



**The first step in developing a safe athletic program is education, which includes traditional physical education classes and continuing education programs such as certifications.**

There is a common but unfortunate belief that when it comes to the possibility of getting sued, coaches have little to worry about. After all, most coaches are dedicated to helping athletes achieve their physical potential and would never consciously do harm. Everybody understands that coaches should be held in high regard because they are teachers – so, isn't it reasonable to expect their good intentions would be rewarded with a degree of "legal immunity" in the justice system? Not quite. America is an increasingly litigious society, and coaches are just as vulnerable as anyone else to becoming involved in a lawsuit.

There is no guaranteed way to avoid lawsuits. The fact is you can be sued by anyone, at any time, for just about any reason. That's the way our legal system works. Your aim should be to not give anyone a reason to want to sue you but at the same time to put yourself in the best possible position to win a lawsuit should you be sued.

### **Legal Mistakes: The Big Three**

There are three common approaches to dealing with the legal system found among high school administrators, as well as coaches and physical education teachers. All these approaches should be recognized for what they are: mistakes.

1. Ignore the Law.
2. Fear the Law.
3. Manipulate the Law.

Administrators may have taken one business law course in college, but they tend to not want to deal with legal issues because they're administrators, not lawyers; besides,

they may figure the school district has lawyers and the insurance carriers have lawyers, so they should be covered. And since they don't deal with the law on a regular basis, they may opt to ignore it. That decision may not seem to matter – until someone gets hurt, and then the attorneys and courts and judicial system are involved, and all of sudden they say to the coach or colleague, "Why didn't you do that?" "Well, I didn't know." But they should have known, so ignoring the law is a major blunder.

Another mistake administrators often make is that they fear the law, partly because they don't understand it. If administrators are so afraid of being sued that they move into panic mode to do everything they can to never be named in a lawsuit, they may make decisions that compromise their athletic programs. This might be a misguided – and costly – choice to replace all the free-weight equipment with more-expensive machines. Or simply to eliminate a weightroom completely from the athletic program. Or they may succumb to the argument that sports with the highest injury rates should be banned, such as gymnastics. But when you do that, the next sport in line moves up and becomes the high-risk sport. Eventually, as you keep banning sports, all you'll have left are checkers and chess! Dr. Marc Rabinoff, a full professor in the Department of Human Performance and Sport at Metropolitan State College of Denver, Colorado, notes that gymnastics is not, as many people believe, the sport with the most injuries, but the injuries we see in gymnastics are the most

catastrophic ones. Says Dr. Rabinoff, "You might see only one injury on a high school gymnastics team in five years, but that injury might be a broken neck. So it isn't just the number of injuries that scares school administrators, it's the severity of those injuries that causes them to try to cut those sports in their curriculum."

So what do they do? They tend to manipulate the law in their mind; they think they are getting around it so they won't get in a lawsuit. For example, an administrator at an inner-city school may say that because there are gangs here, you can't wear red or blue or pink. But it really does violate students' civil rights to dictate what kids in a public school can wear. An administrator who is working a sport venue is engaging in illegal profiling if he says that he doesn't want a certain type of person coming into the building with or without a ticket because he "has a feeling" the kid may start a fight. Can't do that, not if the kid has a ticket and it's a public entity. It's that sort of mental manipulation that gets administrators in trouble all the time.

Once you start playing with the law or you don't bother to learn what the law is, then you put yourself at risk. Read your materials and school policies and ask your attorney so you know what the standard of care is in all areas of your profession. Make your decisions based upon what the law says – period!

### **Are You at Risk?**

In the past, lawsuits against coaches certainly happened, but over the past two decades there has been a tremendous increase in the number of lawsuits against equipment manufacturers and weightroom operators. Nowadays parents of athletes are not content to just sit back and look at coaches as if they couldn't do anything wrong. For example, we're seeing lawsuits that deal with how coaches are treating the athletes and even lawsuits involving sexual harassment. Most of these litigations, however, are related to duty, standards of care, instructor qualifications, failure to warn and lack of supervision, equipment design defects and deficiencies, and inadequate equipment maintenance.

To learn how the legal system works, it's important to understand the concept of "duty." Duty refers to the concept that there is a responsibility, a duty, of one person to

another for their safety. In a lawsuit, the plaintiff first needs to establish that the defendant had a duty to him or her at the time of an injury. No duty, no lawsuit.

After duty is established, the next step is for the plaintiff (the person suing) to show that the duty was breached and that the injury was a result of the actions of the defendants. Then the plaintiff must show that the breach actually happened at that facility, a legal concept known as proximate cause. Finally, the plaintiff must prove that there were damages. Many strength coaches and personal trainers believe that generally they are safe from lawsuits because people will go after the organizations the coaches or trainers work for, such as schools and health clubs. Not quite.

