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THE AEROBICS FITNESS INDUSTRY: EVOLVING STANDARDS OF PRACTICE

GREGORY M. STAHMER*

I. INTRODUCTION

America is in the midst of a fitness boom that has engulfed people from all walks of life.¹ Our preoccupation with fitness and health has turned it into more than a five billion-dollar a year industry.² As early as 1985, eighty-five million Americans were involved in some type of exercise program, a figure constituting thirty-five percent of the nation's population.³

One of the most popular forms of exercise in the United States is aerobic dance or fitness.⁴ Millions have been drawn to such programs for both the cardiorespiratory as well as psycho-physiological benefits.⁵

Along with the increase in popularity of aerobic fitness, has been an increase in the number of injuries as well as subsequent legal action⁶ associated with these programs.⁷ Physicians and athletic trainers are finding that they treat a significant number of people injured while participating in aerobic fitness classes.⁸ Although there is some disagreement as to the interpretation of the data,⁹ recent studies,¹⁰ compared

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1. Hyman & Feiger, *Legal Aspects of Health and Fitness Clubs: A Healthy and Dangerous Industry*, 15 COLO. LAW. 1787 (1986).

2. *Id.*

3. *Id.*

4. Aerobic dance generally refers to an exercise regime put to music in a format similar to a dance routine. It is the author's impression that aerobic fitness encompasses aerobic dance as well as other exercises that work the cardiovascular system. As a matter of consistency, the author will use the term "aerobic fitness" throughout this article.

5. Francis, *Aerobic Dance Injuries: A Survey of Instructors*, 13 PHYSICIAN SPORTSMED. 105 (1985).

6. While there are no reported decisions dealing with the standards of competence of aerobic fitness instructors, there are a number of trial court decisions dealing with the liability of fitness centers for exercise related injuries. See, e.g., *Sosa v. Jack La Lanne*, No. C339856 (Super. Ct. Los Angeles, Cal. 1985) (aggravation of preexisting physical problem following exercise); *Battaglia v. Holiday Health Club, Inc.*, No. 86 Civ. 9489 (Dist. Ct. Denver, Colo. 1986) (injury while using exercise machine); *Jacobson v. Holiday Health Club*, No. A85 CV 1249 (Dist. Ct. Arapahoe Co., Colo. 1986) (injury from weight training machine); *Heher v. Strafford Racquetball*, No. CB-81-197255S (Super. Ct. Fairfield Co., Conn. 1985).

7. Francis, *supra* note 5.

8. *Id.*

9. Richie, *Medical-Legal Implication of Dance Exercise Prescription and Leadership: The Risk of Injury*, 2 EXERCISE STANDARDS MALPRACTICE REP. 17, 21 (1988).

10. In a study presented at the IDEA Industry Convention in Anaheim, California,

with studies done five years ago,¹¹ show that the influx of injuries related to aerobic fitness programs has declined.

While not all the factors that have contributed to this decrease in injuries are known, it does appear clear that an increase, over the past few years, in the level of instructor training and competence has played a dominant role.¹² Perhaps the greatest impact on instructor training has come from a clearer definition of industry standards and the development of more comprehensive certification programs for aerobic fitness instructors.¹³ Although this evolution represents a substantial improvement in the state of the industry, the process is far from complete. In order to define more clearly the accepted standard of practice, the industry must work towards developing a nation-wide uniform level of competency.

This article explores the evolution of the standards of practice in the aerobic fitness industry. Included in this discussion is a survey of the standards of practice which have been promulgated by the leading industry organizations, followed by an application of these standards to aerobic fitness program activities. Finally, legislative action in the area is examined along with the concomitant problems of legislatively mandated standards of practice.

II. STANDARDS OF PRACTICE

A. Overview and History

At present there are no applicable standards that regulate the conduct of exercise professionals¹⁴ in any state statute.¹⁵ Hence, in the absence of any standard defined by statute, the instructor's conduct must be measured against an industry standard. Once an instructor is held out to possess the experience and training necessary to teach an aerobic fitness class, he or she is expected to exercise the skill and knowledge recognized by the members of the industry.¹⁶ Indeed, instructors in

Drs. Peter and Lorna Francis reported a decrease in injuries among instructors from 64% in 1986, to 76% in 1983. The study also concluded that 57% of the reported injuries were aggravations of injuries not associated with aerobic fitness. Richie, *Id.*

11. Garrick, *The Epidemiology of Aerobic Dance Injuries*, 14 AM. J. SPORTS MED. 67 (1986) (33% of all students and 25% of all instructors will suffer injuries associated with aerobic fitness classes); Francis, *Aerobic Dance Injuries: A Survey of Instructors*, 13 PHYSICIAN SPORTSMED. 105 (1985) (76.9% of aerobic fitness instructors reported injuries from teaching classes); Richie, *Aerobic Dance Injuries: A Retrospective Study of Instructors and Participants*, 13 PHYSICIAN SPORTSMED. 130 (1985) (43.3% of all students and 75.9% of all instructors surveyed reported at least one injury associated with regular participation in an aerobic fitness class).

12. Richie, *supra* note 9, at 21.

13. Claremont, *The Ability of Instructors to Organize Aerobic Dance Exercise Into Effective Cardiovascular Training*, 14 PHYSICIAN SPORTSMED. 89, 90 (1986).

