

LITIGATIONS IN FITNESS PROGRAMMES: HOW PREPARED ARE FITNESS CENTRE'S IN EDO AND DELTA STATES OF NIGERIA?

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ABSTRACT

The aim of this study was to examine the legal dimension to fitness programmes with a view to assessing the extent to which fitness clinics in our society are conscious of what legal obligation binds them in the discharge of their duties. A total of 37 fitness centre's were drawn from Edo and Delta States and used for the study. A validated, structured questionnaire was used for the study. Results obtained from the study revealed that fitness clinics in Edo and Delta states are least prepared for legal eventualities in the discharge of their duties to their clients.

Keywords: Jurisprudence, legal obligation, exercise/fitness programmes, negligence, informed consent, fitness instructor.

INTRODUCTION

Since the beginning of time, adjudication has always been an integral aspect of the activities of man. In ancient traditional societies, organized methods for settling disputes and seeking redress for actual or perceived wrongs have always been on ground. And all along, individuals have always had some element of identity or consciousness as to what is deemed right and wrong and as such have always learnt to protect their personal rights from being trampled upon. With the advent of western education and the subsequent encroachment of western cultures into our society, we have now become even more conscious of the extent to which almost every aspect of our lives are being governed by elements of jurisprudence.

Today, the growing emphasis on the need to look good, feel good and live longer is pervasive. And sufficient evidence abounds to prove that one of the ways to achieve this desire is through fitness and exercise (Ludington & Diehl, 2000; Prentice, 1997). However, fitness and exercise programmes sometimes involve vigorous movement activities and the use of equipment that are not considered entirely safe. On this note, and given the growing sensitivity of the populace to issues of jurisprudence, there is therefore the need for fitness instructors and trainers to take cognizance of the delicate nature of their duties to their clients and to keep abreast with the legal intricacies that could result therefrom (Ray, 1994).

Litigations over sports and fitness programmes have, in recent times, taken centre stage in the law courts in developed nations of the world. Issues arising from accidents in sports and injuries to athletes are common grounds for litigation. It is on this note that Ray (1994) argued that all sports personnel, who include athletic trainers and fitness specialists, should be aware of and understands certain legal principles covering their duties. This is in order to avoid litigation due to what is referred to as health care malpractice, which is a liability-generating conduct associated with the adverse outcome of patient treatment (Scott, 1990; Ray, 1994; Morakinyo, 2004). While attempting to further explain the legal dimension to participation in physical activities, Scot (1990) observed that some areas in which the sports personnel could be held liable include:

1. Negligence,
2. Failure to obtain informed consent
3. Use/transfer of defective product
4. Abnormally dangerous treatment (p.98)

Negligence

This is a civil wrong that results in injury or harm to another person or to property as a result of an act of commission or omission. It involves failing to provide a proper or reasonable level of care (Olajide, 2004). It is the failure to act with the prudence that a reasonable person would exercise under the same circumstances (Arnheim & Prentice, 2000; Olajide, 2004; Morakinyo, 2004 & 2006). In the law of torts, the term is used to describe a failure to exercise due care, which results in injury to another party, and for which an action for money damages may be brought (Olajide, 2004). For a legal action to be validly instituted against a party on the grounds of negligence, the following four principles, according to Recreation and Sport (2002) have to be established:

- I. A duty of care was owed to the injured,
- II. There was a breach of the duty of care,
- III. An injury was sustained, and
- IV. There was a reasonable causal connection between the breach of duty of care and the injury sustained (p. 64)

Informed Consent

This is a documented agreement between the fitness trainer and the client, seeking to obtain the consent of the client before engaging in exercise training (Chen & Esposito, 2004). The import of this is to document the fact that the client has willingly submitted himself for exercise training after being made aware of all possible implications of engaging in such programme given their current health status (Fulcher & White, 2000; Wilder, Jones & Woodard, 2002; Mitten, 2002; Chen & Esposito, 2004). Obtaining informed signed consent before initiating an exercise training programme helps to clarify the responsibilities and goals of both the trainer and the client (Fletcher, et al. 2001).

Use/Transfer of Defective Product

Fitness personnel could be held accountable for the intentional or otherwise use and or transfer of defective products. These include the use/transfer of defective facilities and equipment for physical activities (Olajide, 2004; Morakinyo, 2006). Morakinyo further observed that various sports have rules guiding the nature, standard and measurement of the facilities and equipment needed for those sports. Having a full knowledge of these rules should be the responsibility of the sports personnel as this will sufficiently furnish them with the needed know-how not only in the discharge of their duties, but also in the defense against possible litigation.

