

THE LEGAL ASPECTS

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Medical Emergency Procedures: Minimize Your Liability

It is essential that all health/fitness facilities have a written emergency action plan (EAP). Various professional organizations have published standards, guidelines, and position papers that specify procedures that should be included in a facility's written EAP(1-3). These published statements often include steps that staff members should take at the time of a medical emergency (*e.g.*, specific actions the first responder, crowd control, and communications staff members should take) and immediately after a medical emergency (*e.g.*, completion of an incident report form). Including these procedures into the written EAP and then training the staff on how to properly carry them out can help minimize liability. However, additional procedures exist that are often not included in published statements but can be just as important to help minimize liability. This column presents eight procedures that should be considered for inclusion in written EAPs and explains the legal protection they each provide.

Procedure 1

During all hours of operation, health/fitness facilities need to have a manager-on-duty (MOD) who has the overall responsibility to carry out the EAP properly in the event of a medical emergency. Once upon the scene, the MOD should make certain that all staff members (*e.g.*, first responder, communications, and crowd control) are performing their jobs properly, assist where necessary, and direct the overall situation. In addition, the MOD should make

sure that what is communicated to the injured party is appropriate such as:

1. Express sympathy, but do not admit to any fault. Do not say "It is all our fault."
2. Do not make any promises. Do not say "Our insurance will pay for everything."

What is said to an injured party is important because he/she may rely

upon any statements and/or promises made at the time of the medical emergency and include them in his/her claim or lawsuit, which may increase liability for the health/fitness facility.

Procedure 2

The MOD should gather information from the injured party, for example, ask him/her to describe: (a) *what*—facts describing his/her injury and



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pain, (b) *how*—facts describing the mechanics of the injury, (c) *why*—facts describing possible reasons for the injury, (d) *when*—the exact time of the injury, and (e) *where*—the specific location of the injury (4).

All statements made by the injured party should then be included in the incident report form. These statements may be useful because any admissions from the injured party can be used as evidence that may protect the health/fitness facility in later litigation. If the injured party is unconscious, it will not be possible to interview him/her, and the MOD will only be able to rely upon witnesses to help record the what, how, why, when, and where. Also, in the case of a serious medical emergency, the MOD or another designated staff member should immediately inform the injured party's "emergency contact" individual. This emergency contact information should be obtained and filed when a new member joins the facility.

Procedure 3

After interviewing the injured party and recording his/her statements, the MOD needs to gather the same type of information from any participants and staff members who were witnesses and all staff members involved in carrying out the EAP. In addition to asking them to describe the what, how, why, when, and where, the MOD should ask witnesses if they noticed any unusual behaviors of the injured party before the injury or at the time of the injury, for example, misusing the equipment, over training, and acting in a strange manner. It is important to obtain the name and contact information of each witness who was interviewed, in case, they will be called upon to be a fact witness in a subsequent claim or lawsuit. The facts obtained by witnesses may decrease liability on

part of the health/fitness facility, especially if the facts show that the injured party contributed to his/her own injury.

Procedure 4

Next, the MOD should take photographs of any conditions present where the injury occurred, for example, wet or dry surfaces, signage that is posted, and any exercise equipment associated with the injury. If the injury involved a piece of exercise equipment, gathering evidence is especially important because the evidence may show that the injury was because of a product defect in which the manufacturer would be liable, not the health/fitness facility. In addition, plaintiffs involved in an equipment injury often sue the health/fitness facility for negligence claims such as the failure to appropriately assemble and/or maintain the equipment. Therefore, evidence such as photos showing that the equipment was in proper working order along with well-documented maintenance records can provide a good defense for the facility in the event of a negligence claim or lawsuit. The MOD should also record the type of machine, name of the manufacturer, and serial number of the equipment involved (4).

