

*America's foremost authority on weight training lawsuits tells you the best ways to avoid legal trouble*

There is a belief that when it comes to the possibility of getting sued, coaches have little to worry about. After all, most coaches are dedicated to helping athletes achieve their physical potential and would never consciously do harm. Everybody understands that coaches should be held in high regard because they are teachers; and as such, isn't it reasonable to expect their good intentions would be rewarded with a degree of "legal immunity" from the legal system? Not quite. America has become an increasingly litigious society, and coaches are just as vulnerable as anyone else to becoming involved in a lawsuit.

There is no 100 percent guaranteed way to avoid lawsuits. The fact is you can be sued by anyone, at any time, for just about any reason. That's the way our legal system works. Your aim should be to not give anyone a reason to want to sue you and to put yourself in the best possible position to win a lawsuit. To help you accomplish these two goals, here's some expert advice from Marc Rabinoff, Ed.D.

Dr. Rabinoff is a full professor and chair of the Department of Human Performance, Sport and Leisure Studies at Metropolitan State College of Denver, Colorado. Possessing graduate degrees in administration and a master's in physical education, Dr. Rabinoff is one of the most respected sports and fitness liability consultants in the nation. Since 1980 he has served as an expert witness in over 200 lawsuits involving coaches, physical educators, schools,



**Marc Rabinoff, Ed.D.**  
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health clubs and equipment manufacturers. He has represented both plaintiffs and defendants, and as such has developed valuable insight into identifying the best approaches for his clients.

In this exclusive interview, Dr. Rabinoff shares strategies you can use to make your conditioning programs safe and discusses topics ranging from the value of strength coaching certifications to the relative safety of machines compared to free weights. We're certain you'll find many practical suggestions to improve your own programs.

**BFS:** Is it still true that most people are reluctant to sue coaches?

**Rabinoff:** In the past, lawsuits against coaches happened, but certainly not at the rate we're seeing now. Nowadays parents of athletes are not content to just sit back and look at coaches as if they couldn't do anything wrong. For example, we're seeing lawsuits that deal with how coaches are treating the athletes and even lawsuits involving sexual harassment.

**BFS:** What are the common reasons people sue?

**Rabinoff:** Most of the litigations I've worked on commonly relate to duty, standards of care, instructor qualifications, failure to warn and lack of supervision, equipment design defects and deficiencies, and inadequate equipment maintenance. Over the past two decades there has been a tremendous increase in the

number of lawsuits against equipment manufacturers and weightroom operations.

**BFS:** What do you mean by “duty”?

**Rabinoff:** This refers to the concept that there is a responsibility, a duty, of one person to another for their safety. In a lawsuit, the plaintiff first needs to establish that the defendant had a duty to him or her at the time of an injury. No duty, no lawsuit.

**BFS:** If a duty is established, what happens next?

**Rabinoff:** The next step is for the plaintiff to show that the duty was breached and that the injury was a result of the actions of the defendants.

Then the plaintiff must show that the breach actually happened at that facility, a legal concept known as proximate cause. Finally, the plaintiff must prove that there were damages.

**BFS:** Many strength coaches and personal trainers believe that generally they are safe from lawsuits because people will go after the organizations they work for, such as schools and health clubs.

**Rabinoff:** Not quite. Plaintiff lawyers try to name as many defendants as possible to share fault, a concept known as the “deep pockets” theory. In most states it is the responsibility of the court to determine the balance of responsibility of the defendants to the plaintiff. In a case I worked on in 1997, \$2.3 million was awarded to the plaintiff, with \$1 million coming from one insurance carrier, \$750,000 from another insurance carrier, and \$850,000 from one manufacturer.

**BFS:** Can’t a health club or school avoid problems simply by hiring independent contractors?

**Rabinoff:** No, it doesn’t work that way—the trainee can still sue the health club. If a health club is saying to the client that their trainers are working in their facility and using their equipment, they support them being here; and when the club is named in a suit, the trainer will be named also. That being said, I strongly recommend that a health club or any organization involved in physical fitness have an attorney review

their contracts for independent employees as to what their liability is.



