**Chapter 7: Exercise Prescription and Scope of Practice**

**Designing and delivering exercise prescriptions within an exercise professional’s scope of practice is essential from a legal perspective. Failure to do so can result in harming fitness participants and negligence lawsuits as demonstrated in the cases described in this chapter. In addition, crossing over the line into a licensed practice can lead to violations of state licensing statutes. To minimize these types of claims, it is essential that fitness managers and exercise professionals develop and implement risk management strategies associated with exercise prescription and scope of practice.**

Review the learning objectives listed on page 249 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. Many initiatives have encouraged Americans to increase their physical activity (PA) such as the *2018 PA Guidelines for Americans* (see Exhibit 7-1 on p. 252) and *Healthy People 2020*. **Note:** The *Healthy People 2030* PA Objectives and Resources are now available at:

 Healthy People 2030 PA Objectives: [Physical Activity - Healthy People 2030 | health.gov](https://health.gov/healthypeople/objectives-and-data/browse-objectives/physical-activity)

 PA Resources: [Physical Activity — Evidence-Based Resources - Healthy People 2030 | health.gov](https://health.gov/healthypeople/objectives-and-data/browse-objectives/physical-activity/evidence-based-resources)

 According to *Healthy People 2030*, little improvement has been made over the last decade. Only 1 in 4 adults and 1 in 5 adolescents in the United States meet physical activity guidelines for aerobic and muscle-strengthening activities.

 Describe how inactivity is a major public health problem and how it leads to many negative health outcomes.

1. A “one-size fits all” approach to exercise prescription is not feasible given the health/fitness status of Americans can vary tremendously as shown in Figure 7-2. List the steps an exercise professional needs to take prior to preparing an exercise prescription for an individual?
2. Describe the FITT-VP principle and then explain why, from a legal perspective, it is important for exercise professionals to apply this principle when establishing exercise prescriptions.
3. The       scope of practice is defined within the context of licensed professionals and the       scope of practice is applicable to all professionals who require special knowledge, skills, and training.
4. What source provided the following statement?

 “If an actor has skills or knowledge that exceed those possessed by most others, these skills or knowledge are circumstances to be taken into account in determining whether the actor has behaved as a reasonably careful person.”

1. Referring to the following three situational factors that help determine the standard of care, describe the standard of care of an exercise professional in the context of exercise prescription and scope of practice.
2. Nature of the activity
3. Types of participants
4. Environmental conditions
5. As described in Figure 7-3, there are three scenarios that can lead to conduct outside the scope of practice of an exercise professional. What are the potential legal consequences of each?
6. Scenario #1
7. Scenario #2
8. Scenario #3
9. Several negligence cases in this chapter described injuries that occurred to apparently healthy adults in which the exercise professional designed/delivered an **improper exercise prescription** that was unsafe or at an intensity level that was too high (Scenario #1). After reviewing two of these cases, *Mellon* and *Proffitt* (p. 258), answer the following questions:
10. The personal fitness trainer in *Mellon* testified he possessed several credentials (e.g., ACE certification, completed training programs offered by Equinox, and continuing education as required by Crunch). Given these credentials, why do you think this personal trainer had his client perform an “unsafe” exercise that led to her falling and fracturing both wrists?
11. What was the opinion of the expert witness in *Mellon* regarding the trainer’s departure of the standard of care?
12. Why do you believe the personal fitness trainer in *Proffitt* had his client continue with high intensity exercise even after his client experienced signs/symptoms of overexertion and made requests to stop?
13. Why should exercise professionals avoid having beginners, like Vince Proffitt, participate in high intensity exercise programs?

**Note:** Additional negligence cases involving exertional rhabdomyolysis are described in Chapter 8.

1. (1) Describe what fitness managers can do to comply with the ADA which requires fitness facilities to serve individuals with disabilities including those with chronic diseases? (See Exhibit 3-1 on p. 75 for definition of disability). Hint: See Risk Management Strategy #1.

(2) What does a plaintiff have to prove in an ADA discrimination lawsuit?

1. For each of the three spotlight cases described under Scenario #2, answer the following questions.
2. *Levy*: Why did the appellate court reverse the trial court’s ruling that the plaintiff assumed the risk?
3. *Bartlett:* The personal trainer in the case had a degree in exercise science and ACSM certification. Yet, the court found the trainer grossly negligent when she prescribed an exercise that led to Bartlett’s injury. Why was her conduct grossly negligent?
4. *Bartlett:* What lessons can fitness managers and exercise professionals learn from the following statement made by the court?