14. There are, however, numerous state statutes which regulate health club membership and marketing. See, e.g., COLO. REV. STAT. § 6-1-101-114 (1973 & Supp. 1989).

15. Wisconsin has enacted legislation presumably to regulate the training and qualifications of fitness instructors. However, the statute sets no standards and requires almost no training. See the discussion of WIS. STAT. ANN. § 134.705 (West 1988) at section IV *infra*.

16. The appropriate standard is set out in the Restatement (Second) of Torts:

other sports are held to reasonable standards in light of their superior learning and experience in their respective fields.¹⁷ In addition, the commentators have noted that special circumstances exist when one holds him or herself out as having superior training and experience in a particular field. In that case, the instructor should not be held to the traditional reasonable person standard,¹⁸ but instead should be held to what is reasonable in light of the instructor's superior training and experience.¹⁹

It appears clear from the latest research in the field, as well as efforts on the part of the industry to regulate itself, that there is a need for uniform standards for aerobic fitness instructors.²⁰ While there is some disagreement as to the risk of injury from participation in aerobic fitness programs,²¹ more and more physicians and athletic trainers have found that they treat a significant number of individuals who complain of injuries received while taking part in aerobics classes.²² Others have argued that the lack of competency standards led to the increased level of injuries.²³ By the mid-1980's, this increase, combined with the lack of any specific standards in the industry, compelled at least two nation-wide organizations to recognize the need for a set of authoritative guidelines.²⁴

Today, three organizations are taking the lead in setting standards for the aerobic fitness industry. These organizations are: The American College of Sports Medicine ("ACSM"),²⁵ International Dance-Exercise

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities.

RESTATEMENT (SECOND) OF TORTS § 299A (1977) (emphasis added).

17. *LaVine v. Clear Creek Skiing Corp.*, 557 F.2d 730, 733 (10th Cir. 1977) (skiing instructor held to the standard of care commensurate with that of an experienced and trained ski instructor); *Everett v. Bucky Warren, Inc.*, 376 Mass. 280, 380 N.E.2d 653 (1978) (hockey instructor with substantial experience in the game of hockey held to a higher standard of care and knowledge than an average person); *Fantini v. Alexander*, 172 N.J. Super. 105, 410 A.2d 1190 (1980) (karate instructor held to level of skill and knowledge normally possessed by members of his profession and citing, with approval, RESTATEMENT (SECOND) OF TORTS § 299A (1977)).

18. See PROSSER AND KEETON ON TORTS § 32 (5th ed. 1984).

19. 3 HARPER JAMES AND GRAY, THE LAW OF TORTS § 16.6 (2d ed. 1986); PROSSER AND KEETON, *supra* note 18, at § 32; Scavey, *Negligence—Subjective or Objective?*, 41 HARV. L. REV. 1, 13, 41 (1927).

20. Herbert, *Dance Fitness Standards: Is There a Need for Standards of Competency for Dance Exercise Instructors?*, 1 EXERCISE STANDARDS AND MALPRACTICE REP. 27 (1987).

21. Legwood, *Does Aerobic Dance Offer More Fun than Fitness?*, 10 PHYSICIAN SPORTSMED. 147-51 (1982).

22. Francis, *Aerobic Dance Injuries: A Survey of Instructors*, 13 PHYSICIAN SPORTSMED. 105 (1985).

23. Claremont, *The Ability of Instructors to Organize Aerobic Dance Exercise Into Effective Cardiovascular Training*, 14 PHYSICIAN SPORTSMED. 89, 90 (1986).

24. Fenly, *Dance Exercise Guidelines Planned*, 12 PHYSICIAN SPORTSMED. 31 (1984) (describing the efforts of the International Dance Exercise Association and the American College of Sports Medicine to recognize the need for guidelines).

25. AMERICAN COLLEGE OF SPORTS MEDICINE, GUIDELINES FOR GRADED EXERCISE TESTING AND EXERCISE PRESCRIPTION (3d ed. 1986).

Association ("IDEA")²⁶, and the Aerobics and Fitness Association of America ("AFAA").²⁷ In addition, the Young Men's Christian Association ("YMCA") has also developed rigorous guidelines to be used by its staff and members throughout the world.²⁸ There are also several other organizations that set standards in the industry. However, their relative influence with respect to aerobic fitness instruction varies.²⁹

The approach that these industry guidelines have taken differs depending on the organization, and often lead to inconsistent results. Some organizations set forth standards in terms of behavioral objectives, while others are stated in terms of clearly defined standards of practice.³⁰ Generally, a behavioral objective describes a level of knowledge that a competent instructor should have in order to correctly develop a class format.³¹ These behavioral objectives state no specific standard to be met, but focus more on the subjective knowledge of the instructor. In other words, there is no clear statement about the type of exercises or the length of the exercise period that is appropriate.³²

In contrast, standards of practice are specific statements of the type of conduct that an instructor should exhibit based on both a comprehensive review of the literature and the accepted practice in the industry.³³ Standards of practice describe the content of an exercise regime as well as its duration.

It is obvious, even to the casual observer, that these two different types of guidelines are difficult to reconcile in practice. One states the proper standard in terms of what an instructor should know, while the other states the standard in terms of specific instructor performance. Any legal analysis of instructor conduct, using published industry standards, requires careful attention to the distinctions between behavioral objectives and standards of practice as well as the logical inconsistencies

26. INTERNATIONAL DANCE-EXERCISE ASSOCIATION FOUNDATION, *AEROBIC DANCE-EXERCISE INSTRUCTOR MANUAL* (N. Van Gelder ed. 1987).

