

BOND UNIVERSITY

FACULTY OF HEALTH SCIENCES AND MEDICINE

**AN INVESTIGATION OF RISK MANAGEMENT PRACTICES IN THE
HEALTH AND FITNESS FACILITIES IN QUEENSLAND: MINIMISING
THE LIKELIHOOD OF LEGAL LIABILITY**

By

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ABSTRACT

The Australian health/fitness industry is an important contributor to the national preventative public health strategy against obesity and associated health risk factors such as coronary heart disease, diabetes, various forms of cancer, osteoporosis and mental health problems (Commonwealth of Australia, 2010; Mathers et al., 2000). Although regular physical activity can significantly reduce obesity and associated health risk factors, epidemiological studies show that vigorous exercise can trigger cardiac events, especially in habitually sedentary people with known or unknown coronary artery disease (Corrado et al., 2006b). Furthermore, participation in physical activity by persons with obesity and diabetes is associated with an increased risk for musculoskeletal injuries, joint injuries, osteoarthritis, and disability (Brukner and Brown, 2005; Wilder and Cicchetti, 2009).

A recent Victorian study drew attention to the concerns of the exercise participants (Finch et al., 2009b) of multipurpose recreational facilities that showed lack of safety policies and practices (Finch et al., 2009a). According to studies conducted in the United States health/fitness facilities that show low cardiac emergency preparation, lack pre-activity screening procedures and do not follow risk management recommendations and policies published by the leading national professional organizations (Connaughton, Spengler and Zhang, 2007) expose themselves to serious risk of litigation (Eickhoff-Shemek, 2010). In this regard, it is suggested that it is crucial for health and fitness facilities to implement effective risk management programs to provide reasonably safe services to their customers.

In contrast, following changes to the Australian law in 2002 that was prompted by a perceived crisis in public liability insurance and an emerging 'litigation culture', recreational service providers in Australia have been given the right to contract out of their implied duty of care to their customers by use of exclusion clauses that can limit or exclude liability for negligence and breach of an implied warranty that services would be provided with reasonable care and skill. However, there were concerns that this blanket protection would cause recreational service providers to refuse to invest

in injury prevention practices and risk the safety of their consumers (Australian Consumer and Competition Commission, 2005; McDonald, 2005). Therefore, proper implementation of risk management programs by recreational service providers to effectively prevent injuries and minimise subsequent liability claims was stressed (Standing Committee on Recreation and Sport, 2002). Despite the fact that the health/fitness industry represents a significant portion of the recreational services offered in Australia, little is known about the implementation of risk management practices in health/fitness facilities. In this light, the main purpose of this study was to investigate implementation of risk management practices in the health/fitness facilities in Queensland. Secondary aims of this study were: (a) to identify the potential sources of legal liability in the health/fitness industry, which will help (b) to develop a risk management assessment questionnaire for health/fitness facilities.

The data was gathered from the managers of health/fitness facilities in Queensland using the self-developed and pilot tested Health and Fitness Industry Risk Management Questionnaire (HFRMQ). The statistical analysis of the data was conducted using descriptive statistics and non-parametric tests. The major findings of the study indicated that health/fitness facilities in Queensland had low adherence to risk management practices related to ‘emergency plans’, ‘inspections’ and ‘staff’, whereas risk management practices such as ‘waivers’ and ‘insurance’ were among the most implemented and valued risk management practices. However, neither waivers nor insurance can prevent injuries or adverse health outcomes that can occur as a result of negligently provided services in health/fitness facilities. Furthermore, as recent case law analysed in this study illustrates, waivers may not always be enforceable, and hence fail to prevent a successful lawsuit. In this light, the discussion and conclusions of this study highlights the need for health/fitness facilities to develop and implement effective risk management programs to provide reasonably safe services in the first place, which in turn minimises the risk of legal liability claims.

DECLARATION

This thesis is submitted to Bond University in fulfilment of the requirements of the degree of Doctor of Philosophy. This thesis represents my own original work towards this research degree and contains no material which has been previously submitted for a degree or diploma at this University or any other institution, except where due acknowledgement is made.

Signature:

Date: 21 December 2011



Betul Sekendiz

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