**One of the most common reasons for lawsuits against weight rooms is inadequate equipment maintenance, as illustrated by this photo of a bench press taken recently at a high school weight room.**

**BFS:** Will a waiver protect a health club?

**Rabinoff:** I’ve found that waivers usually don’t hold up in a court of law. Instead of a waiver, what a health club wants is assumption-of-risk documents that prove that the person involved in an activity understands the risks involved.

**BFS:** Are there any specific trends you see in lawsuits against coaches?

**Rabinoff:** Probably the most frequent lawsuit trend I’m seeing is in the area of professional instructor qualifications, i.e., when a gym or health club does not have a staff of instructors with recognized academic degrees, certifications

or appropriate courses in continuing education. The idea is that instructors named in lawsuits must provide evidence that what they were doing was professionally correct according to current standards and that the injury was unforeseeable.

**BFS:** What is the value of a certification for a strength coach or personal trainer?

**Rabinoff:** In theory, a certification means you went through some course of study, you were tested and evaluated, and you are now certified to perform a particular task. A certification is a document that says you care, that you put out the effort, cost and time to learn, that you want to learn more and that you’ve achieved a measure of proficiency. The critical idea is to apply that knowledge and those skills to your job.

**BFS:** So the first thing a strength coach or personal trainer should do is become certified?

**Rabinoff:** That’s one approach. But what I recommend for anyone in this field is to get a degree, whether it be an associate degree or a four-year degree in such areas as human performance of sport, physical education, adult fitness or exercise science. These kinds of programs are offered in colleges and universities throughout every state. It’s the longest course of study available to prospective trainers: you take actual college-

level classes, you actually do have to perform and you do learn the basics. After earning a degree, you can then focus on getting certified through groups in particular fields of expertise.

**BFS:** Are certification organizations liable for the actions of those who receive certifications from them?

**Rabinoff:** I get asked that question all the time. I sit on the boards of some of these certification organizations and I say, “Look, at an entry level, if giving out information is what your certification is for, then go ahead and do it. However, if you say that this person can actually perform a skill, such as being able to mechanically spot a squat, that’s different. A certification may not reflect the person’s actual competence unless you’ve asked the right questions and truly have measured the level of his or her knowledge.

So far I haven’t seen plaintiff attorneys take on national certification organizations for being inadequate or incompetent in their programs, but I believe that will change. We could start seeing some lawsuits coming back to these organizations because the certifications weren’t rigorous enough academically and from a practical perspective did not prove that the persons certified could actually do what they said they could do.

**BFS:** It appears that you don’t have such a high opinion of certifications that do not have any hands-on training or evaluation.

**Rabinoff:** I’m from the old school in that I believe in physically watching someone do something. That’s the way I was certified in gymnastics—somebody had to watch me. Unfortunately, most of the certifications for personal training, exercise leaders and strength coaches don’t require their graduates to physically

perform those skills. What they should be saying in these types of certifications is that in order for you to truly know, for example, how to safely spot a squat, you’ve got to practice spotting a squat. But if you say if you watch this video or read this textbook you’re OK to go out and teach squatting, there’s a problem.

Think about it: If you knew of a medical school that did everything “virtual,” would you want to be the first patient of a doctor who had just graduated from there? Would you want to be the first client of someone who had never pleaded a case in court, even though he had graduated from law school and had passed the bar exam, which is a written exam? Would you want someone who had just become a dentist to work on your teeth even if he had the newest, best drill on the market but no one had really made him or her try it? I wouldn’t!

**BFS:** Many strength coaches and personal trainers give dietary advice. Is this a problem, and are there certification courses in nutrition that you see as valuable?


**Rabinoff:** That’s a really dangerous place to go, because nutrition is very complex. I truly believe that to give nutritional advice, you need a degree in nutrition and have studied all of the effects of food and nutrition on the body—and that’s a very long course of study and very in-depth work. You can’t just do that in a weekend course—you will not have learned enough.

**BFS:** With many insurance companies you have to be a member of an organization to purchase the insurance. How does paying a membership fee make you more qualified than anyone else to receive insurance? Can a coach or personal trainer get insurance without paying membership dues?