 *Programs like Push to Walk that serve injured individuals “may impose particular duties that an ordinary health club would not have…What would constitute ordinary negligence would differ as between an ordinary health club and a facility like Push to Walk.”*

1. *Layden:* Why did the appellate court reverse the trial court’s ruling that the plaintiff assumed the risks, i.e., “knew of the risks, appreciated their nature and voluntarily assumed them”?
2. *Layden:* How could the injury been prevented in this case if the certified personal trainer had obtained medical clearance after learning about her client’s history of back problems?
3. *Layden*: Why did the court indicate regarding the owner’s defense that she could not be liable because the trainer was an independent contractor, based on the theory of respondeat superior?
4. The EIM initiative, a collaborative effort between the ACSM and AHA, recommends that physicians and other health care providers refer their patients to a credentialed exercise professional or to a community fitness facility or program that employs credentialed exercise professionals. Explain why, from a legal perspective, they may be hesitant to make such referrals.
5. Medical fitness facilities, directly affiliated with a health care system, receive referrals from health care providers on a continual basis. What steps should a typical fitness facility and/or community fitness program take to also obtain such referrals?
6. An article (systematic review) by Warburton et al. and an article by Dr. William Herbert were briefly summarized in this chapter. They both describe the credentials and competence that exercise professionals who will be working with clinical populations should possess.
7. What did Warburton, et al. mean when they stated:

“simply completing a general undergraduate degree in exercise science is an insufficient qualification for work with clinical populations.”

 **Note:** To access the Warburton et al. article and review all seven recommendations and the 15 core competencies (listed in Recommendation #3), go to: [Evidenced-Based Risk Recommendations... Warburton et al.](https://cdnsciencepub.com/doi/10.1139/h11-054?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub++0pubmed&)

1. What did Herbert mean when he stated there is an:

 “increased exposure of the ‘medicalized’ exercise client to greater chances of physical activity related injury and death. And, such events inevitably would increase risks of personal injury litigation affecting not only exercise providers, but also legal actions against referring physicians and community health care systems.”

1. The above comments by leading experts explain why facilities should consider hiring a clinical exercise physiologist. Describe additional reasons. Hint: See Risk Management Strategies #3, #4, and #5.
2. As shown in Figure 7-5, exercise prescriptions can be designed to prevent and treat chronic diseases. What can exercise professionals do to help prevent crossing over the line into the practice of medicine when they prescribe exercise that helps prevent further progression of a disease and/or serves as part of the treatment for a disease?
3. Scenario #3 addresses conduct that crosses over the line into a licensed profession. Such conduct can result in criminal penalties, as shown in Exhibit 7-4, as well as       if the conduct causes harm.
4. (1) Although many exercise professionals have a background in nutrition, why should they avoid giving “individualized” nutritional advice and only provide “general nonmedical nutrition education” as specified in an Ohio statute as shown in Exhibit 7-5?

(2) In 2020, the state of Florida enacted a licensing reform bill that helped clarify the nutrition advice that non-licensed individuals can provide without violating the state’s licensing statute that defines the scope of practice of licensed dietitians. Although this broadens the scope of practice somewhat for exercise professionals and health/wellness coaches, describe the major provisions they must follow.

**Note:** Since the *Cooksey* case (described on pp. 277-278), North Carolina also amended its Nutrition/Dietetics Practice Act. To review, go to: [North Carolina Board of Dietetics/Nutrition | What areas of nutrition and dietetics require licensure (ncbdn.org)](https://www.ncbdn.org/what-areas-of-nutrition-and-dietetics-require-licensure).

1. Answer the following questions regarding the case examples involving legal scope of practice.
2. *Ohio Board of Dietetics:* What did the court mean when it stated:

 “the acts defendant performs are more important than his title and since he does not possess a license to provide nutritional counseling and assessments, defendant’s acts are in violation of R.C. 4759.02(A)”

1. *Cooksey:* Cooksey was informed by the Executive Director of the North Carolina’s State Board that he needed to take down a fee-based nutritional program he offered on his website because it violated the NC Dietetics/Nutrition Practice Act and a state administrative code regarding such programs/services provided over the Internet. What should fitness managers, exercise professionals and health/wellness coaches do to prevent similar violations of statutes and administrative codes?