27. AEROBICS AND FITNESS ASSOCIATION OF AMERICA, *AEROBICS THEORY AND PRACTICE* (P. Cooper ed. 1988).

28. See *Y's WAY TO PHYSICAL FITNESS, THE COMPLETE GUIDE TO FITNESS TESTING AND INSTRUCTION* (L. Golding ed. 3d ed. 1989); *THE Y'S WAY TO PHYSICAL FITNESS, LEADERS GUIDE* (R. Jones ed. 1986).

29. Other organizations have promulgated standards which have either a direct or an indirect application to fitness programs. These organizations include but are not limited to: The American Medical Association, Committee on Exercise & Physical Fitness, *American Med. Ass'n, Evaluation for Exercise Participation: The Apparently Healthy Individual*, 219 J. AM. MED. A. 900 (1972); The American Heart Association, COMMITTEE ON EXERCISE, *AMERICAN HEART ASS'N EXERCISE TESTING AND TRAINING OF APPARENTLY HEALTHY INDIVIDUALS: A HANDBOOK FOR PHYSICIANS* (1972). These standards are directed towards the physician and are in conflict with the standards published by the American College of Sports Medicine discussed in the body of the text. See Herbert, *A Trial Lawyer's Guide to the Legal Implications of Recreational, Preventive and Rehabilitative Exercise Program Standards of Care*, 11 AM. J. TRIAL ADVOC. 433, 444 (1988).

30. Angsten, *An Overview of the Standards of Practice for Dance Exercise and Aerobics, Part Two: The Use of Expert Witnesses and Standards of Practice in Court*, 1 EXERCISE STANDARDS AND MALPRACTICE REP. LAW. ED. 36 (1987).

31. *Id.*

32. *Id.*

33. *Id.*

between them.³⁴

These industry standards determine accountability as they are a guide to the level of competence and experience to be expected from a trained professional.³⁵ An exercise leader who has been certified by one of these organizations must demonstrate the basic knowledge that is needed to lead others safely in an exercise program.³⁶

To fully understand the application of these standards to any particular exercise program, it will be helpful to examine the underlying purpose and focus of each of these published industry standards.

B. ACSM Guidelines

The American College of Sports Medicine ("ACSM") was initially involved in developing standards for rehabilitative exercise programs. The ACSM first published its standards in 1975 and has since revised them twice. The standards express the ACSM position for various phases of preventive and rehabilitative exercise programs.³⁷ The ACSM's *Guidelines for Exercise Testing and Prescription*,³⁸ contains behavioral objectives that detail the competencies for each of the ACSM certification categories.

The ACSM standards for aerobic fitness programs are part of the "preventive tract" and are entitled Behavioral Objectives Exercise Leader/Aerobics.³⁹ The standards contain core behavioral objectives required of all classifications in the preventive tract. In addition, there are specific behavioral objectives for aerobics that can be found in *The Exercise Leader/Aerobics Behavioral Objectives*.⁴⁰

These objectives are further delineated as either general objectives, describing the un-observable mental process, or specific learning objectives, describing behavior in observable terms.⁴¹ For example, under "Exercise Physiology" the general objective states the instructor "will demonstrate a knowledge of basic exercise physiology,"⁴² and the specific learning objective requires the instructor to "define and explain the concept of specificity of exercise conditioning."⁴³

34. *Id.* at 36.

35. Herbert, *A Trial Lawyer's Guide to the Legal Implications of Recreational, Preventive and Rehabilitative Exercise Program Standards of Care*, 11 AM. J. TRIAL ADVOC. 433, 435 (1988).

36. Gelson, "No Pain, No Gain": *What's Wrong With Some Exercise Leadership*, 1 EXERCISE STANDARDS AND MALPRACTICE REP. 52, 53 (1987).

37. HERBERT & HERBERT, *LEGAL ASPECTS OF PREVENTIVE AND REHABILITATIVE EXERCISE PROGRAMS* 165 (2d ed. 1989).

38. AMERICAN COLLEGE OF SPORTS MEDICINE, *GUIDELINES FOR EXERCISE TESTING AND PRESCRIPTION* (3d ed. 1986).

39. The ACSM has separate sets of behavioral objectives in its preventive health/fitness personnel tract: Health Fitness Director, Health Fitness Instructor and Fitness Leader/Specialty. The Specialty categories include aerobic fitness as well as military and law enforcement specialties. *See also supra*, note 38, at 113.

40. AMERICAN COLLEGE OF SPORTS MEDICINE, *GUIDELINES FOR EXERCISE TESTING AND PRESCRIPTION* (3d ed. 1986).

41. *Id.* at 106.

42. *Id.* at 114.