Any equipment associated with an injury should be promptly removed from use until inspected and, in the case of equipment failure, repaired and serviced. Any parts that are replaced should be retained because they could provide evidence that the injury was possibly because of a product defect or provide evidence that could dismiss any claims of negligence on part of the health/fitness facility. In *Flores v. 24 Hour Fitness* (5), the defendant health club either lost or discarded a cable that broke on a machine that the plaintiff was using when he was injured. The plaintiff claimed that the defendant's

inability to produce the cable constituted spoilage of evidence, alleging that 24 Hour Fitness was negligent because it failed to assemble the cable properly. If 24 Hour Fitness would have retained the broken cable, they perhaps could have refuted the plaintiff's claim that they were negligent when assembling the cable.

Procedure 5

The EAP should include a thorough, well-developed incident report form. Many examples can be found by searching terms on the internet, such as accident, incident, or injury report form. Managers/owners of health/fitness facilities should work closely with their legal and insurance experts in the development of their report form so that the information included will provide the best defense possible in the event of a claim or lawsuit against the facility. The MOD should carefully type the report, making sure that all information included in the report is accurate and all evidence (*e.g.*, statements made by the injured party, witnesses, and photographs) is included with the report form. The MOD should then sign the report form and submit it to the facility's manager/owner for his/her review, approval, and signature (4). The report form should then be submitted in a timely fashion (*e.g.*, within 24 hours) to the facility's legal counsel and insurance agent/broker, with a copy kept at the health/fitness facility in a secure location. It also is recommended to state on the report form "privileged and confidential" (6) which legal counsel can later argue that the information provided is subject to attorney-client privilege and therefore cannot be disclosed to third parties.

Procedure 6

Although protocols regarding all types of communication should be

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addressed in the written EAP, it will be important for the manager/owner to remind staff members of these protocols immediately after a medical emergency, for example, what to say in response to any questions/comments from participants, the injured party, the injured party's legal/insurance representatives, or the media. The manager/owner also should inform any of the participants who were witnesses of the same. It is probably best that staff members and witnesses do not answer questions (or make comments) regarding the incident and refer those who are inquiring about the injury to one designated person, for example, the manager/owner. A response such as "the incident is being handled by experienced experts" may be enough when asked to comment or answer questions, along with a referral to the designated person. This will help prevent any inappropriate or inaccurate information that may be communicated that can later be used against the health/fitness facility.

Procedure 7

Later, on the same day or day after the incident, either the MOD or manager/owner should contact the injured party or in the case of a serious medical emergency, the injured party's emergency contact. The purpose of this contact is to show concern for the injured party and to obtain a status report of his/her condition and recovery. Again, nothing should be stated regarding fault or insurance. Any information obtained can then be included with the incident report form.

Procedure 8

After the above procedures have been carried out, the MOD along with

the manager/owner should carefully evaluate all procedures involving the incident. The following questions should be asked: (a) was the facility's EAP carried out properly, for example, did all staff members perform their duties appropriately, (b) was the incident report form filled out accurately and completely, (c) was this incident preventable, and (d) are any changes needed with the written EAP or EAP staff training program? The answers to these questions will determine any steps the manager/owner and professional staff members may need to take. For example, if an injury could have been prevented (e.g., a slip and fall on a wet surface that could have been prevented through appropriate floor coverings), it will be critical that steps are taken to prevent this type of injury from occurring in the future. If the appropriate steps are not taken, it could result in a *gross* negligence claim or lawsuit against the facility if a similar injury occurs in the future.

Conclusions

The above procedures are not often addressed in published statements involving emergency procedures (1–3), but are essential to help minimize legal liability when a medical emergency occurs. Health/fitness professionals along with their managers/owners should consider these procedures when preparing their written EAPs and EAP staff training programs. Training of all MODs is especially important. Following these procedures will significantly strengthen a facility's defense in the event of a claim or lawsuit, and they should be followed no matter what type of medical emergency has occurred, minor or major.

This column provides general legal information and is not intended to substitute for individualized legal advice.



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