Supervision—An Asset to the Weight Room?

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The popularity of new-fangled fitness activities, whether they be physical education, athletics, or recreation, always brings with them a need for rules, regulations, and standards of care. Weight training has settled in as the third most popular exercise program in the U.S. in the last few years (11, 12).

This new surge in physical conditioning can be found in physical education classes, athletics, and recreation. In the education arena, it is taught in physical education classes to all ages and both sexes; in sports, athletes are trained and instructed in its conditioning effects; and finally, all eligible persons either have access to the weight room at their school facility during “open recreation” or have equipment at home.

There is a second trend that seems to follow all movements, and that is litigation for wrongful injury. Statistics from Personal Injury Verdict Reviews (27) show that the recovery rate in lawsuits against health and fitness clubs is close to 56%.

The new emphasis is on supervision. Negligent supervision, a term used by Raymond Yasser, author of Torts and Sports (38), is now becoming the “nemesis” of the public and private interests of the fitness industry of the 1990s. This newly emerging concept has become increasingly viable as a cause of action. With the increase in participation has come an increase in injuries, and the biggest culprit of this problem appears to be lack of adequate supervision (12, 18, 20). For example, van der Smissen (35) found that 80% of the plaintiffs in negligence lawsuits claimed supervision as the main factor in their litigation.

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Although the courts have emphasized that the schools, recreation facilities, and health clubs are not intended to be insurers of safety to all or strictly liable for injuries incurred on their premises (7, 28), and that they do not have a duty to supervise the movement of an individual during every waking moment (1, 3, 9, 22), failure to provide proper and adequate supervision is becoming a greater issue in the provision of a safe workout environment free from unreasonable risk of harm.

In the year that the National Strength Coaches Association was formed there were approximately 35,500 weight lifting injuries that required emergency room assistance (24). The majority happened in the home, with more than 50% of the accident victims ranging in age between 10 and 19 years.

Another statistic, from the U.S. Products Safety Commission, states that the latest count of injuries in 1 year totaled over 43,000, with approximately 19,000 occurring on home equipment (18). Wescott and Finamore’s (37) studies show that only 77% of most athletes are supervised, and still this 77% group has sustained a back injury rate of 47% due to improper lifting resulting from poor instruction and/or lack of supervision.

Serious accidents are rare in supervised programs (25). The downside of inadequate supervision or lack of it is that liability insurance costs are very expensive. This cost of liability insurance becomes “protection money” in view of statistics demonstrating

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that 95% of the litigation cases are settled out of court (16).

Administrators, teachers, strength coaches, personal trainers, fitness instructors, and health club owners, when concentrating on physical education, sports, and recreation, should be aware of the four main reasons why accidents occur. Baley and Matthews (2, 3) list them as poor facility maintenance, defective equipment, inadequate instruction, and inadequate supervision.

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Negligent supervision is a viable cause of legal action; therefore it is necessary to understand the intricacies involved in determining a duty to supervise. The first concept is to understand negligence. Once a duty has been established, and a breach determined, it is necessary to fix a proximate cause in order to assess damages. In this process, foreseeability, assumption of risk, and comparative and/or contributory negligence have to be examined.

The first step to understanding the position of supervision is to establish the meaning and process of negligence.

To sustain a cause of action in negligence, a complaint must allege ultimate facts which establish a relationship between the parties giving rise to a legal duty on the part of the defendant to protect the plaintiff from injury of which he complains. It must also show that the defendant negligently breached that duty, and the plaintiff's injury was proximately caused by the defendant's negligence. (9)

This article deals with supervision in the education community as it pertains to physical education and athletics, with particular emphasis on strength instructors.

It is important to understand, according to van der Smissen (35), an authority on supervision and tort liability, that there are no general statutes which require "supervision in physical education, sports, recreation, and parks' camps" (p. 167). This concept of protecting the public domain is almost exclusively a state or individual right and/or responsibility. It is usually implied in such perspectives as common law, duty to supervise, or supervision stated in statutory regulations of some state entity (9, 19). Van der Smissen (35) cites three areas where the duty to supervise arises: by statutory requirement, by voluntary assumption of a duty, and by the duty being inherent in the situation.

There are a few precedents in developing a duty to supervise in the present educational setting. First is that attending school is mandatory for young people in most geographical areas. As a society, we deem it important that students be supervised in that situation, therefore entrusting the care and protection of the student to the school system.

Given that the school administration is in the business of operating a school system, the courts have ascertained that this is "sufficient to demonstrate a relationship between the school and the pupil giving rise to a duty" (Ref. 31, p. 164). The duty owed is usually set forth in common law and statutory duty to supervise students (8, 19).

The second means of establishing a duty to supervise is through "voluntary assumption of that role" (35). It is crucial to understand that the strength instructor may not have a vested interest in a certain activity, but may decide to take an active role in the activity only to find that he or she has, by this very decision, voluntarily assumed the duty to supervise. An "inherent duty to supervise" is the last element of accepting a duty to supervise (35). The key terminology in this concept is whether the activity involved is sponsored by the institution.