43. *Id.*

C. IDEA Guidelines

The International Dance Exercise Association ("IDEA") is an organization committed to furthering the interest of dance exercise instructors.⁴⁴ Originally IDEA planned to develop standards as well as a certification program in concert with the ACSM. However, in 1985 the IDEA Foundation was formed as a non-profit organization to promote research and consumer education in the field.⁴⁵ In 1986, IDEA published a position paper setting forth objectives for the training of dance-exercise instructors. The statement, entitled *Training Guidelines for Dance-Exercise Instructors* ("Guidelines"), has the following three-part stated purpose:

[To] represent the minimum level of proficiency and theoretical knowledge essential for the dance-exercise instructor to (1) design a safe and effective class setting, (2) lead and instruct others in dance exercise, and (3) respond to the typical questions and problems that arise in a class setting. These training guidelines apply only to instructors teaching healthy persons who have no apparent physical limitations or special medical needs.⁴⁶

The *Guidelines* are essentially divided into three main sections. The first section deals with core knowledge and skills necessary for teaching aerobic fitness classes. The second section addresses more operational issues such as health screening, emergency training and legal issues. The third deals primarily with nutrition and weight control issues.

The *Guidelines* contain behavioral objectives that describe the level of knowledge that a competent instructor should have. For example, the *Guidelines* require an instructor to "[d]escribe how to individualize an exercise program on the basis of information obtained through health screening, progress made in class, or fitness evaluation; for example, by raising or lowering exercise intensity, placing someone into a beginner or advanced program, or modifying specific exercises."⁴⁷ However, while this section requires an instructor to demonstrate how to individualize a program, it contains no description of the type of exercises that should be included in the program or what the duration of the program should be, based on any new information that may be obtained from the participant. Indeed, from a legal viewpoint, the *Guidelines* offer little guidance in judging an exercise professional's conduct.

In addition to the *Guidelines*, IDEA has published the *Aerobic Dance-Exercise Instructor Manual* ("Manual"). The *Manual* provides all the basic knowledge needed to fulfill the behavioral objectives outlined in the

44. Angsten, *An Overview of the Standards of Practice for Dance Exercise and Aerobics, Part Two: The Use of Expert Witnesses and Standards of Practice in Court*, 1 EXERCISE STANDARDS AND MALPRACTICE REP. LAW. ED. 37 (1987).

45. *Id.*

46. IDEA FOUNDATION, GUIDELINES FOR TRAINING OF DANCE-EXERCISE INSTRUCTORS 1 (1986).

47. *Id.* at 3.

Guidelines, as well as information needed to pass the certification exam.⁴⁸

D. AFAA Guidelines

The Aerobics and Fitness Association of America ("AFAA") was formed in 1983 to provide a foundation upon which standards for the teaching of aerobic exercise could be built. In 1983 AFAA published *Basic Exercise Standards and Guidelines* ("Standards and Guidelines").⁴⁹ The stated purpose of the *Standards and Guidelines* is "to provide the professional instructor with up-to-date information presented in an easy-to-follow format on how to teach a class that is both safe and effective while still allowing for the individual creativity inherent in this exercise form."⁵⁰

The *Standards and Guidelines* are divided into twelve sections and describe methods by which an instructor should instruct a class. Some of the more important sections provide information on medical clearance, class format, warm-up exercises, cool-down exercises, and methods of checking one's heart rate.⁵¹

The *Standards and Guidelines* provide specific standards with respect to the type of exercise that should be performed as well as duration. For example, as part of a warm-up prior to exercise, the *Standards and Guidelines* state that "[c]lass should begin with 7-10 minutes of a balanced combination of static stretches and smoothly performed, rhythmic limbering exercises."⁵² Hence, the *Standards and Guidelines*, unlike the IDEA standards, appear to be directed more at the practical aspects of class formatting and not the subjective knowledge of the instructor. In addition to the *Standards and Guidelines*, AFAA has published a complete textbook on aerobic fitness that provides a detailed analysis of all phases of aerobic fitness.⁵³

E. YMCA Guidelines

The YMCA has been actively involved in developing physical fitness programs in the United States for more than a century. The YMCA invented basketball and volleyball, and it also developed long distance running clubs long before jogging became a popular sport.⁵⁴ In 1972,

48. IDEA FOUNDATION, *Certification Exam* (1989).

49. *Standards and Guidelines* have been revised twice since they were introduced in the fall of 1983. The *Standards and Guidelines* were first revised in 1985 when they were included in the AFAA text book *AEROBICS THEORY AND PRACTICE* (P. COOPER ED. 1988), and then once again in 1987.

50. West, *Introduction to Basic Exercise Standards and Guidelines of the Aerobics and Fitness Association of America*, in *AEROBICS, THEORY AND PRACTICE* (P. COOPER ED. 1988).

51. *The Aerobics and Fitness Association of America, Basic Exercise Standards and Guidelines*, in *AEROBICS THEORY AND PRACTICE* xv (P. COOPER ED. 1988).

52. *BASIC EXERCISE STANDARDS AND GUIDELINES* section IV. B. in *AEROBICS THEORY AND PRACTICE* (P. COOPER ED. 1988).

53. *THE AEROBICS AND FITNESS ASSOCIATION OF AMERICA, AEROBICS THEORY AND PRACTICE* (P. COOPER ED. 1988).