Dr. Rabinoff has served as an expert witness in more than 300 lawsuits involving coaches, physical educators, schools, health clubs and equipment manufacturers. He explains that plaintiff lawyers try to name as many defendants as possible to share fault, a concept known as the “deep pockets” theory.

He says also that in most states it is the responsibility of the court to determine the degree of responsibility each defendant has for the damages to the plaintiff. In a case Dr. Rabinoff worked on in 1997, \$2.3 million was awarded to the plaintiff, with \$1 million coming from one insurance carrier, \$750,000 from another insurance carrier, and \$850,000 from one manufacturer.

### **Education and the Law**

From a legal perspective, coaches and teachers named in lawsuits must provide evidence that what they were doing was professionally correct according to current standards and that the injury was unforeseeable. One of the most common lawsuits against coaches is in the area of professional instructor qualifications, such as when a gym or health club has a staff of instructors without recognized academic degrees, certifications or appropriate courses in continuing education.

BFS recommends that anyone in the field of exercise instruction get a degree, whether it be an associate degree or a four-year degree in an area such as human performance of sport, physical education, adult fitness or exercise science. These types of programs are offered in colleges and universities throughout every state. It's the longest course of study available to prospective trainers: You take actual college-level classes, you actually do have to perform and you do learn the basics. After earning a degree, you can then focus on getting certified through groups in particular fields of expertise.

A certification represents a type of continuing education that provides documentation that you completed a course of study, you were tested and evaluated, and you are now certified to perform a particular task. A certification is a document that says you care, that you put out the effort, cost and time to learn, that you want to learn more and that you've achieved a measure of proficiency.

Are certification organizations liable for the actions of those who receive certifications from them? Says Dr. Rabinoff, “I sit on the boards of some of these certification organizations and I say, ‘Look, at an entry level, if giving out information is what your certification is for, then go ahead and do it. However, if you say that this person can actually perform a skill, such as being able to mechanically spot a squat, that's different.’”

A certification may not reflect the person's actual competence unless you've asked the right questions and truly have measured the level of the person's knowledge. So far we haven't seen plaintiff attorneys take on national certification organizations for being inadequate or incompetent in their programs, but I believe that will change. We could start seeing some lawsuits coming back to these organizations because the certifications weren't rigorous enough academically and, from a practical perspective, did not prove that the persons certified could actually do what they said they could do.

Unfortunately, most of the certifications for personal trainers, exercise leaders and strength coaches don't require their graduates to physically perform those skills. What they should be saying in these types of certifications is that in order for you to truly know, for example, how to safely spot a squat, you've got to practice spotting a squat. If a certification organization says that if you watch this video or read this textbook you're OK to go out and teach squatting, there's a problem. Says Dr. Rabinoff, “Think about it: If you knew of a medical school that did everything ‘virtual,’ would you want to be the first patient of a doctor who had just graduated from there? Would you want to be the first client of someone who had never pleaded a case in court, even though the person had graduated from law school and had passed the bar exam (which is a written exam)? Would you want someone who had just become a dentist to work on your teeth even if that dentist had the newest, best drill on the market but had never tried the drill before? I wouldn't!”

Throughout the fitness industry there are those who consider an academic degree to be

unnecessary and a certification to be enough. Although that is certainly true in certain trades, the standard in the profession is still an academic degree (although there may be certain degree programs that have questionable practices, especially online programs). The fact is, if an organization is going to hire a coach for young men and women, it generally would be better to hire someone who went through four years of academic study, wrote papers and took practical exams, rather than someone who took a certification course over the Internet and became certified in a weekend.

Ultimately, it's not enough to have degrees or certifications; you must show that you are keeping current on what is going on in your field. Otherwise, it will be difficult for a school or health club to stand behind the skills and abilities of its instructional staff.

### **Paperwork: Waivers and Insurance**

We all know athletes get hurt in sport. Professional physical educators have to do everything they can to ensure that an athlete can move on to a higher level. But you can't tell gymnasts, on only the second day of practice, to perform double twisting backs when they can't even do a forward roll. And just because a freshman is big and heavy doesn't mean he's ready to play on the varsity team, especially if he can't run 20 feet without gasping for air. There's always a learning curve, with intermediate steps that must be achieved and documented to show that the athlete is able to perform physically and mentally at that level. Otherwise, you're putting the athlete in jeopardy, and the risk of injury skyrockets. One of the most common mistakes coaches make today is that they rush their athletes too fast. As a matter of fact, if you talk to sports medicine doctors, most will tell you that 85 percent of the injuries they see are overuse injuries. That's because the trainees' muscles were not ready to do what they were asked to do.

