

The Dark Side of Sports

Working Out During Class

Coaches and PE instructors must focus on doing their job when they are on the job

QUESTION: In the weightroom I am a coach who practices what he preaches. I don't believe in prescribing anything to my athletes that I can't do myself, so during class time I often work out with my athletes. I think this is something all coaches should do, as it really motivates my students, especially when they try to beat the old man. However, one of my fellow teachers says that from a liability standpoint this "may not be wise." Is there really a problem here?

ANSWER: Is what you're doing wise? No.

As soon as you do your own workout, supervision goes down the drain. You cannot supervise your class while concentrating on your own workout – it's like being in two places at the same time. It can't be done.

Regarding the issue of modeling technique for your students, that would be fine if you're

demonstrating while your students or athletes have stopped working out to watch you and therefore are not training. In fact, it often has a powerful impact when a PE instructor or coach can perform exercises or sport skills with perfect technique. You're a role model. But once you start doing your own workout in a gym, then you have a supervision issue that is nondefensible in a court of law. Why? Because you are

working out and not supervising.

You might argue that you did your own workout between the sets of your students that you were supervising, but it doesn't matter – it's irrelevant. You are not being paid as a professional physical educator or coach or trainer – whatever term you want to use – to work out. You're being paid to supervise, train and instruct students or athletes. And if you think that whatever

happens in class is an accident for which you have no responsibility, you'd better think again.

It's called the "stand-alone defense." If you are working out during a class that you were supposed to be teaching, then you are not doing your job – consequently, you are in violation of your contract with the school. In effect the school administration is saying, "We're going to defend ourselves on what we do, but we're not defending you." Let me give you an example.



BFS Clinician Rick Bojak (far left) supervising proper lifting and spotting technique at a BFS clinic.

Let's say a student sues both the school and you for negligence because he or she was hurt during a class and you were working out at the time. The school can say that you were in violation of your contract and therefore are not covered by their school insurance policy – you will therefore have to pay your own legal fees and settle all court decisions out of your own pocket.

Now what happens if a kid is spotting you and you get hurt? Well, if it's in the act of you demonstrating an exercise to the class and no one was working out, then it's simply an accident. Let's say that you were demonstrating a bench press in your high school freshman weight training class and you missed the lift and injured a rotator cuff muscle because your spotter wasn't paying attention. Could you sue the school or the 15-year-old who was spotting you? Sure – you can pretty much sue anybody for just about anything at any time. Will any attorney take your case? I doubt it.

Beyond the Gym

It's important to understand that the legal problems of working out while you are teaching or supervising extend beyond the weightroom. The liability issues apply to all sports. I learned that a long, long time ago when I was student teaching swimming back in 1969 at the age of 21.

One of the first things my supervising teacher told me back then was “No matter what you do, Marc, do not go into the water during class.” When I asked him why, he said, “As soon as you dive into the water, you've lost control of your class. And if one kid turns around and punches out another one while you're underwater, we're done.” He told me that in 1969; and since then, no matter what classes I've ever taught, I make certain to never lose

contact with my class.

Going beyond theory, I'm currently consulting on a case in which a PE instructor was teaching a condition-

didn't watch it, he wasn't right there, and he didn't see it. And that's how the instructor testified in his deposition. When asked where he was when this



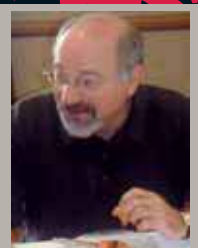
There is a time to coach and a time to train. Here is Dr. Marc Rabinoff (far right) with fellow weight training instructor Glenn Morris (far left) supervising assisted pull-ups in a weight training class at Metro State College in Denver, Colorado.

ing class, and part of the class time was spent running around an indoor track. The teacher decided to run with the class in the back of the group, running slowly because he was trying to rehab a recent injury. During the class, in the front of the group, a heavysset kid picked up a smaller kid, smashed him to the ground, breaking the smaller kid's elbows, wrists and jaw. The teacher didn't have any idea what was going on since he was so far in back. He

incident occurred, he said he was in the back of the pack working out!

Finally, you need to realize that whatever rules apply to you as a PE instructor or coach, they also apply to your student teachers, interns and older athletes who are helping you teach the class. During a class in which they are supposed to be coaching or supervising is not the time for them to be working out. They need to do their job, as do you. Period. **BFS**

(The “Dark Side of Sports” is a question-and-answer feature by Dr. Marc Rabinoff that answers questions about safety and liability based upon actual litigations. The questions are based on questions BFS clinicians have heard through their seminars, e-mails and phone conversations with coaches and parents.)



The Dark Side of Sports: Playing Doctor

If you think you're qualified to rehab an old neck injury, better think again



There are safe ways to train the muscles of the neck, but athletes who have injured their neck must consult with the appropriate healthcare professionals before exercising this area.

Question:

I am coaching a football player who transferred from another school and who suffered a stress fracture in his neck a year ago. I told him he would not be allowed to play or lift until he brought in his medical records so I could read them, which he did. He is in no pain now, so I have him using our neck machine and I have a training partner apply manual resistance for rotation; I also manually stretch his neck muscles at least twice a week. I had the boy's parents sign a waiver and assumption-of-risk form. Have I covered all my bases from a legal standpoint?

