

# Certification of Fitness Professionals Separating Myth from Fact

By: David L. Herbert, J.D.  
Senior Partner  
Herbert & Benson, Attorneys at Law  
4571 Stephen Circle, NW  
Canton, Ohio 44718-3629  
Telephone: 330-499-1016  
Facsimile: 330-499-0790  
E-mail: herblegal@aol.com  
Co-Editor, The Exercise Standards and Malpractice Reporter

## **Introduction**

The recent fitness industry movement towards the certification of personal fitness trainers accompanied by a related “push” from some segments of the industry to encourage the accreditation of personal fitness trainer certifying organizations and the creation of “national board” testing and registration for personal fitness trainers has created a myriad of “spins” about the meaning of certain terms associated with these developments. This “spin-zone” needs to be examined to separate myth from fact and to debunk those matters and issues which are not supported by either historical events or relevant evidence.

## **Background**

The training and certification of various fitness professionals has been the subject of examination and inquiry for many years. Several organizations including the Aerobics and Fitness Association of America (AFAA), the American College of Sports Medicine (ACSM), the National Strength and Conditioning Association (NSCA) and some others, have been involved in the testing and certification of fitness professionals for many years.

Such efforts by these prominent organizations, as well as others, were undertaken to provide presumptive evidence of competency for fitness professionals so that the consuming public could receive some assurance about the qualifications of those who were to provide them with desired training and fitness services. However some other organizations began to offer what many considered “lesser forms” of certification for fitness instructors through what some would call “certification mills” or “fly-by-night” outfits. According to some accounts there were perhaps several hundred certification/training organizations in existence at one time, some of which fit within the definition of prominent certifiers and some of which would be in the later specified classification.

Slip shod practices by some industry certifying and training groups led to what some claimed were an abundance of less than qualified instructors. Once consumer injuries and even deaths began to occur in the industry, the media started an intense examination of the industry and some ill prepared instructors. The “fall out” from this coverage was noted by many providers.

All of the foregoing combined with other concerns led some in the industry to take action in an effort to improve the qualifications and status of fitness professionals. IHRSA, the International Health, Racquet and Sportsclub Association, for example, passed a

corporate resolution in 2003 recommending that its member clubs hire only those personal fitness trainers certified by organizations accredited by the National Commission for Certifying Agencies (NCCA).

This resolution was later amended in 2004 to expand the approved accreditation list from this one accreditation provider to include the Council for Higher Education Accreditation and the United States Department of Education.

At about the same time the National Board of Fitness Examiners (NBFEE) was founded to develop nationally based and uniform standards of practice for personal fitness trainers to be used to administer an NBFEE provided written and practical examination followed by registration of those who successfully pass the test process. Under NBFEE's procedure, preparation for the NBFEE examination can take several forms and includes training through a number of affiliated organizations who themselves include certifying organizations for fitness professionals.

These affiliates, now classified as provisional affiliates, include AFAA, American Fitness Professionals and Associates (AFPA), International Sports Sciences Association (ISSA), World Instructor Training Schools (WITS), American Aerobic Association International – International Sports Medicine Association (AAAI-ISMA), and Health and Fitness Training College (HFTA), among others. The NBFEE board examination effort is expected to be in full swing by the end of 2006 and has gotten to the point that some trainers have already taken and passed the written examination and are now listed on the organization's registry as having passed that examination (<http://nbfef.org/registry/>).

As a result of aspects of the foregoing, some certification organizations within the industry began efforts to obtain NCCA accreditation for their certification programs. Others joined the NBFEE effort as affiliate organizations to act not only as certifiers themselves but also as educational providers for those who wished to sit and take the NBFEE tests.

Both the NCCA accreditation processes for certification organizations as well as the NBFEE effort were based upon structured psychometric principles. The application of this process for both organizations was established to ensure non-discrimination in the testing process and to help provide minimal due process to those taking either a certification or national board examination. The processes were thus designed to be "legally defensible" – meaning that the processes could withstand challenges legally as being non-discriminatory and that minimal due process principles would attach to the certification or testing process.

Despite this accepted definition for the defensibility of these processes some within the industry began to circulate information that the term "legal defensibility" dealt with the ability of personal fitness trainers who were certified by organizations accredited pursuant to the IHRSA initiative to withstand claims and suits arising from their delivery of services. This article was written to address some of the issues related to these matters and to debunk certain myths while separating fact from fiction.