Can't a health club or school avoid problems simply by hiring independent contractors? The answer is no – the trainee can still sue the health club. Says Dr. Rabinoff, “The owners and managers of a health club, for example, are saying to their clients that since their trainers are working in their facility and using their equipment, they support them being here; and when the club is named in a suit, the trainer will be named as well. That being said, I strongly recommend that a health club, or any organization involved in physical fitness, have an attorney review their contracts for independent employees to determine what their liability is.”



**Strength and conditioning clinics, such as this one conducted by BFS, are a great way to reinforce proper lifting technique.**

Regarding waivers, Rabinoff suggests they should always be approved by the legal counsel of the entity and always used each time a consumer, participant, guest user, or athlete enters a facility. “Along with the waiver, the entity needs to provide an assumption of risk statement. This must be written in clear, understandable language for the lay person to accept, know and acknowledge when they sign it. A club owner, coach, teacher or instructor should never assume because they have a waiver they are OK and do not need to do what is professionally accepted while operating their programs, classes and facilities.”

Despite our best efforts, accidents can occur that may result in litigations. That is what insurance is for. It is important for coaches, physical education instructors and personal trainers to know if, how and where they are covered by insurance – high school coaches who do personal training in their homes probably will not be covered by their schools’ insurance policy.

With many insurance companies you have to be a member of an organization to purchase the insurance. There are some carriers that offer personal liability insurance to those who are not members of a professional organization, but these are the exception. Usually the criterion to qualify for insurance is that you have to be a member of a professional organization, because that then validates the fact that you’re getting the journals and suggests that you may be attending some seminars.

### **Instruction and Supervision**

BFS is very cautious about recommending any new piece of exercise equipment because not every exercise, or every method of exercising, is good for everyone. Say you attach an elastic band to a barbell that you are going to bench press – you have to understand how

that band works mechanically along with the muscle group that you’re working. It’s an entirely new variable. Likewise, coaches should not allow their athletes to use any exercise machine without understanding all its safety operation procedures..

Failure to understand invites disastrous results. Dr. Rabinoff participated as a forensic expert in two cases in which clients at a health club using Smith machines became quadriplegics. He says, “Some people believe the process of disengaging the bar and then rotating your hand forward or back to reengage the hook over the pin is the safety mechanism. That’s not the safety mechanism! It’s the operating mechanism of the apparatus, because you can’t do a Smith machine exercise without disengaging and then reengaging the hooks. The safety mechanism is the adjustable stop at the bottom. If you have a Smith machine that doesn’t have an adjustable stop, you’ve got a defective Smith machine because there’s no safety mechanism on it.”

The fact is you can’t blame an inanimate object for an injury. If the person who gets hurt never knew how to use a piece of equipment, you can blame whoever was responsible for letting them on that piece of equipment in the first place. Or if the person did know how to use the equipment, you can blame that same person because they knew how to do it and didn’t do it. And if the equipment was poorly designed, you can blame the manufacturer..

One popular misconception is that machines are safer than free weights. In fact, Dr. Rabinoff has found that about 95 percent of the litigations he has done are related to machines. “My conclusion after 25 years of testifying is that most people know that if you drop free weights you’re going to get hurt, so we tend to be really cautious about

using them. With machines, most people think that nothing could happen to them, so they become less safety conscious and tend to use more weight than they should. It seems people have this false sense of security with machines, but the fact is that machines are machines – they have moving parts that can cause injury if you do not use them properly: You have to insert the pins correctly, you have to read the warning signs and follow the instructions and so on. That’s why machine manufacturers are getting better with their instruction plaques and warning statements they put on machines. It may be common sense to most people that you should not try to adjust a machine that is jammed, but to protect themselves, equipment manufacturers and gym owners need to take steps to make certain their clients are aware of such dangers.”

Another legal issue concerns when to allow athletes who have been injured to resume play or practice. Often football players with minor injuries will go back into a game – how should coaches deal with these situations to avoid lawsuits? This is a matter of common sense. There should be a system of checks and balances in athletic programs with a series of people who should have their say on whether an athlete is ready to come back: athletic trainers, team physicians, the athlete’s personal physician and the coaching staff. All these individuals should be involved in determining whether an injured athlete can be allowed to play or practice, and at what level.