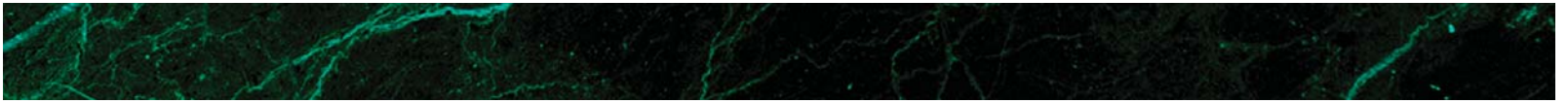
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**Having been an expert witness in 10 lawsuits involving weight training, BFS Founder/CEO Dr. Greg Shepard saw the importance of developing the BFS Safety Package to help coaches run a more safety conscious weight room.**



**Rabinoff:** There may be some carriers that offer personal liability insurance to those who are not members of a professional organization, but these are the exception. Usually the criterion to qualify for insurance is you have to be a member of a professional organization, because that then validates the fact that at least you're getting the journals and you may be going to some seminars. Again, it's not enough to have degrees or certifications; you must show that you are keeping current on what is going on in your field. If not, it is often difficult for a gym or health club to stand behind the skills and abilities of its instructional staff.

**BFS:** What is the biggest mistake you see coaches making?

**Rabinoff:** We all know athletes get hurt in sport. As professional physical educators we have to do everything we can to ensure that the athlete can move on to a higher level. But you can't have gymnasts, on only the second day of practice, perform double twisting backs when they can't even do a forward roll. And just because a freshman is big and heavy doesn't mean he's ready to play on the varsity team, especially if he can't run 20 feet without gasping for air. There's a learning curve, with intermediate steps that must be achieved and documented to show that the athlete was able to perform physically and mentally at that level. Otherwise, you're putting the athlete in jeopardy and the risk of injury skyrockets.

One of the most common mistakes coaches make today is that they rush their athletes too fast. As a matter of fact, if you talk to most sports medicine doctors, they will tell you that 85 percent of the injuries they see are overuse injuries. That's because the trainees' muscles were not ready to do what they were asked to do.

**BFS:** The coaches who promote slow training protocols claim that their training methods are safer than traditional athletic training protocols, such as those that incorporate Olympic lifting exercises. What is your opinion?

**Rabinoff:** From the studies I've read, I believe this type of training may have its place, such as when training low-level athletes or when emphasizing technique, but I don't believe it is necessarily safer than conventional forms of training. I say this because I believe most athletes need to do some ballistic training to perform at a high level and prepare the body for the stresses it will encounter in the sport.

**BFS:** Are there legal obligations of equipment companies for their equipment?

**Rabinoff:** Absolutely! I am member of the committee for exercise and fitness equipment of the American Society of Testing Materials. Whether you're a PE instructor in a high school or a football coach or a health club director, there are always minimum standards, and the ASTM is where you go to find them. We revise the standards all the time as we find things that are happening in the field. For example, there are standards for not only the design and use of treadmills but also the placement of treadmills, the distances from the side, the front and the back. People fall off treadmills all the time, but we see a major problem when they fall off and hit their heads on walls because the treadmill is placed too close to a wall. I've done two death cases already, and one case involving serious, permanent injury. What I'm recommending to manufacturers is that we revisit the treadmill standard and see if we need to increase the space around the treadmill.

**BFS:** What about the belief that machines are safer than free weights? What is happening in the courts?

**Rabinoff:** It seems people have this false sense of security with machines, but the fact is that machines are machines—they have moving parts that can cause injury if you do not use them properly: You have to insert the pins correctly, you have to read the warning signs and follow the instructions and so on. Most of the lawsuits I've been involved with deal with accidents that occur with machines, not free weights. That's why machine manufacturers are getting better with their instruction plaques and warning statements they put on machines. It may be common sense to most people that you should not try to adjust a machine that is jammed, but to protect themselves, equipment manufacturers and gym owners need to take steps to make certain their clients are aware of such dangers.

**BFS:** Any final thoughts you'd like to share with our readers?

**Rabinoff:** Just because you have a 19-inch neck or look good in a leotard does not qualify you to work in the field of fitness and athletic training. All of us in this field, from coaches to gym owners to administrators, have to follow established rules and procedures for conducting our programs in weightrooms and exercise facilities. Only through communication and education can we provide the best training environment for our athletes and provide the best insurance against litigation. 