**Chapter 8: Instruction and Supervision**

**Numerous negligence lawsuits have occurred due to exercise professionals failing to provide proper instruction and supervision. Legal scholars and expert witnesses have stated that these failures are a leading allegation of negligence. This chapter is one of the most important chapters in this textbook. It covers negligence cases involving all types of exercise professionals who failed to provide proper instruction and supervision. Important risk management strategies are described that fitness managers and exercise professionals can develop and implement to minimize these types of negligence cases.**

Review the learning objectives listed on page 293 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 each of the following classifications of supervision and give an example of each.

**Specific:**

**General:**

**Transitional:**

1. What is the major difference between High Intensity training (HIT) and High Intensity Interval Training (HIIT)?
2. Negligence cases involving extreme conditioning programs (ECPs) like HIT are described in this and other chapters in this textbook. Articles by professional organizations warning of the potential dangers of ECPs, published over the last decade, are also briefly described. Yet, even with all this information, injuries such as exertional rhabdomyolysis (ER) resulting from ECPs continue to occur (e.g., 12 soccer players diagnosed with ER in 2019 at the University of Houston).
3. Describe ER
4. Why are ER injuries still occurring, despite the negligence cases and published articles?

**Note:** You can review the following articles (References #10 and #11) and take note of many recommendations the authors provide.

 Full text of article by Bergeron, et al. at: [Consortium for Health and Military Performance and American... : Current Sports Medicine Reports (lww.com)](https://journals.lww.com/acsm-csmr/Fulltext/2011/11000/Consortium_for_Health_and_Military_Performance_and.15.aspx)

 Full text of article by Casa, et al. at: <https://www.nata.org/sites/default/files/preventingsuddendeath-consensusstatement.pdf>

1. ER cases of athletes continue to occur even since the University of Iowa case in 2011 that received a lot of national coverage (see p. 319). Thirteen football players suffered ER with most of them recovering. However, one Iowa player, William Lowe, did not recover and claimed he had continued medical problems in his lawsuit. This case was settled. An *internal* report conducted by the university stated that the strength and conditioning coaches did not know about ER and cleared all coaches, physicians, and trainers of any wrongdoing. The head strength and conditioning coach, Chris Doyle kept his job. Why would the defense (did not know about ER) likely be an ineffective defense in a court of law?

 **Note:** Chris Doyle was not fired after the 2011 incident that injured 13 athletes. However, in June 2020, Chris Doyle reached a $1M separation agreement with the University of Iowa due to another potential legal liability issue. See: [Iowa football coach Chris Doyle leaves after racism claims - New York Daily News (nydailynews.com)](https://www.nydailynews.com/news/national/ny-chris-doyle-iowa-football-racism-20200615-6alp67uqlnb2pp7aqchqcjlgvi-story.html)

1. (1) Although HIIT programs are generally safer than HIT programs given the rest/recovery interval, precautions still need to be taken before individuals participate in them. Briefly describe these precautions for:

**Body weight/resistance HIIT programs**:

**Cardiovascular HIIT programs**:

(2) Why are HIIT programs not for everyone?

1. Several negligent instruction/supervision cases involving personal fitness trainers are described throughout this text, such as the spotlight cases listed in Table 8-1, p. 299. Answer the following questions regarding the spotlight case in this chapter, *Vaid v. Equinox.*
2. Interestingly, four expert witnesses for the defendants (medical professionals) testified that Dr. Vaid’s injury (carotid dissection) was due to the negligence of the trainer (negligent instruction) and Equinox (vicarious liability involving improper retention and supervision). Another expert for the defendants stated that there was no professional standard of care in the personal training industry. Why is this incorrect?
3. The defendant claimed that the risk of stroke from improper use of the rowing machine was not a foreseeable risk. How did the court respond to this and what important message does this send to all exercise professionals?
4. The jury returned a large verdict of $14,500,000. Why didn’t the plaintiff receive all of this amount?
5. Personal fitness trainers have been found negligent for failing to meet the standard of care as described in many of the cases in this textbook. Non-traditional personal fitness training poses some additional legal liability exposures compared to traditional training conducted in a facility. For each of the following, briefly describe these liability exposures.

**Internet training:**

**Home training:**

**Outdoor training:**

1. Briefly describe why the following are issues that exercise professionals, who lead non-traditional training programs, should discuss with their legal counsel.