The final scenario in this establishment of responsibility is the "breach of said duty to supervise." This is made manifest by the idea of failure to exercise reasonable care in discharging the duty of supervision. Once this is established, then the "proximate cause" element must be proven in order for the plaintiff to recover damages from the defendant (8).
Another important concept pertains to whether the supervision is “discretionary” (decisional) or “ministerial” (operational) (4, 15, 21, 32, 33, 34). The Federal Tort Claims Act, 28 U.S.C. section 2680(h), defines the function as either one of planning or operation:

The planning function, for which immunity is granted, is regarded as the stage in which policy making takes place. The operational functions, for which there is no immunity, are the acts that implement the decisions that were made at the planning stage. (15)

To further clarify this concept, the instructor is exercising his or her discretionary powers when setting up the activity he or she wishes to teach or coach. But, once having established the activity, he or she must function in a ministerial capacity for which there is no immunity from tort liability (21).

Once it is accepted that supervision is necessary to the successful management of a school’s facilities and programs, the next question is, What type of supervision will satisfy the strength instructor’s duties owed to his or her students? Three types of supervision are recognized by the courts: general, specific, and transitional (3, 35).

Specific or direct supervision dictates close contact with the individual or group being supervised. This mode usually involves program instruction. Van der Smissen approaches specific supervision from three perspectives: (a) required when there is instruction, (b) required when there is an inability to perform the activity due to a physical or mental handicap, and (c) required when a participant’s behavior could be dangerous to self or others, and may be recognized through actual or constructive knowledge. Baley and Matthews (3) further enhance this definition by the addition of the responsibility to plan, direct, and evaluate the activity.

General supervision dictates that the supervisor maintain watch over activities being performed in an area or a facility. This type of supervision can be considered a “roving” type, not supervising individuals per se but rather groups participating in activities at a particular place. It is further stated, in the case of Pagan v. Summers (3), that “there is no compulsion for general supervision to be continuous and direct at all times and all places” (p. 158). This would be considered an impossibility.

Transitional supervision falls somewhere between specific and general supervision; its meaning fluctuates from one state to another (35). In explaining and demonstrating a weight lifting exercise, the strength instructor would be engaging in specific supervision, but once the exercise is actually practiced, general supervision would be dominant.

Finally, van der Smissen cites five basic functions of supervision: (a) behavior management, (b) rendering of emergency care, (c) enforcement of rules and regulations, (d) alertness to dangerous conditions, and (e) responsibilities for persons on or off the premises.

There are other factors a strength instructor must be knowledgeable about when assuming a supervisory capacity. The student’s lifting experience, skill level, intellectual status, maturity level, and physical condition, the time, and the characteristics of the area or facility involved—all become contributing circumstances in a potential litigation (1, 2, 12, 15, 25).

A point of reference pertains to an instructor’s temporary absence from a duty station while supervising a class, practice, area, or facility. Two crucial elements in this situation are the length of absence and the foreseeability that a safe environment might rapidly become a dangerous situation due to the propensity for those being supervised to misbehave without proper direction (15).

The instructor must decide what constitutes control and direction of his or her pupils, and therefore would do well to make arrangements for his or her absence. The only exception would be an emergency, and even then it would be judicious to send a student for help and stay and maintain control in the meantime.

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The most difficult condition to meet for weight room supervision is the establishment and enforcement of rules and regulations. The courts expect the school system to formulate and promulgate rules and regulations governing student conduct and providing for their safety while at school, and impose on the school system a duty to enforce these rules (3, 28). Not only must the institution make these rules and regulations, it must communicate them to the individuals governed by them and
ensure that they are enforced equitably (35).

The final elements of supervision require a standard of care that entails qualified, competent strength instructors, adequate instruction, proper maintenance of equipment, emergency medical procedures, and documentation. Qualified personnel who are either certified in their profession or in the process of obtaining certification (10, 26, 31) are essential for enhancing and perpetuating the safety of students within their jurisdiction. It should be noted that volunteer supervision will be treated by the courts with the same expectations as supervision by regular qualified professionals (29).

Proper supervision (5, 6, 36) requires that three general elements be in place to help counter litigation problems. First there must be (a) an emergency response system to allow for some type of first aid to the victim, including cardiopulmonary resuscitation if needed, (b) competent and safe movement or transportation of the victim, and (c) cooperative follow-up procedures to preserve standard medical assistance (13, 17, 31).

The second critical element is the maintenance of equipment under the authority of the instructor (14, 31). There should be an inspection routine to check for defective parts and machines, a process of documenting this activity, and a procedure to inactivate or remove worn and defective pieces. The third element, probably the most important when it is requested during litigation, is documentation (31).

In providing proper supervision, the supervisor should always issue a warning to the participants if there is a risk of injury when involved in the activity (3, 29). Failure to warn is difficult to defend if the instructor has any knowledge of the general qualifications needed to develop a teaching curriculum as it pertains to weight lifting. Finally, sports risk management authorities Marc Rabinoff (30) and David Stotlar (31) emphatically state that no person, whether athlete or not, should be left alone in the weight room without supervision.

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