**Note:** Go to the Cooksey website ([www.diabetes-warrior.net](http://www.diabetes-warrior.net)) and note his “disclaimer” at the bottom of the page.

 To review a similar case (Ref. #58), go to [CrossFit | Florida Enacts Occupational Freedom and Opportunity Act](https://www.crossfit.com/battles/florida-nutrition-bill-state). The plaintiff in this case also appealed claiming her free speech rights were violated. Listen to the oral arguments, US Court of Appeals, 11th circuit on June 11, 2020 at:

 [Del Castillo -- 11th Circuit](https://www.ca11.uscourts.gov/oral-argument-recordings?title=&field_oar_case_name_value=Del+Castillo&field_oral_argument_date_value%5Bvalue%5D%5Byear%5D=&field_oral_argument_date_value%5Bvalue%5D%5Bmonth%5D=)

 Case Docket number 19-13070 (*Del Castillo v. Secretary, Florida Dept. of Health*)

1. *Sosa-Gaines:* The plaintiff claimed her injury was due to a chiropractic type adjustment her personal trainer performed on her back. The certified trainer testified he had been trained to perform this maneuver and that he had performed it on clients before with no injury. Although there were several reasons why the plaintiff did not prevail in her negligence lawsuit, why would the trainer’s defense likely not be an effective defense if the plaintiff could have shown that the maneuver caused her injury?
2. Because the exercise profession is not government-regulated, anyone can practice as an exercise professional. Licensed professionals (e.g., physicians, physical therapists, athletic trainers, dietitians, counselors) may want to work as an exercise professional and/or health and wellness coach.

(1)Why should they keep their licensed practice separated from their practice as an exercise professional and/or health and wellness coach?

(2)What steps should they take prior to practicing as an exercise professional and/or health and wellness coach?

1. (1) Why should fitness managers establish scope of practice policies and procedures from a legal perspective? Hint: See Risk Management Strategy #2.

(2) Briefly describe the four areas of staff training that are needed to help ensure staff members are practicing within their scope. Hint: See Risk Management Strategy #7.

1. **Case Study:**

JJ works as a personal fitness trainer in the state of Florida. Because he had completed an online certification course in nutrition, he felt confident to provide his overweight client a diet to follow that included a reduction of high-fat items. Trusting JJ, the client followed his advice but also began consuming more carbohydrates to replace the high-fat items. A few months later, her physician diagnosed her with Type 2 diabetes and polycystic ovary syndrome (PCOS) and referred her to an RDN. The RDN informed her that a high intake of carbs for individuals with PCOS can contribute to insulin resistance and, thus, increase the risk of the diabetes. She filed a negligence lawsuit against JJ (and the fitness facility) claiming her Type 2 diabetes was caused by following the nutritional advice of JJ. JJ testified that he did not know that advising someone to reduce their fat intake could lead to harm.

1. Did the advice that JJ gave his client violate the Florida Dietetics and Nutrition Practice Act?
2. Describe why JJ’s defense might not be effective at trial?
3. What could the facility’s manager have done to prevent this lawsuit?
4. **True or False:** Place a T or F in the space provided

       A) All exercise professionals should practice within their education, training, experience, and practical skills.

       B) There is no standard of care that personal fitness trainers need to follow.

       C) Exercise professionals who are well-educated and trained are more likely to understand their scope of practice than those who are not well-educated and trained.

       D) Fitness facilities that have a medical advisor and hire a clinical exercise physiologist increase their credibility among health care professionals and organizations.

       E) Exercise professionals who design and deliver exercise programs for clinical populations in community fitness settings can be reimbursed by health insurance providers.

       F) The FDA has recalled numerous nutritional supplements due to them containing potentially harmful ingredients.

       G) Exercise professionals should be aware of privacy laws that may be violated when prescribing exercise using technology, e.g., wearable technology, mobile apps.

       H) “I did not know the supplement I advised my clients to take would cause harm” is an effective legal defense that can be used by exercise professionals.

       I) To adhere to applicable privacy laws and professional codes of conduct, exercise professionals should keep exercise prescriptions (written and electronic) private, confidential, and secure.

       J) When making referrals, it is not necessary for exercise professionals to follow similar referral guidelines as expected of health care professionals.