An Overview Of Business Liability And Waivers For Medical Fitness Facilities

By: Michael R. Richmond, JD
Waiver Defined

A waiver is a voluntary relinquishment of a known right.
Waiver In The Fitness Industry

A waiver as it relates to the fitness industry is:

A document that abandons a client’s right to sue a fitness facility/business or an individual engaged in the fitness industry due to an injury or damages caused by the action or inaction of the fitness professional
Waivers In The Fitness Industry

A waiver in the fitness industry is:

Usually signed by the client prior to engaging in a fitness activity
The enforceability of a waiver **differs** under the laws of each state.
State Differences On Waiver Enforceability

At least three states **will not enforce** any type of pre-injury waiver:

- New York
  N.Y. Gen.Oblig. Law § 5-326
- Virginia
  244 Va.191, 418 S.E.2d 894 (1992)
- Louisiana
  La. Civil Code art. 2004
State Differences On Waiver Enforceability

In most states, a parent cannot release a minor’s prospective injury claim.

Utah
37 P.3d 1062 (2001)

The two known exceptions are Massachusetts and Ohio.
Waiver Enforceability

Waivers involving more dangerous activities are less likely to be enforced:

Vermont – skiing and racing
Connecticut – snow tubing and horseback riding
West Virginia – club rugby
Washington – interscholastic athletics
Waiver Enforceability

Most states will void a waiver involving conduct more severe than ordinary negligence such as:

- Gross negligence
- Recklessness
- Willful and wanton
Should We Just “Wave” Goodbye To The Waiver?
Many states will enforce a waiver based on ordinary negligence
Standards For Waiver
Enforceability: *Calarco V. YMCA*

149. Ill.App.3d 1037 (1986)

A weight fell on a member’s hand
Calarco V. YMCA

The Calarco Court held that an agreement to limit liability will be enforced:

• Unless there exists a substantial disparity in the bargaining positions of the parties

• Unless the agreement violates public policy
Problem Language From The Calarco Waiver

“In consideration of...I do hereby (agree to)...waive...any and all rights to damages...connected with my participation in any activities of the YMCA”
Problem Language From The Calarco Waiver

“I hereby do declare myself to be physically sound, having medical approval to participate in the activities of the YMCA”
“In consideration of...I do hereby (agree to)...waive..._any and all rights to damages...connected with my participation in any activities of the YMCA”

“I hereby do declare myself to be physically sound, having medical approval to participate in the activities of the YMCA”
The agreement must be expressed in **clear, explicit and unequivocal** language demonstrating the intent of the parties to eliminate the fitness center’s liability.
Specificity Is Key!

General language is \textbf{not sufficient} to indicate an intention to absolve a party from liability for ordinary negligence.
An ambiguity will be resolved in favor of the injured party
“In consideration of...I do hereby (agree to)...waive...any and all rights to damages... connected with my participation in any activities of the YMCA”

“I hereby do declare myself to be physically sound, having medical approval to participate in the activities of the YMCA”
The plaintiff was injured at Defendant’s health club by inhaling harmful gaseous vapors.
Larsen V. Vic Tanny

The court found that although the plaintiff who relieves the defendant of liability assumes the risk of injury, the danger of injury should be known by the plaintiff.

Since the inhaling of gaseous fumes was beyond the reasonable contemplation of the member, the court refused to enforce the waiver.
Can you show us a waiver that was enforced?
Garrison v. Combined Fitness Centre  
201 Ill. App. 3d 581

Garrison had been a member of the facility for over 2 years

He “worked out” 2+ hours per session  
3 or 4 days per week

He was attempting to bench press 295 lbs
Garrison v. Combined Fitness Centre
201 Ill.App.3d 581

He called for a “spotter”

The “spotter” had not yet arrived, but he was exerting force on the stationary bar

The bar with its 295 lbs rolled off its stand and crushed his neck
The Garrison Waiver

“It is further agreed that all exercises including the use of weights...and all machinery, equipment and apparatus... shall be at the Member’s sole risk.”

“COMBINED FITNESS CENTER shall not be liable to Member...and...”

“Member holds the Center...harmless...”
ACSM

HEALTH/FITNESS
Facility Standards and Guidelines, 3rd Ed.

Appendix B    Form 6

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For More Information:

Please Contact Michael Richmond, JD at

MRichmond@HellerRichmond.com