## **Myth vs. Fact**

**Myth 1: NCCA or similar third party accreditation for fitness industry certification organizations will protect consumers from harm due to injuries caused by personal fitness trainers.**

**Fact:** Like nearly every similar profession which provides personal services to consumers, the delivery of services by personal fitness trainers includes the possibility of injury – or even death – to those who receive these services. Some of these instances of injury will be due to the occurrence of certain untoward events which are not the result of anyone’s negligence but are simply a result of the risks inherent in the activity. At least one court of appeals in California has in fact ruled that fitness activities involve such inherent risks. Other such instances of injury/death however, will sometimes be the result of negligent conduct which occurs by way of a sustained act or omission to act when a duty to act exists. Some of these occurrences will result despite the best of intentions and can happen to even the most careful and prudent of providers.

Education, training, certification by respected organizations according to sound psychometric principles which can be achieved through a number of processes – including those provided by a certification organization accredited by an entity such as the NCCA, as well as testing and the provision of national board examinations through such entities as the NBFEE, can all help improve the qualifications of fitness professionals. Such steps may hopefully reduce the occurrence of negligently performed and provided services. Whether or not the accreditation of certifiers will protect consumers from harm however, due to injuries caused to them by personal fitness trainers remains to be seen.

**Myth 2:** Accreditation of fitness professional certifying organizations will protect personal fitness trainers and their employers/contractors from claims of negligence and related lawsuits.

**Fact:** Accreditation of fitness certification organizations by any entity, including those approved by IHRSA, is but one alternative means to be used to help insure that the certifications earned by fitness professionals are provided from an authoritative and respected institution. However, accreditation of fitness certification organizations does not insure that certified professionals and those employing them will not be faced with claims related to negligence and subsequent lawsuits instituted by clients when those clients claim to be injured due to the negligent provision of service from those professionals. Moreover, accreditation of certification organizations does not provide “immunity” for certified individuals or their employers/contractors from successful claims and suits.

Fitness professionals need to understand that actual immunity from some claims and lawsuits is provided by the terms of certain federal and/or state legislation or case law to selected individuals or organizations under specified and narrow circumstances. Immunity from successful suit, may be provided in some states, for example, when a good samaritan comes to the aid of an individual who is in need of an emergency response. Despite the foregoing, however, there is no immunity provided under existing federal or state law to a personal fitness trainer who is certified by an organization that is in turn accredited by NCCA or any other accreditor of fitness certification organizations. Moreover, there is no federal or state statute, corresponding regulation or court decision which has ever provided protection from claim or suit for those who are certified by organizations that are in turn accredited by some accrediting organization.

The fact of the matter is that those who provide personal training services regardless of their background, education, training or certification are potentially liable to any consumer who claims to have been hurt as a result of the negligent provision of service by such professionals. While education, training, experience, background and certification may all assist in the defense of any such suit, and while certification may provide presumptive evidence of competency to be used to refute claims that a personal trainer provided service below the required standard of care, such matters are always determined by fact finders in the course of deciding the allegations of particular lawsuits. So, the fact of the matter is that the accreditation of an organization which provides certification for a

personal fitness trainer does not provide either immunity or per se protection from claims and lawsuits against personal fitness trainers.

**Myth 3:** Required or specified educational prerequisites to certification or testing of personal fitness trainers are a detriment to or a negative aspect of such a process and are really unnecessary for the certification of personal fitness trainers.

**Fact:** Prerequisites to candidates' admission to certification programs which require specified educational training is one of a multitude of resources that individuals can bring with them to the certification or examination table for the purposes of improving their individual abilities to provide first rate personal training services to clients. Education can never be a detriment to the process and is in fact a big plus for trainers and those programs which require educational prerequisites before certification or examination. Such requirements can only provide evidence of greater qualifications for those who have such prerequisites and those who achieve a subsequent certification milestone.

**Myth 4:** Practical testing of personal fitness trainers is either unnecessary or inappropriate for any testing or certification process for such individuals.