**Protective Legal Documents:**

**Applicable Laws:**

**Insurance:**

**Documentation:**

1. Why have individuals been diagnosed with ER after participating in indoor cycling classes.
2. Why was the primary assumption of risk defense ineffective in the spotlight case, *Scheck v. Soul Cycle*?
3. (1) Explain why, from a legal perspective, fitness facilities should offer “beginner” exercise classes? Hint: See Key Point on p. 310 & Risk Management Strategy #3.

(2) If beginner classes cannot be offered or if participants are not available to enroll in them, what risk management strategies can fitness managers develop and implement? Hint: See “Lessons Learned” in *Scheck* and Risk Management Strategy #3.

1. Injuries in popular group exercise programs (e.g., indoor cycling, yoga, boot camp, Pilates, kickboxing) are quite prevalent. After reviewing the data and cases described on pp. 304-310, what appears to be the “common theme” as to the cause of these injuries?

1. List the five questions that AFAA recommends that group exercise leaders should consider when determining the effectiveness and potential risk for injury when teaching exercise. Hint: See Risk Management Strategy #1. **Note:** These actually apply to all exercise professionals.
2.
3.
4.
5.
6.
7. Why were the following defenses ineffective in protecting the defendants in the spotlight case, *Lotz v. Claremont Club*?
8. **Waiver/release of liability**:
9. **Primary assumption of risk**:
10. Throughout this textbook, staff training is emphasized because it is an important and effective risk management strategy. In *Lyle v. 24 Hour Fitness*, an expert stated the following regarding staff training:

 Training is not just “sit and get.” It’s not just, “go to a computer program and punch through the buttons until it says you passed.” Training is not a thing that you pass, it’s a level of competency that typically involves ... actual hands-on observation and coaching as needed so that a supervisor knows there’s a level of mastery.

1. How is this statement applicable to the exercise profession, especially with regard to personal fitness trainers and group exercise leaders?
2. Why was the defendant vicariously liable in *Lyle v. 24 Hour Fitness* but not directly liability?
3. List professional organizations that have published standards and guidelines regarding youth fitness programs (Hint: See Risk Management Strategy #1) and organizations that are focusing on safety of youth sports (Hint: See pp. 313-314).
4. Youth fitness:
5. Youth sports:
6. In the spotlight case, *UCF Athletics Association v. Plancher*, Ereck Plancher (UCF football player) died while participating in conditioning drills.
7. The parents made several negligence claims with three of these listed in the spotlight case on p. 315. Describe what the defendants should have done that likely would have saved Ereck’s life and prevented these types of claims.
8. The defendants used two defenses (waiver and sovereign immunity). Why was the waiver defense ineffective and the sovereign immunity defense effective?
9. According to a study conducted by the National Center for Catastrophic Sport Injury, 90% of heat injury deaths occur during practice (Ref. #54) and another study (Ref. #68) found that strength and conditioning coaches lacked essential knowledge to prevent or recognize heat stroke. Describe how the findings of these studies likely reflect the causes of death/injury in the *Plancher,* *Lee*, and *McNair* cases.
10. Exertional heat and exertional rhabdomyolysis injuries/deaths can occur in any exercise program, but appear to be common in strength and conditioning programs. The following cases involving strength and conditioning programs were described in this chapter:
* University of Central Florida: *UCF Athletics Association v. Plancher*
* Grambling State University (Louisiana): *Lee v. Louisiana Board of Trustees for State Colleges*
* University of Maryland: Jordan McNair case
* University of Iowa: William Lowe case
* University of Oregon: Doug Brenner and Sam Poutasi cases

**Note:** The McNair case was recently settled (Jan. 2021). Jordan McNair’s parents will receive $3.5 million. Read about here: [Maryland Settles Lawsuit Over Heatstroke Death - Athletic Business](https://www.athleticbusiness.com/civil-actions/maryland-settles-lawsuit-over-heatstroke-death.html?oly_enc_id=3681F9285356C4W)

The situations that led to these injuries were discussed in these cases and summarized. See “common themes” listed on pp. 320-321. List resources that athletic administrators and strength and conditioning coaches should be aware of and follow to help prevent these injuries and create a professional environment. Hint: See p. 321 and Risk Management Strategy #1, p. 326.