Additional legal issues of concern to coaches may deal with being involved in rehabilitating injuries and counseling students and athletes with mental health issues. If you are not trained beyond basic first aid to assess or rehabilitate injuries, then you should not assess or rehabilitate injuries. And if you are

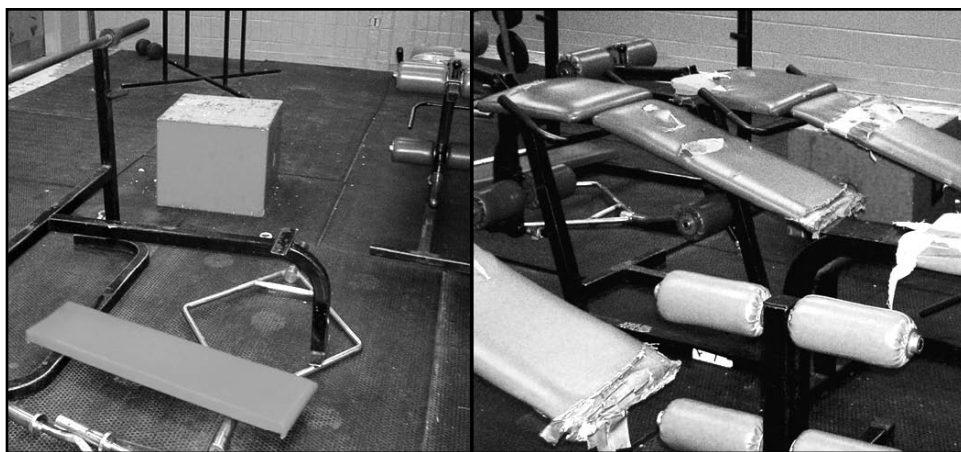
not trained in counseling individuals who are experiencing mental health issues, then you should not be counseling individuals. Have a plan to refer these matters to the appropriate health care professionals.

Finally, those working in educational institutions must avoid violating “church and state” sections of the constitution. Although you may believe that it would be in the best interest of those you work with to share with them your spiritual beliefs, the professional standard in this profession is that a school is not the place for you to do this.

### **Weightroom Design.**

With the popularity of weight training in this country, weightrooms may become overcrowded with equipment. What often happens is that companies that sell exercise equipment will do a free weightroom analysis. Using a computer program, they will show how to put their equipment into your facility and lay it out to maximize available space. But if you’re going to have weight equipment, you have to make certain there is adequate space; and that may mean checking with the manufacturers, rather than the marketers, to determine what the actual spacing needs are. And consider that there are standards in weightroom design that should be referenced when designing weightrooms.

For example, there is a basic minimum standard of at least two a half feet to three feet of space around a piece of equipment. But that’s just for most exercise equipment; with a treadmill, Dr. Rabinoff believes, you should have at least six feet behind the end of a treadmill, and at least three feet on each side. “What I’ve seen in cases that I’ve testified in is the gym owner lines up the treadmills looking out into the workout area, with the end of the treadmills facing a wall with maybe a foot behind them. I’ve



**Poorly maintained exercise stations and equipment are accidents waiting to happen.**

done three cases where people have fallen off the treadmill, hit their heads on the walls and died of trauma! Also, if you don’t have enough space between the treadmills, there is the risk that when someone gets on the treadmill and another gets off, they could hit each other.”

What is the distributor’s responsibility in regard to providing equipment that is safe? At BFS, we believe that if you’re putting your name on something, then you should be responsible for what it is. If you’re distributing equipment made in Taiwan and they used the wrong kind of bolt so if you get up to a certain poundage the bolt breaks and causes injury, then the distributor is partly responsible. It’s just not a matter of who is making a piece of equipment but also who is selling and marketing it. If a company is misrepresenting the equipment it sells, that’s fraud; there are many cases where distributors were sued because they misrepresented what their products could and could not do. As for using homemade equipment donated by some well-intentioned person, the best advice is “Don’t.” Often those who build such equipment do not know the standards

in the industry (set up by the ASTM), and their equipment may fall short of meeting these standards. Further, there is the question as to whether accidents that occur with such equipment are covered by an insurance carrier.

At the high school level, there are increasing numbers of students in weight training classes and fewer PE teachers, so you have bigger classes and more stress on the teachers. Many schools don’t have a lot of money to update equipment, so there is a lot of older equipment that may not have been maintained appropriately. Unfortunately, many coaches simply don’t do anything about safety until a kid gets hurt and files a lawsuit. The bottom line is that we can significantly minimize the risk of injuring athletes and getting sued by doing our jobs as coaches, teachers, administrators and club owners by making sure that each day we open that gym door is a new day with a higher standard of care.

Note: The complete position paper, including references, is available for download at [www.biggerfasterstronger.com](http://www.biggerfasterstronger.com).