

R I S K
Management [BY DOYCE J. COTTEN]

Preventing Increased Liability

TWO KINDS OF communication from staff have the potential for causing liability problems. First is such oral communication as a staff member telling a group of clients, "That machine is an accident waiting to happen," or "That piece of equipment is a death trap." Or, following an injury to a client, a staff member tells that client, "I warned management that this was going to happen," or "You are the third person to be injured on this machine this month."

The second type of communication that can cause liability problems involves written memos or reports sent to management. A memo may state that allowing a particular activity is "dangerous and negligent." Or the employee sends management a memo stating that the fitness center is negligent in failing to meet industry standards regarding a particular activity or piece of equipment. Do such comments and reports increase the fitness center's liability? The answer, of course, is yes. Thoughtless or casual comments by an employee, even if opinion or based on inaccurate information, can encourage lawsuits and provide ammunition that can be used in court. Memos or reports can be used against the facility in court as evidence of negligence.

Prior preparation can prevent many such statements. The best way to handle potentially damaging comments, whether oral or written, is to establish policies for the proper way an employee may report concerns to management. Educate employees regarding the negative ramifications that can result from casual comments, and foster an atmosphere in which employee input is valued.

Communicate with employees

Make sure that all employees understand that 1) if they have concerns about equipment or procedures, they need to discuss them with management; 2) statements made to clients can result in client dissatisfaction, loss of clientele and possible litigation for the facility; and 3) such communication does not help to solve the problem. In addition, in the event of an accident, fitness center policy should specify that all communication regarding the incident is to come through one designated individual. All contacts (e.g., the press, clients, attorneys) should be referred to the designated spokesperson. Staff members who cannot abide by or understand the need for these policies are a liability to the facility, and need to be replaced.

But what should management do when such negative statements have been made or memos received? When oral statements are reported, it is important to discuss the allegation with clients, and give

them the facts. The employee should be forcefully reminded of club policy on the proper way to handle concerns.

Regarding written memos or reports, don't ignore any statement or charge. Even if the charge is baseless, it is important to take action.

The memo must not be discarded, but should go into your records. Be sure to also include authoritative evidence and materials countering the charge. Management should consult with the staff member who wrote the memo. It may be that the staff member was using terms like "negligent" too casually, and did not really understand the term and its implications. Or it may be that the staff member's understanding of industry standards are mistaken. It is vital that the issue be resolved.

Guidelines

The following are some guidelines to follow to head off litigation at the pass:

Encourage staff members to report their concerns to management.

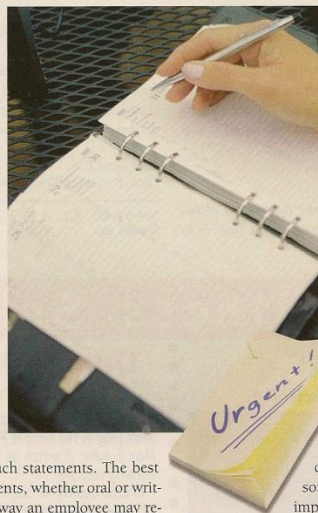
- If the concern is a valid one, take immediate action to correct the situation, and thank the employee for coming to you with their concern.
- If the concern is not valid or the needed action is impossible at the time, discuss it with the employee, explaining your reasoning and why you feel action is not needed or is impossible. Even if the employee is not convinced, they at least understand why action was not taken.

Thank the employee for coming to you with their concern.

Train your staff to communicate objectively and effectively.

- Stress that reports should state facts, not inflammatory characterizations.
- Train staff on how to react and what to say in the event of accidents.
- Train staff on how to complete an accident report honestly, factually and objectively.

When your staff informs you of valid concerns, act immediately. Failure to immediately correct hazards has two results: 1) the hazard remains, and 2) the staff member gets the message that safety and reporting hazards or concerns is not important. **FM**



*Dr. Doyce J. Cotten, professor emeritus of sport management at Georgia Southern University, is co-author of **Waivers & Releases of Liability** (4th ed.). This new edition is available from the author at djcotten@gmail.com or 912 764-4848. He is also the co-author of **Law for Recreation and Sport Managers** (3rd ed.) and owns **Sport Risk Consulting**.*