1. Regarding first responder and military exercise programs, two cases were described in this chapter *– Martin v. Moreau* and *Hajdusek v. United States.* Why did the appellate courts in these cases rule differently with regard to the sovereign immunity defense?
2. The article by Bergeron et al. -- [Consortium for Health and Military Performance and American... : Current Sports Medicine Reports (lww.com)](https://journals.lww.com/acsm-csmr/Fulltext/2011/11000/Consortium_for_Health_and_Military_Performance_and.15.aspx) -- was published in 2011. Yet, deaths in military testing and training programs continue to occur. For example, see the following article published in 2019: [Navy Calls for Closer Fitness Test Monitoring Following Recruit Deaths | Military.com](https://www.military.com/daily-news/2019/05/13/navy-calls-closer-fitness-test-monitoring-following-recruit-deaths.html). Although this article described a Navy memo including safety guidelines/precautions to be implemented, what else needs to be done to be sure they are implemented?
3. Describe why, from both safety and legal perspectives, fitness managers should have their employees who lead exercise programs complete and submit lesson plans and evaluations/reflections of lesson plans such as those in Exhibits 8-3 and 8-4, respectively.
4. **Safety:**
5. **Legal:**
6. The Performance Appraisal Tool (PAT) that appears in this chapter’s Appendix has been successfully used to conduct performance appraisals of group exercise leaders. It can also be adapted to do the same for personal fitness trainers. Why is a good idea to share this tool with candidates in a job interview in addition to a job description? Hint: See Risk Management Strategy #5.
7. Given that “safety” is the #1 responsibility of all exercise professionals, why should fitness managers consider providing an “in-house” continuing education program that focuses on safe and effective instruction? Hint: See Risk Management Strategy #7.
8. **Matching:** Indicate the correct response in the space provided from the list of terms below.

       Lead author of an article published 2012 addressing collegiate athletic programs that included the following quote: “workouts that are too novel, too much, too soon, or too intense have a strong connection to exertional rhabdomyolysis.”

       A case in which the plaintiff claimed he suffered exertional rhabdomyolysis and continued to have medical problems after participating in his first indoor cycling class.

       A term used to describe youth physical activity programs that are properly designed and delivered based on age.

       Individual that published one of five guiding principles in 2019 that stated collegiate strength and conditioning workouts should be in writing, reflect safe principles of exercise, and reviewed by athletic departments.

       A term used to describe decisions made by government employees, such as those leading military exercise programs, who are not subject to liability as a private employer may be due to an exception specified in the Federal Tort Claims Act.

       A case in which a hospital employee claimed that the hospital did not comply with Medicare’s requirements regarding cardiac rehabilitation programs.

       A serious medical condition that causes swelling of muscle tissue and possible muscle necrosis with a diagnosis of exertional rhabdomyolysis.

       A case in which the plaintiff suffered a crushed ankle when a 400-pound tire fell on her foot in a boot camp class.

 A. Discretionary Function E. *Burgos. v. Active Health and Fitness Club*

 B. Douglas Casa F. Developmentally Appropriate

 C. Compartment Syndrome G. NCAA Chief Medical Officer

 D. *Horowitz v. Luxury Hotels* H. *United States ex rel. Martinez v. KPC International of Puerto Rico Healthcare Inc.*

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

       A) High intensity exercise programs involving either cardiovascular or body weight/resistance activities have led to exertional rhabdomyolysis.

       B) Behavior-based performance criteria listed on the PAT in the Appendix reflect behaviors of the job.

       C) No potential legal duties exist for personal fitness trainers who conduct training over the Internet.

       D) Large exercise classes (e.g., those with more than 15-20 participants) should have a second instructor to help observe and provide assistance to participants.

       E) The only reason to have exercise professionals prepare written lessons is to provide documentation in the case of a negligence lawsuit.

       F) Due to coaches possibly having heavy influence, control, or a direct report over medical staff, the NCAA published guidelines regarding *independent* medical care of college student-athletes.

       G) How long documents (e.g., lesson plans of personal fitness trainers and group exercise leaders) are retained should be based on the state’s statute of limitations and legal counsel advice.

       H) Aggregate data obtained from anonymous evaluations completed by group exercise participants should be shared with group exercise leaders, e.g., discussed during performance appraisals.

       I) Heat injury deaths are less prevalent in high school football programs than in collegiate football programs.

       J) Studies investigating the physiological demands of indoor cycling classes have shown them to be “high intensity” classes and, thus, may be inappropriate for some participants.