Answer:

First, there are federal laws that protect an individual's right to keep their medical records private (from HIPAA, the Health Insurance Portability and Accountability Act). If the parents of this athlete agree to show you their child's medical records, that may be one exception (unless the athlete is older than 18, in which case the athlete would have to give his or her consent), but you cannot coerce your athlete to bring you his medical records. Just this one mistake alone could be grounds for a lawsuit against you and your school, and administrators could risk losing their jobs from violating the law in such a manner.

Even if you did have access to medical records, how is it that you are qualified to interpret them? Do you have a medical degree? I have testified in many cases in which coaches and personal trainers were extremely embarrassed when opposing counsel confronted them with this very question. For example, if you read a notation in some medical records that an athlete had spondylolisthesis, would you be able to understand the different ratings and types of this condition: grade 1 vs. grade 2, anterior vs. posterior? Or if you read where the athlete had scoliosis, would you be able to explain to a jury the difference between thoracic curve scoliosis and lumbar curve scoliosis?

If you do not have a medical degree and specific training in head and neck injuries, then you should not be reading medical reports. And whatever treatment you've been

administrating, either by yourself or through an assistant or training partner, you need to stop doing it immediately!

Next, you have the right idea about getting an assumption-of-risk form signed, but waivers are another manner. As a US citizen you cannot waive your right to sue, even if it states that you are doing so in the waiver. I have testified in nearly 300 lawsuits, and every one of them had waivers; so what does that tell you? It can't hurt to have a signed waiver, and many health clubs will use them because their customers don't know any better; but most likely it's not going to provide you any legal protection.

Now let's look at what you should have done.

Ducks in a Row

When your athlete first transferred to your school, you were put on notice that you would be working with an athlete who had had a serious injury. The first thing you and the school's athletic trainer, if one is available, need to do is get a letter from that athlete's doctor that explains what exactly the injury was, what the mechanism was that caused it, what the prognosis is and what the healthcare providers recommend for dealing with it. One conclusion might be, unfortunately, that this athlete may not be allowed to play football due to his pre-existing condition.

Ideally, what you want to have is some form of documentation from a medical expert that the injury in question has been sufficiently rehabbed. Otherwise, if you start training this athlete, then your actions fall into the category of performing rehab. Let me explain.

There is a difference between preparing an athlete for a sport and rehabilitating a body part that has been damaged. They are two different training regimens, and each requires different types of expertise. After all, how many physical therapists do you know who can properly demonstrate a power clean, and how many coaches do you know who can administer an ultrasound treatment? Bottom line: unless you are certified or licensed to do rehab, then you should not be prescribing neck exercises for this athlete.

Let me give you an example of how adopting your approach can go bad – really bad. There is a case currently pending in the Michigan courts against a major health club. One of their personal trainers, a woman who had completed a considerable amount of coursework to become a chiropractor, but had never been licensed, was performing intense neck stretching exercises on a middle-aged gentleman. The intensity of the stretching was such that the client, a surgeon, allegedly suffered a stroke as a result of a severed carotid artery

and will never be able again to practice his profession. Further, when this gentleman gave his video deposition, he had trouble remembering his own name, much less where he earned his medical degree.

Now you may be thinking that I'm recommending banning neck machines – certainly not. The neck muscles should be trained, especially for contact sports such as football; but there are more appropriate ways to do it. With a four-way neck machine, for example, the person performing the exercise has precise control of how much resistance is being used and how much force they wish to apply. With manual resistance and passive stretching, the individual being worked on does not have control of how much force is applied; these are determined by the person doing the exercises.

Intensive manual stretching and strengthening is a skill; and even if you can perform it correctly, that doesn't necessarily mean that you can properly teach your athletes to perform these exercises on each other. Would you want your 14-year-old son to have his neck stretched by a 13-year-old?

I've found in my 30 years of teaching weight training classes that if you properly strengthen the muscles of the shoulder girdle, then your neck strength will be fine. A colleague of mine had never performed any weight training exercises for the neck but competed in Olympic lifting. When he was in his 30s he got to try the sophisticated neck extension machine produced by MedX, an amazing device that costs close to six figures; the person who administered the test said that he had far exceeded anyone else they had ever tested on that machine in his clinic.

Therefore, if you have exercises such as power cleans in your program, and jerks or overhead presses as well, then you might be providing your football players with adequate conditioning for the neck muscles. But it still would be a good idea, in my professional opinion, to include a few specific exercises for the neck muscles performed on a neck machine.

Although your intentions are good, you cannot afford to be ignorant of the proper way to deal with an athlete with a pre-existing injury. More importantly, knowing how to properly handle such a situation is in the best interests of the athlete's safety. **BFS**



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THE DARK SIDE OF SPORTS:

Liability IN SUPERVISION

Need-to-know facts and sound advice to help weight training supervisors avoid lawsuits

BY DR. MARC RABINOFF



Dr. Rabinoff's colleague Glenn A. Morris, an adjunct professor of strength training at Metropolitan State College of Denver, makes certain Kendra Lindel understands what is expected of her in his weight training class.