Abnormally Dangerous Treatment

The fitness specialists, in the course of their training, are exposed to the rudiments of first aid treatment which is meant to equip them with the ability to handle minor injuries arising from participation in physical activities. This training entails a strict clause to refer cases, the severity of which is beyond the training of the sports specialist and demands the intervention of qualified medical personnel, to the appropriate authority (Dunnier, 2006). The fitness trainer, having full cognizance of the bounds of his intervention in the case of injuries to clients must not attempt to exceed such bounds. If and when the trainer does, his action could

be visited by legal retribution for providing dangerous treatment. A fitness trainer needs to be aware of all criminal intentional conducts or intentional tort that could infringe on the personal rights of the clients. Having knowledge of these conducts is however not enough to protect the fitness trainer from legal action (Balady et al., 1998). Thus the fitness trainer should make a conscious effort to put his knowledge into practice.

STATEMENT OF THE PROBLEM

The encroachment of western civilization and its culture has, in recent times, heightened people's sensitivity to human rights and the need to protect these rights from being trampled upon. The same western civilization has gradually moulded our orientations to appreciate the need to keep fit and live a healthy disease-free life. And it has been recorded that one of the avenues for achieving this need is through a well designed exercise and fitness programmes. These programmes, suffice to say, are accident prone due to the fact that they sometimes involve vigorous movement and the use of equipment. Be this as it may, there is a concern as to whether our fitness centre's are conscious of the legal intricacies that could result in the discharge of their duties and to what extent have these fitness centre's taken steps to address litigation if and when they arise from their actions or inactions.

Research Questions

The following research questions guided the study:

1. What safety and emergency measures have been instituted to address the issue of accident and safety in these fitness centre's in order to avert incidence of litigation?
2. What safety and emergency equipment have been put in place in this fitness centre's to address the issue of accidents and forestall the possibility of litigation?

METHODOLOGY

Subjects

A total of 37 fitness centres was selected from Benin City, Uromi, Warri and Asaba in Edo and Delta States: This involved 10 fitness centre's from each of Benin City, Warri and Asaba, and 7 from Uromi. In each of the selected fitness centres, the chief officer in charge of the centre constituted the respondent for the study. Thus from the 37 fitness centre's, 37 respondents were conveniently selected as sample for the study.

Procedure

The selected towns in Edo and Delta States were selected using the purposive sampling technique owing to the fact that they amply suit the purpose of the study. After selecting the towns, the fitness centres used were selected using the systematic sampling technique. In doing that, the researchers drew up a list of all the fitness centres in the four towns, and from the list, the first and every third fitness centres were picked for the study. Though this method was only applied to three of the towns, viz, Benin City, Warri and Asaba, in Uromi, all the 7 fitness centre's in the list were used for the study.

Research Instruments

A validated, self-developed, structured questionnaire and a checklist were used to generate data for the study. The questionnaire was made up of two sections, A and B. The first section labelled as section A contained items designed to elicit demographic information from the respondents. The second section labelled as section B contained 18 items designed in a modified Likert Scale format with response options in three scales viz: Yes, Undecided, and No. The checklist was made up of 10 items designed to reflect the availability or non-

availability of equipment and facilities within the fitness centre's with a "yes" or "no" response options for the researchers to fill in.

STATISTICAL ANALYSIS

Data obtained were analyzed using descriptive statistics with the application of Statistical Package for the Social Sciences (SPSS).

Research Question 1

What safety and emergency measures have been instituted to address the issue of accident and safety in these fitness centre's in order to avert incidence of litigation?

Table 1. Safety and emergency measures

<i>Measures</i>	<i>R e s p o n s e s</i>							
	<i>Yes</i>	<i>%</i>	<i>U</i>	<i>%</i>	<i>No</i>	<i>%</i>	<i>Total</i>	
Is the fitness centre duly registered?	07	19	18	48.6	12	32.4	37(100%)	
Are clients required to sign an informed consent form before taking a training programme?	02	5.4	11	29.7	24	64.9	37(100%)	
Are clients mandated to use protective equipment before participating in physical activities?	11	29.7	09	24.3	17	46	37(100%)	
Are each contents of the fitness programme handled by qualified specialists in each area?	04	10.8	27	73	06	16.2	37(100%)	
Does the centre have on-site physician?	08	21.6	19	51.4	10	27	37(100%)	
Is the centre affiliated with a doctor?	09	24.3	20	54.1	08	21.6	37(100%)	
Are safety signs visible?	11	29.7	09	24.3	17	46	37(100%)	
Are safety signs written in bold fonts?	11	29.7	09	24.3	17	45.9	37(100%)	
Is the staff properly trained to identify the warning signs of fatigue or distress?	04	10.8	27	73	06	16.2	37(100%)	
Do staff members have cardiopulmonary resuscitation and first aid training?	09	24.3	21	56.8	07	19	37(100%)	
Does the fitness centre have visual emergency signals in strategic places?	06	16.2	19	51.4	12	32.4	37(100%)	
Is the staff properly trained to handle emergencies when they arise?	04	10.8	27	73	06	16.2	37(100%)	
Are routes free of temporary or permanent obstructions?	12	32.4	11	29.7	14	37.9	37(100%)	
Are the equipment well maintained?	12	32.4	09	24.3	16	43.3	37(100%)	
Is the fitness centre's atmosphere comfortable?	06	16.2	27	73	04	10.8	37(100%)	
Is the fitness centre clean and well kept?	09	24.3	20	54.1	08	21.6	37(100%)	
Is the fitness centre well lit?	08	21.6	22	59.4	07	19	37(100%)	
Is the equipment display/storage area uncluttered?	07	18.9	19	51.4	11	29.7	37(100%)	
Do staff members receive training in providing fitness services to members with functional limitations or disabilities?	04	10.8	27	73	06	16.2	37(100%)	
<i>Mean Total</i>	7.6	20.5	18.5	49.9	10.9	29.6	37(100%)	