54. Golding, *An Examination of the Standards of Practice of the Young Men's Christian Association (YMCA)*, 1 *EXERCISE STANDARDS AND MALPRACTICE REP. LAW. ED.* 29 (1987).

the YMCA published *The Y's Way to Physical Fitness*⁵⁵ which contained a comprehensive set of principles and guidelines for use by all the YMCAs' in the United States. The YMCA's guidelines are very rigorous and founded upon solid professional expertise.⁵⁶ These guidelines appear to be similar to the AFAA's standards in that they state specific exercise types as well as duration.⁵⁷ In addition, the YMCA's guidelines provide for a specific exercise format, as well as examples of acceptable exercises that may be selected based on the instructor's personal taste.⁵⁸ For example, chapter five of *Exercise Principles and Guidelines* states: "[a]n exercise session should consist of four basic parts—warm-up, muscular strength and endurance exercises, cardiorespiratory work, and cool-down. Everyone should exercise a minimum of 40 to 60 minutes three to four times per week."⁵⁹ In addition, the exercise principles and guidelines contain extensive tables and charts to properly gauge workout intensity and duration.⁶⁰

F. *Application of Standards to Aerobic Fitness Programs*

At first, application of these standards to a particular exercise program may appear troublesome. Indeed, taken together they are difficult to reconcile. Some are stated in terms of an instructor's subjective knowledge,⁶¹ while others are stated in terms of specific standards of practice.⁶²

Prospectively, the behavioral objectives may be used by a fitness program director to ensure that an instructor has the minimum knowledge of exercise science needed to format a safe and effective class. On the other hand, specific standards of practice may be used to ensure that a pre-planned class format complies with the industry's notion of acceptable practices. By taking care to see that a fitness program complies with the accepted industry standards of practice, a fitness director may avoid legal liability and, more importantly, serious participant injury.⁶³

In the unfortunate event of an injury or accident, a program that followed the industry standards will be able to assert that its conduct was within the scope of accepted industry standards. In addition, a well-trained staff will be better able to respond to problems when they do

55. L. GOLDING, *Y'S WAY TO PHYSICAL FITNESS* (3d ed. 1989).

56. Herbert, *A Trial Lawyer's Guide to the Legal Implications of Recreational, Preventive and Rehabilitative Exercise Program Standards of Care*, 11 AM. J. TRIAL ADVOC. 433, 447 (1988).

57. See L. GOLDING, *supra* note 55, at 145.

58. *Id.*

59. *Id.* at 149.

60. *Id.* at 145-157.

61. *Supra* note 31 and accompanying text.

62. *Supra* note 33 and accompanying text.

63. Once the fitness instructor meets the accepted standard of practice in the industry and the fitness class participant has consented to take part in the fitness program with knowledge of the attendant risk of any physical exercise program, the instructor should be able to avoid liability should an accident occur. See Simons, *Assumption of Risk and Consent in the Law of Torts: A Theory of Full Preference*, 67 B.U.L. REV. 213, 215 (1987); see also PROSSER AND KEETON ON TORTS § 68 (5th ed. 1984).

arise.⁶⁴ In summary, when accidents occur, as they inevitably will in the fitness center setting, the industry standards may be used to judge the appropriateness of facility/personnel policies and procedures in place at the time of the accident.⁶⁵ The goal of the industry must be to establish a cohesive set of nationally recognized standards of practice directed at both the subjective knowledge of the instructor and, perhaps more importantly, specific instructor performance.

III. CERTIFICATION OF INSTRUCTORS

In the mid-1980's more than 50 certification programs existed, and it was very difficult for consumers to gauge the quality of instructors in the fitness center setting in terms of instructor certification.⁶⁶ Often many fitness centers developed in-house testing procedures that led to certification of staff members, who had varying levels of training and experience as fitness instructors.⁶⁷ Many of these programs failed to provide even the minimum training and knowledge needed to properly instruct a fitness class.⁶⁸

Often when an injury occurs, and is followed by litigation, the instructor's qualifications and training will be at issue.⁶⁹ This may be the case even when the instructor's conduct leading to the injury was within the industry's recognized standard of practice.⁷⁰

As early as 1984, at least two national organizations recognized the need for national certification.⁷¹ It became obvious that the excess of certification programs, in particular the mail order programs, were not sufficient to assure the consumer that their instructor had achieved an acceptable level of training.⁷²

Today, The American College of Sports Medicine, The International Dance-Exercise Association and The Aerobics and Fitness Association of America have all assumed major roles as certifying organizations in the United States.⁷³ The certification process, within a given organization, is often closely related to the organization's stan-

64. All of the standards discussed above contain sections on emergency procedures. See AMERICAN COLLEGE OF SPORTS MEDICINE, GUIDELINES FOR EXERCISE TESTING AND PRESCRIPTION 24 (1986); INTERNATIONAL DANCE-EXERCISE ASSOCIATION FOUNDATION, GUIDELINES FOR TRAINING OF DANCE-EXERCISE INSTRUCTORS 5 (1986); THE AEROBICS AND FITNESS ASSOCIATION OF AMERICA, AEROBICS THEORY & PRACTICE 293 (1988); Y'S WAY TO PHYSICAL FITNESS 27 (L. Golding 3d ed. 1989).

65. Herbert, *supra* note 35, at 449.

66. Cinque, *Aerobic Instructor Certification: Standards at Last?*, 14 PHYSICIAN SPORTSMED. 171 (1986).

67. Rabinoff, *An Examination of Four Recent Cases Against Fitness Instructors*, 2 EXERCISE STANDARDS MALPRACTICE REP. 43 (1988).

68. The basic knowledge needed includes studies in physical education, physiology, sports medicine, kinesiology and adult fitness. *Id.*

69. Rabinoff, *supra* note 67.

70. *Id.*

71. See Fenly, *Dance-Exercise Guidelines Planned*, 12 PHYSICIAN SPORTSMED. 31 (1984).

72. Golding, *Standards of Competency for Dance Exercise Instructors*, 1 EXERCISE STANDARDS MALPRACTICE REP. 37, 41 (1987).

