for sure, be competent. In her first month, she hired several instructors and trainers – all with NCCA accredited certifications. They immediately began their jobs upon hiring. She had purchased a CGL to help protect her business. Soon thereafter, a client of one of these trainers filed a complaint listing several ordinary and gross negligence claims against the trainer and Ms. Johnson, the employer. Once the complaint was filed, the case was described on the front page of the local newspaper.

1. How could Ms. Johnson and her facility be vicariously liable?
2. How could Ms. Johnson and her facility be directly liable?
3. If the court finds Ms. Johnson grossly negligent, will her CGL policy pay out the punitive damages?
4. What affect will the newspaper story have on Ms. Johnson’s business?
5. What should Ms. Johnson do to help prevent similar lawsuits in the future?
6. Of the 10 risk management strategies described in this chapter, which ones should exercise professionals consider before becoming an entrepreneur and starting their own business? For each strategy, describe the legal liability protection it provides.

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

       Case in which the court ruled on both vicarious liability and direct liability of the

 employer.

      Case in which the court ruled that the plaintiff failed to file the complaint within

 the statute of limitations.

      A law that for-profit employers may need to follow when hiring student interns.

      A law that provides liability protection for volunteers, but not for nonprofit

 organizations and government agencies.

       Negligence case that involved four defendants.

       Type of liability insurance policy that can protect fitness facilities from ordinary negligence.

       Type of training that fitness managers should provide before personal fitness trainers and group exercise leaders begin their jobs.

       Type of liability insurance that protects exercise professionals from ordinary negligent acts of omission and commission.

1. Classroom and Practical E. FLSA
2. Professional Liability F. Volunteer Protection Act
3. *Jacob v. Grant Life Choices* G. *D’Amico v. LA Fitness*
4. *Jessica H. v. Equinox Holdings, Inc.* H. CGL