Lawsuits against weight training instructors happen all the time. That's a fact. It's also a fact that 80 percent of the litigations against weight training instructors involve injuries caused by inappropriate supervision. In other words, if you're involved in a lawsuit, there is an 8 out of 10 chance that the plaintiff attorney will claim that you – or your staff, if you're an administrator – were not supervising the weightroom properly at the time their client was injured. Do I have your attention?

From a legal perspective, there are basically two types of supervision: *specific supervision* and *general supervision*. Specific supervision means that you are working one-to-one with an individual; in other words, you might be spotting a bench press. General supervision is done by a person who is in charge of an entire facility. It doesn't matter if you have a 500-square-foot weightroom or a 15,000-square-foot weightroom – the same concepts of standard of care apply in regard to supervision.

The Legal Lingo

To understand your own liability as a weight training instructor, you first have to understand some basic legal definitions. One of these is *tort*, which refers to a civil wrong. If an athlete is injured in a weightroom, a tort represents the laws that would govern any litigation against you.

Another important term is *duty*, which refers to the special relationship between you and the person who was injured. If you are teaching a weight training class in a high school, for example, you have established a duty to be responsible for everyone who uses your weightroom – whether you are instructing them or not.

In addition to proving that there was a duty, in litigation the plaintiff attorney must also prove that there was a *breach*

of duty – in other words, that it was the weight training instructor’s responsibility to properly instruct the plaintiff and that the instructor failed to do his or her job properly; and as a result of the instructor falling below the standards of the profession, *damages*, such as an injury, occurred.

In the area of professional standards, also known as *standard of care*, there are three basic accusations that a plaintiff attorney will make. They are as follows:

YOU ARE QUALIFIED TO DO SOMETHING AND YOU DID IT WRONG. You made a mistake. For example, you lost your concentration and did not spot a bench press properly, and the result was an injury to the individual performing the exercise.

YOU DIDN’T DO SOMETHING THAT YOU WERE QUALIFIED TO DO AND WERE SUPPOSED TO DO. For example, if you are trained in CPR and somebody is having a problem in your weightroom who requires CPR and you don’t administer it, you could be held responsible – especially if being CPR certified is a criterion for you to hold that job.

YOU DID SOMETHING THAT YOU’RE NOT QUALIFIED TO DO. You went beyond your area of expertise. For example, if an athlete gets hurt in the weightroom and you decide to set a broken bone, well, unless you have a medical degree, you’re probably going to be in big trouble when you try to put that bone back in place. And this is why I stress the importance of all weight training instructors acquiring a certification specific to this field. If you can’t justify your academic and professional practical background before you walk into a weightroom to coach trainees, don’t walk into that weightroom!

Who’s Getting Sued?

One question I’m often asked when I lecture on the topic of weightroom supervision is “Why are coaches being sued?” And the answer I give them is that in about 90 percent of the lawsuits I’ve seen, the primary cause of the litigation was poor instruction. Did the coach teach that athlete how to squat properly? Did he follow appropriate warm-up protocols? Another, which is becoming increasingly common, is “Did the coach use the proper progression for that activity?” Let me explain this last question with an example.

Plyometrics can be an effective method to train athletes to become more explosive. Coaches are always looking for that “edge,” and much of the material written about plyometrics promises that this type of training will give an athlete that edge. Fine. But it would be very foolish to direct an athlete who has a low strength level and has never performed box jumping before to perform

depth jumps off a 24-inch box. Maybe that exercise would be appropriate for an NFL receiver who has performed plyometrics throughout his high school and college career, but not for a middle school athlete with no experience in this type of training. And the same goes with having a student-athlete who has never been in a weightroom attempt a maximum single in the deadlift on the first training session.

This brings up another topic in the area of supervision: *failure to warn*. What this means, or more specifically what the courts are telling us, is that “We as strength coaches and weight training supervisors must tell the truth about the risks involved in participating in a specific activity.” While it may be unlikely that an athlete can get killed performing a biceps curl, it is certainly possible to die or suffer permanent disability performing a bench press. And I realize that it’s tough for a coach to tell a group of young athletes and their parents that participating in sports or physical conditioning could result in a catastrophic injury, but it is something that must be done.

Another question I’m frequently asked by high school coaches is “What is my responsibility as a weight training expert if I’m visiting a weightroom that I’m not assigned to and I see a kid performing an exercise incorrectly? Am I supposed to jump into that weightroom and shout, ‘Hey, don’t lift that weight that way!’?” Well, no – at least that’s not what the courts say. You have no special relationship in any facility other than your own, so you are not responsible for the actions of that kid.

We’re not like Don Quixote; we don’t saddle up and go jousting with windmills. We’re not supposed to wander around and try to correct every ill we see on the face of the earth. However, we *are* significantly responsible for our own activities where we are employed when we put that name tag on that says “Weight Training Instructor.” **BFS**



Dr. Marc Rabinoff is a professor of human performance and sport at Metro State. His courses on the legal aspects of sport are extremely popular.