73. The YMCA also has an extensive certification process, however, its use is limited to instructors within the YMCA system.

dards of practice.⁷⁴ To completely understand the relationship of the certification process to the industry standards of practice, it is important to briefly discuss the various certification processes, their effect on fitness programs, and on the program's concomitant legal liability.

A. ACSM Certification

The ACSM was initially involved in the certification of rehabilitative exercise program leaders. However, in 1982, in response to a perceived need for certification of preventive exercise programs the ACSM developed the Health Fitness Instructor program.⁷⁵ The rapid growth of the aerobic fitness industry during the latter half of the 1980's led the ACSM to develop an additional certification program for aerobic fitness leaders.⁷⁶ This certification program stresses basic exercise physiology, kinesiology, exercise principles, emergency care and floor leadership.⁷⁷

B. IDEA Certification

The IDEA certification exam is administered by an independent testing service and will be offered three times during 1990.⁷⁸ The test covers a wide range of subject matter⁷⁹ and certification must be renewed every two years.⁸⁰ The IDEA certification examination program contains no practical component. This didactic and non-practical orientation of the IDEA exam is a serious shortcoming of the IDEA certification process, a shortcoming that is also reflected in the non-practical orientation of the IDEA guidelines.

74. See *supra* section II.

75. In order to be certified as a Health Fitness Instructor a candidate was required to have a bachelors degree in an allied health field. The program consisted of a four-day workshop followed by an examination. See Golding, *Standards of Competency for Dance Exercise Instructors*, 1 EXERCISE STANDARDS MALPRACTICE REP. 37, 40 (1987); see also AMERICAN COLLEGE OF SPORTS MEDICINE, GUIDELINES FOR EXERCISE TESTING AND PRESCRIPTION 113 (3d ed. 1986).

76. AMERICAN COLLEGE OF SPORTS MEDICINE, *supra* note 38, at 113.

77. The ACSM certification process entails a three-day workshop as well as a one-day examination. The examination contains, in addition to the written component, a four-section practical exam covering practical leadership, exercise specificity, contraindicated exercise and exercise for special populations. Candidates for ACSM certification must possess certification from IDEA, AFAA or other equivalent organizations before they will be allowed to sit for the examination. Golding, *Standards of Competency for Dance Exercise Instructors*, 1 EXERCISE STANDARDS MALPRACTICE REP. 37, 41 (1987).

78. Two additional tests will be offered in 1990 in conjunction with IDEA conferences. See IDEA FOUNDATION, CERTIFICATION EXAM: 1990 TEST DATES AND SITES.

79. The IDEA certification exam consists of three main components: 1) Core Knowledge: exercise physiology, basic anatomy and kinesiology, and exercise programing skills; 2) Operational and Administrative Skills: emergency training, health screening and legal issues; and 3) Nutrition and Weight Control: basic nutrition, nutrition and exercise, and weight loss and weight control. In addition, it is suggested that the applicant have completed at least 25 hours of supervised course work in related fields. IDEA FOUNDATION, CERTIFICATION EXAM, INFORMATION AND APPLICATION 4 (1989).

80. Recertification requires at least 15 hours of continuing education over a two year period. *Id.*

C. AFAA Certification

The AFAA certification exam⁸¹, unlike the IDEA exam, contains a written as well as a practical component. The practical emphasis of the AFAA exam appears to be a reflection of the practical orientation of AFAA's *Standards and Guidelines*.⁸² The written portion of the examination tests the candidate's understanding of the *Standards and Guidelines* at a Junior College comprehension level.⁸³ At present, the exam is offered several times a month throughout the United States and abroad.

D. Certification of Instructors: Conclusions

The voluminous number of certification programs that had dotted the fitness landscape only a few years ago appears to have diminished. The void has been filled by fewer, albeit more respected, national certification programs, several of which were discussed above. Some commentators question the effectiveness of even these programs, given their relatively short workshop and training periods.⁸⁴ While not completely disagreeing with that argument, it is important to note that the almost explosive consumer demand in recent years makes it a practical impossibility to demand college training of all aerobic fitness leaders. However, it appears clear from the standpoint of legal liability that there can be no exception from full national certification of all aerobic fitness leaders. Certification programs provide, at least, presumptive evidence of the competency of the instructor.⁸⁵ The consumer has the right to demand that his or her instructor has the basic level of knowledge necessary to instruct safely.⁸⁶ Indeed, certification programs will undoubtedly become the standard of practice for consumer fitness programs in the years to come.⁸⁷

IV. LEGISLATION

Although there have been many threats by state legislatures to pass

81. The criteria for AFAA certification are as follows:

- 1) Individuals must demonstrate knowledge of:
 - a. Anatomy and exercise physiology;
 - b. Cardiovascular/medical considerations of aerobic exercise;
 - c. Injury prevention;
 - d. Correct exercise execution and instruction;
 - e. Appropriate class format and instruction technique;
 - f. Sports nutrition; and
- 2) Hold current CPR Certification

West, *Certification*, in *AEROBICS THEORY & PRACTICE* (P. Cooper ed. 1988).

