

# AN ANALYSIS OF THE USE OF WAIVERS, SOURCES OF INJURIES AND LIABILITY CLAIMS IN THE HEALTH AND FITNESS FACILITIES

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## Aim of abstract/paper - research question

The purpose of this study was to analyse the use of waivers, sources of injury risks, and legal liability claims in the health and fitness facilities in Queensland.

## Literature review

Under Australian law, recreational service providers can use exclusion (waiver) clauses in their service contracts to limit or preclude legal liability for negligently caused personal injury or death. Membership contracts and pre-exercise screening tools used by the health and fitness facilities typically include waivers directed to this objective. However, contractual waivers can often be ineffective in limiting or excluding legal liability claims (Belna Pty Ltd v. Irwin, 2009; Kovacevic v. Holland Park Holdings, 2010), and may provide false security to the health and fitness facilities that rely on them against legal actions for negligence and breach of contract.

Furthermore, there were concerns that this blanket protection would cause recreational service providers to refuse to invest in injury prevention practices and risk the safety of their participants (Australian Consumer and Competition Commission, 2005; McDonald, 2005). Therefore, understanding the use of waivers, sources of injuries and legal liability claims in the health and fitness facilities is crucial to make evidence informed risk management recommendations to the health and fitness facility operators for reasonably safe services.

## Methodology, research design and data analysis

The study was ethically approved by Bond University Human Research Ethics Committee. An online Health and Fitness Industry Risk Management Questionnaire (HFRMQ) ( $\alpha=.9$ ) was developed to collect the data. All of the health and fitness facilities in Queensland ( $N=262$ ), whose contact information and e-mail addresses could be gathered using Australia's online gym directories and yellow pages were invited to participate in the study. Overall, 52 health and fitness facility managers participated in the study yielding a %20 return rate. The data was analysed using descriptive statistics and frequencies with SPSS 18.

## Results, discussion and conclusions

The results showed that while most of the health and fitness facilities required all of their participants to sign a waiver form (67% strongly agree, 33% agree), almost a third (23% not sure, 4% disagree, 2% strongly disagree)

of the health and fitness facilities could not admit to having obtained legal advice while drafting their waiver and membership forms. Health and fitness facility managers reported that the weight training area (40%), group exercises (21%) followed by the cardiovascular training area (12%) had the highest number of reported accidents/injuries, with sprains and strains (86%) being the most common type of injury. When the health and fitness facility managers were asked about the legal liability claims against their facility, 19% reported a total of 28 lawsuits that were mostly settled out of court (96%). These legal liability claims were made by participants, who either sustained orthopaedic injuries (50%), or sprains/strains (50%) at these health and fitness facilities. These findings have several implications.

Firstly, health and fitness service providers need to bear in mind that the issue of whether, and in what circumstances a waiver can be an effective defence to negligent liability claims is complex, and their validity is mostly considered by the courts under the principles of contract law. Therefore, health and fitness facility operators must ensure that they obtain proper legal advice when drafting contract documents such as membership forms and waivers.

Secondly, health and fitness facility managers should not depend on waivers as the sole risk management practice against legal liability claims. Implementing safety risk management practices such as comprehensive pre-exercise screening procedures, regular inspections, and preventative maintenance programs to prevent injuries that can arise relating to or out of the services offered especially in the weight training and cardiovascular training areas, can be a much more effective and efficient way to minimise the risk of legal liability claims in the first place.

## References

- Australian Consumer and Competition Commission. (2005). Public liability and professional indemnity insurance: Fifth monitoring report. Dickson, ACT: ACCC. *Belna Pty Ltd v. Irwin* (NSWCA 46, 2009)
- McDonald, B. (2005). Legislative intervention in the law of negligence: the common law, statutory interpretation and tort reform in Australia. *Sydney Law Review*, 27, 443-482.
- Kovacevic v. Holland Park Holdings Pty Ltd (QDC 279, 2010)