**Fact:** Testing of personal fitness trainers through the performance of a practical test provides a very valuable and reasonable basis upon which to test and review the qualifications of individuals who will thereafter provide actual training services to consumers. To best illustrate this process, one must necessarily ask whether or not a consumer would undergo an operation by a surgeon who had never before performed a surgical procedure or whether or not a consumer would ever fly on an airplane that had a pilot at the controls who had no previous flying experience. Obviously, when service is provided, practical training is a desirable component of the qualifications of a personal fitness trainer and should serve to demonstrate his or her ability to provide service in accordance with the expected standard of care.

The testing of professional skills through a practical examination is apparently something that no fitness certification organization is presently pursuing. The NCCA accreditation process for certification organizations permits the provision of a practical examination if a certifying organization chooses to do so and properly formulates the practicum.

However **no** NCCA accredited fitness certification organization for example, is believed to provide such a practical component to its certification process at the present time. Despite the foregoing, several non-fitness industry NCCA accredited certification organizations have practical testing components included in their testing and certification process.

In an effort to improve the qualifications and competence of personal fitness trainers, the NBFEE examination process will include such practical testing for personal fitness trainers sitting for its national boards. Such testing should take the personal fitness training profession to new levels of demonstrated competence. In addition, the written and practical examination process should provide a true gold standard for the profession to strive to achieve.

**Myth 5:** Individual certification programs can provide uniform standards for personal fitness trainers.

**Fact:** The lack of uniform national standards for personal fitness trainers has led to confusion in the industry and in the delivery of varied services by professionals to consumers. Moreover, the lack of such standards has probably resulted in more claims

and lawsuits against industry providers, confusion in the application of standards of care issues in court and inconsistent jury verdicts and court rulings. One must necessarily wonder whether or not the care provided or the service rendered by a personal fitness trainer in Ohio should be any different from the personal fitness service provided by a trainer in California. Can clients in California expect better service than that provided by personal fitness trainers in Ohio? Should they? Should there be any difference whatsoever?

Decades ago, medical care in this country was delivered in accordance with the prevailing standard of care within particular local jurisdictions. Consequently, there was often a difference in care between that which was provided in one locale or one state when compared to that provided in a different locale or a different state. Judicial evaluation of that care in malpractice actions was often evaluated by reference to a local as opposed to a national standard. Some years ago and in a progressive manner, the medical profession, state legislatures and the courts began to determine that services rendered by medical professionals should be judged from a national as opposed to a state or local standard of care so that the populace would receive uniform care which could be so evaluated regardless of where they resided or where service was provided. That type of milestone is one which all service providers should seek to achieve.

Aside from the foregoing, there is also a decided difference in the subject matters of various certification examinations which are now provided to those who seek various fitness certifications. When the goals and study materials of one certifying organization are compared to those of another such organization this is obvious. Knowledgeable industry observers have indicated that such differences may slant one certification process or another toward an emphasis on certain subjects or domains while another certification process may be differently constructed with a different emphasis. National and uniform standards need to be applied to test the knowledge base of personal trainers such as those utilized by the NBF for testing purposes. Such uniform standards should be applied to the certification or testing process regardless of where such examinations are given or which certifier does the testing.

AFAA long ago committed to such an effort by its development and publication of Exercise Standards and Guidelines Reference Manual, Fourth Edition (2006) (first published in 1993). The American College of Sports Medicine (ACSM) also committed to the development of standards and guidelines for health and fitness facilities when it published its First and then its Second Edition of ACSM's Health/Fitness Facilities Standards and Guidelines in 1992 and 1997 respectively. That effort is continuing as that organization is in the process of finalizing and publishing the Third Edition of this work later this year.

The National Strength and Conditioning Association (NSCA) began a similar effort some years ago when it first developed and published its standards of practice, see, <http://www.nasca-lift.org/Publications/standards.shtml>. IHRSA, the American Heart Association (AHA) with ACSM, the Medical Fitness Association (MFA) and others have all similarly engaged in some standards development. Each of the foregoing efforts however, to one degree or another has not resulted in a consistent, uniform expression of the standard of care to be expected from and delivered by personal fitness trainers.

It is hoped that the effort now being undertaken by the NBF will result in a uniform, national standards statement which can be used and applied in a very consistent way not only to test the qualifications of various fitness professionals, starting with personal fitness trainers, but also to be used as a benchmark for expected service delivery by such professionals.