82. See *supra* notes 52, 53 and accompanying text.

83. Angsten, *An Overview of the Standards of Practice for Dance Exercise and Aerobics, Part Two: The Use of Expert Witnesses and Standards of Practice in Court*, 1 *EXERCISE STANDARDS MALPRACTICE REP. LAW. ED.* 36, 37 (1987).

84. Rabinoff, *An Examination of Four Recent Cases Against Fitness Instructors*, 2 *EXERCISE STANDARDS MALPRACTICE REP.* 43, 44 (1988).

85. Golding, *Standards of Competency for Dance Exercise Instructors*, 1 *EXERCISE STANDARDS MALPRACTICE REP.* 37, 41 (1987).

86. *Id.*

87. *Id.*

laws that would regulate the licensing of exercise professionals,⁸⁸ there have been few⁸⁹ actual legislative proposals,⁹⁰ and only one to date has been passed into law.⁹¹

In 1986 Senate Bill No. 64 was introduced in the California Senate by Senator Arthur Torres.⁹² Senate Bill No. 64 was not well received by the fitness community. The American College of Sports Medicine felt that the bill would have a "negative impact on the competence of individuals teaching fitness."⁹³ The California proposal never became law.

In 1987 Senate Bill 290 was introduced into the Wisconsin Senate by Senator Lee and others.⁹⁴ Later that year the Wisconsin legislature enacted the law⁹⁵ which went into effect on May 3, 1988.⁹⁶ The new law⁹⁷ requires that only one employee of a fitness center have satisfactorily completed courses in basic first aid and basic cardiopulmonary

88. Cinque, *Aerobic Instructor Certification: Standards at Last?*, 14 PHYSICIAN SPORTSMED. 171 (1986).

89. Three other states: Pennsylvania, Minnesota and New York introduced bills similar to the Wisconsin legislation in the later part of 1989. As of the writing of this article, none of these proposals had been passed into law.

90. See generally *Legislative Proposals for Licensing Exercise Professionals*, 1 EXERCISE STANDARDS AND MALPRACTICE REP. 91 (1987).

91. WIS. STAT. ANN. § 134.705 (West 1989).

92. The law, as it was proposed, would have required fitness instructors to be certified and would not allow those who were not certified to use the title "fitness instructor." The proposed law would require course instruction and certification testing in the following subject areas:

1. Basic exercise physiology;
2. Basic anatomy;
3. Basic kinesiology;
4. Dance exercise teaching and leadership skills;
5. Dance exercise injuries and prevention techniques;
6. Professional and legal responsibilities;
7. First aid;
8. Instruction in basic cardiopulmonary resuscitation; and
9. Basic nutrition.

Legislative Proposals for Licensing Exercise Professionals, 1 EXERCISE STANDARDS AND MALPRACTICE REP. 91 (1987).

93. *Id.* at 91 (citing a letter to California State Senators Arthur Torres and Joseph Montoya from John R. Sutton, M.D., President, Peter B. Raven, Ph.D., President Elect, and John A. Miller, Executive Director, ACSM).

94. *Legislative Proposals for Regulating Exercise Professionals*, 2 EXERCISE STANDARDS AND MALPRACTICE REP. 9 (1988).

95. 1987 Act 385.

96. *New Legislation: Legislative Proposal for Regulating Exercise Professional Becomes Law*, 3 EXERCISE STANDARDS MALPRACTICE REP. 13 (1989).

97. Section 134.705 Fitness center staff requirements:

(2) A fitness center shall do any of the following:

(a) At all times during which the fitness center is open and its facilities and services are available for use, have at least one employe [sic] present on the premises of the fitness center who has satisfactorily completed a course or courses in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(b) Ensure that each of its employes, [sic] within 90 days after hire, satisfactorily completes at least one course in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by this department.

(4) A fitness center shall post a notice or notices on its premises stating the requirements of sub. (2) and the penalty for the violation of sub. (2) under s.

resuscitation.⁹⁸

The law, as it was passed, is a somewhat diluted version of the legislation originally proposed. In its original form, the law required at least one employee to successfully complete a minimum of three hours of college level instruction in exercise physiology.⁹⁹ In its present form, the law contains no provision regulating the level of fitness training that an instructor must have.¹⁰⁰

Some commentators have noted that this new law "may represent a first step towards state regulation of fitness center employees"¹⁰¹ and that state regulation of the industry is desirable.¹⁰² However, it appears clear that this law falls short of being effective and indeed may hamper efforts to improve instructor competence.¹⁰³

The new law is clearly insufficient to provide the assurance that a fitness instructor will have the qualifications necessary to properly instruct an aerobic fitness class.¹⁰⁴ The only substantive requirement of the law with respect to an instructor's qualifications is that "at least one employee present . . . has satisfactorily completed a course or courses in basic first aid and cardiopulmonary resuscitation."¹⁰⁵ Hence, the law contains no requirement that the instructor have any understanding of exercise physiology, kinesiology, nutrition or weight control.¹⁰⁶

134.70(15)(a). The notice shall comply with the rules promulgated by the department under sub. (5)(d).

(5) The department shall promulgate rules establishing all of the following:

(a) The minimum standards for the qualifications and training of an individual, including an individual associated with an organization or institution of higher education, who teaches basic first aid or basic cardiopulmonary resuscitation to fitness center employees [sic] under sub. (2).

(b) The minimum hours of instruction and general content of the basic first aid and basic cardiopulmonary resuscitation courses taught to fitness center employees under sub. (2).