From the analysis in the above table, it is evident that majority of the respondents were undecided as to the level of safety and emergency measures that have been instituted in the fitness centres to address issues of accidents in order to avert litigation. This can be observed where 51.4%, 54.1, 73%, 56.8%, 51.4%, 73%, 73%, 54.1%, 59.4%, 51.4% and 73%, respectively were undecided as to whether the centre has an on-site physician or is affiliated with a doctor; whether the staff are properly trained to identify the warning signs of fatigue or distress; whether staff members have cardiopulmonary resuscitation and first aid training; whether the fitness centres have visual emergency signals in strategic places; whether the staff are properly trained to handle emergencies that may arise; whether the fitness centres' atmosphere comfortable; whether the fitness centre is clean and well kept; whether the fitness centre is well lit; whether the equipment area uncluttered and whether staff members receive training in providing services to members with functional limitations or disabilities. Furthermore, 64.9%, 46%, 46%, 45.9% and 43.3% of the respondents respectively were negative in their responses to questions on whether clients required to sign an informed consent form before taking a training programme; whether clients mandated to use protective equipment before participating in physical activities; whether safety signs are visible; whether safety signs are written in fonts that are bold enough for people to see; and whether the equipment are well maintained. On the average, a total of 49.9% of the respondents were undecided in their responses to questions on what safety and emergency measures have been instituted in the fitness centres to address the issue of accidents and avert litigation; furthermore, 26.8% were negative in their responses while 23.5% were positive.

Research Questions 2

What safety and emergency equipment have been put in place in these fitness centres to address the issue of accidents and forestall the possibility of litigation?

Table 2. Safety and emergency equipment

<i>Equipment</i>	<i>No. of Clinics</i>	<i>Avail-ability</i>	<i>Non Avail-ability</i>	<i>Functionality</i>	<i>Non Functionality</i>
Well equipped first aid box	37(100%)	18(48.6)	19(51.4)	18(100)	0(0)
Fire extinguisher	37(100%)	16(43.2)	21(56.8)	07(43.8)	09(56.2)
Telephone in the fitness room	37(100%)	03(8.1)	34(91.9)	02(66.7)	1(33.3)
Signs indicating where the telephones are	37(100%)	01(2.7)	36(97.3)	01(100)	0(0)
Signs indicating where the fire extinguisher is	37(100%)	01(2.7)	36(97.3)	01(100)	0(0)
Automatic external defibrillator	37(100%)	0(0)	37(100)	0(0)	0(0)
Blood pressure kit	37(100%)	03(8.1)	34(91.9)	03(100)	0(0)
Stethoscope	37(100%)	01(2.7)	36(97.3)	01(100)	0(0)
<i>Mean Total</i>	<i>37(100%)</i>	<i>5.4(14.5)</i>	<i>31.6(85.5)</i>	<i>4.1(75.9)</i>	<i>1.3(24.1)</i>

Figures in parentheses are percentages

The analysis in table 2 shows that the fitness centres surveyed were under equipped with safety and emergency equipment. This can be observed in the table where only 48.6% of the fitness centres have well equipped first aid box. In the same vein, only 16 of the fitness

centres representing 43.2% have fire extinguishers, and out of these, only 7 were functional. However, none of the fitness centres surveyed had automatic external defibrillator, while only 1 has a stethoscope. On the whole, safety and emergency equipment were 85.5% unavailable in the surveyed fitness centres while out of the available ones, 75.9% were functional and 24.1% non-functional.

DISCUSSION OF FINDINGS

This study has amply demonstrated the fact that safety and emergency measures and equipment have not been sufficiently instituted in the fitness centres under study to address issues of emergencies and accidents in order to avert litigation. And as has been noted in various studies, the absence of safety and emergency equipment and measures can render the fitness trainer liable to legal actions when the aggrieved party feels litigious (Scott, 1990; Ray, 1994; Morakinyo, 2004). While the study sufficiently portrays shortage of equipment and measures for clients' protection in the surveyed fitness centres, some vital equipment like automatic external defibrillators were totally unavailable. Furthermore, only a few amongst the surveyed fitness centres have instituted measures and or equipment as shown in the cases of informed consent requirement, mandatory use of protective equipment, emergency plans, telephones, visible safety signs, blood pressure kits, and stethoscopes. It is noteworthy that this situation is not in conformity with the recommendations of the American Heart Association/American College of Sports Medicine (2006) for safety and emergency preparation in fitness clinics.

Registration with the Corporate Affairs Commission (C.A.C.) is a mandatory prerequisite for running any business venture in Nigeria. This is to ensure that such outfit is recognized as a legal entity to operate their business within the legal framework of the country (C.A.C., 2005). However, this study revealed that only 19% of the fitness centres under study were duly registered with the C.A.C. thereby rendering the operations of the unregistered fitness centres illegal. While running an illegal outfit is in itself a crime in Nigeria, the enormity of this criminality is further heightened when such outfits are providing sub-standard services as demonstrated in the cases of some of the fitness centres in this study where safety and emergency measures and equipment are grossly unavailable. This can be observed in the analysis where there are a disappointingly low positive responses to questions on whether the centre has an on-site physician or is affiliated with a doctor; whether the staff are properly trained to identify the warning signs of fatigue or distress; whether staff members have cardiopulmonary resuscitation and first aid training; whether the fitness centres have visual emergency signals in strategic places; whether the staff are properly trained to handle emergencies that may arise; whether the fitness centres' atmosphere comfortable; whether the fitness centre is clean and well kept; whether the fitness centre is well lit; whether the equipment area is uncluttered and whether staff members receive training in providing services to members with functional limitations or disabilities

Buttressing the importance of signing an informed consent before participating in a fitness programme, it has been variously observed that this process helps in spelling out and documenting the agreement between the fitness trainer and the client with a view to recording the fact that the client has willingly submitted himself or herself for exercise training after being made aware of all possible implications of engaging in such programme given their current health status; the import of this is to better prepare the fitness trainer from possible legal actions that may result in the course of the fitness programme (Fulcher & White, 2000; Wilder, Jones & Woodard, 2002; Mitten, 2002; Chen & Esposito, 2004). However, this study has painted a disappointing scenario in the fitness centres under study as it was revealed that only 5.6% of the entire fitness centres studied actually require that their clients sign an

informed consent form before participating in their fitness programmes. Further compounding the problem of availability of safety and emergency equipment and measures is the problem of functionality. Among the areas in which the sports personnel could be held liable according to Scot (1990) include the use/transfer of defective product. And from the findings of this study, 21.6% of the available safety and emergency equipment were not functional and thus deemed defective. This constitutes a potential avenue through which the affected fitness centres could face a lawsuit. Meanwhile, the importance of an up-to-date safety and emergency plan and equipment to a health/fitness clinic has been elaborately spelt out in the recommendations of the American Heart Association/American College of Sports Medicine (2006).

CONCLUSIONS AND RECOMMENDATIONS

This study has sufficiently demonstrated that majority of fitness centres in Edo and Delta States provide services that grossly fall short of expected standards especially in the area of safety and emergency provisions. This unhealthy situation exposes the clients that patronize these fitness centres to accidents and injuries thereby making such fitness centres easily vulnerable to legal actions.

Consequent upon the findings of this study, it is therefore recommended that, among other things, government or Corporate Affairs Commission (C.A.C.) should establish a monitoring group to assess every fitness centres in the country to ensure that they are duly registered and are operating within the confines of the statutory declaration establishing their operations. Furthermore, such monitoring group from the government or C.A.C. should ensure that, amongst the requirements for licensing a fitness centre, is the ability for such intending fitness centre to have in place, basic safety and emergency plans and equipment in order to sufficiently limit the vulnerability of their clients to accidents and prevent litigations in such fitness centres.

In the same vein, the National Association for Physical, Health Education, Recreation Sports and Dance (NAPHER-SD) which currently is the umbrella association of physical and health education and sports and their related fields in Nigeria, should design a standard or benchmark guiding the establishment and operations of fitness centres and ensure a strict compliance with these standards.

On a final note, it is recommended that experts in the field of sports and exercise science should play more roles in providing fitness services to the populace of Nigeria and wrest this venture from charlatans who are currently making a mess of the profession.

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