(c) Procedures governing the department's approval of individuals, organizations and institutions meeting the standards established under paras. (a) and (b).

(d) Specifications for the notice required under sub. (4) including:

1. Dimensions.

2. Print size or type.

3. The location or locations where the notice must be posted on the fitness center premises.

(7) A violation of sub. (2) or (4) is subject to s. 134.70(15)(a). This subsection or s. 134.70(15)(a) does not preclude a person injured as a result of a violation of this section from pursuing and other available equitable or legal relief.

98. WIS. STAT. § 134.705 (2)(a) (1987).

99. *Supra* note 96, at 14.

100. *See supra* note 97.

101. *Legislative Proposal For Regulating Exercise Professionals Becomes Law*, 3 EXERCISE STANDARDS MALPRACTICE REP. 13, 14 (1989).

102. *Id.*

103. Interview with Marc. A. Rabinoff, Ed.D., Chairman & Professor, Physical Education & Recreation Department, Metropolitan State College, Denver, Colorado, in Denver (Dec. 12, 1989).

104. *Id.*

105. WIS. STAT. ANN. § 134.705 (2)(a) (1987).

106. These subjects are treated in detail in L. GOLDING, *Y'S WAY TO PHYSICAL FITNESS* ch. 3 (1989); *AEROBICS THEORY AND PRACTICE* part A (Cooper ed. 1988); *AEROBIC DANCE-EXERCISE INSTRUCTORS MANUAL* part I (Gelder ed. 1987); *GUIDELINES FOR EXERCISE TESTING AND PRESCRIPTION* ch. 9 (3d ed. 1986).

In the event injuries occur at a fitness center that does not comply with the provisions of the statute, it may be claimed, depending on the jurisdiction, that the acts or omissions of the center are negligence *per se*.¹⁰⁷ However, the statute does nothing to address the more serious concern of the fitness industry, that of instructor qualifications.

Indeed, the real fear of such legislation is that a fitness center may follow the law to the letter, providing one employee who is CPR trained, but have fitness classes taught by untrained and inexperienced personnel. When an injury occurs, the fitness center may attempt to raise the defense that it followed the statute and should not be held accountable to any industry standard.

In reality, such fear may not be so well founded. While it is true that compliance with the statute may be evidence of due care, it may not necessarily preclude a finding that the fitness center was not negligent in failing to also meet the industry standard.¹⁰⁸ Whether such a defense will be a successful bar to legal claims, at least in Wisconsin, will depend for the most part upon future judicial interpretation of section 134.705 by the Wisconsin courts.¹⁰⁹

It appears clear that even with a statute similar to Wisconsin's, the courts will look to the accepted industry standard of practice when assessing an instructor's conduct or a program format. Hence, efforts to assure better instructor qualifications as well as a safer, more effective fitness experience should come from a cohesive effort on the part of the industry, and not from legislative intervention.

V. CONCLUSION

A little more than five years ago, the aerobic fitness industry had little in the way of industry standards or guidelines. Today, a few organizations have emerged as leaders in the promulgation of industry standards and continue the thrust towards comprehensive standards of practice. These organizations also offer comprehensive certification programs for aerobic fitness instructors through workshops and examinations nationwide.

At present, there have been no published appellate court decisions defining to what standard aerobic fitness instructors will be held. Hence, the fitness professional as well as the trial lawyer needs to be aware of the standards promulgated by the industry and understand their application. Therefore, in light of the various standards of practice in the aerobic fitness industry, it will be interesting to see what standard

107. See *New Legislation, Legislative Proposal for Regulating Exercise Professionals Becomes Law*, 1 EXERCISE STANDARDS MALPRACTICE REP. 13, 14 (1989); see also *Martin v. Herzog*, 126 N.E. 814 (1920); PROSSER AND KEETON ON TORTS 229 (5th ed. 1984); RESTATEMENT (SECOND) OF TORTS § 288B (1977).

108. See *Stone v. Sterling Drug, Inc.*, 490 N.Y.S.2d 468 (A.D. 3 Dept. 1985); PROSSER AND KEETON ON TORTS 233 (5th ed. 1984); RESTATEMENT (SECOND) OF TORTS § 288C (1977).

109. As of the writing of this article there have been no published opinions by the Wisconsin courts construing the provisions of § 134.705.

courts will apply when faced with litigation. These standards and guidelines provide at least a basic description of what the industry views as acceptable practice. In the event of injury to a participant in an aerobic fitness program, these standards serve as a guideline by which courts may judge the conduct of the instructor as well as the content of the program.

However, these standards, as they exist today, are only one step in an evolving process. In the future, the industry must move towards a single cohesive standard of practice, recognized on a national level, if the public is to be assured of a uniform quality level of training for all instructors. In addition, the industry standards must define specific instructor performance and not simply state required minimum levels of subjective knowledge.

Today, it is essential that all aerobic fitness instructors possess certification from a nationally recognized organization. However, the current certification process needs to be geared more towards a practical application of skills in an hands-on environment if the unknowing, exercising public is to be assured of safe and effective exercise programs.

State legislation regulating fitness center personnel has been proposed in a few states and enacted into law in one. While such regulation of the aerobic fitness industry is the product of genuine concern for the health and safety of fitness program participants, it is not the most effective way to address the problem. In the rapidly evolving aerobic fitness industry, effective regulation can only come from the adoption of national uniform standards of practice by the industry.

