

An Overview Of Business Liability And Waivers For Medical Fitness Facilities

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A decorative graphic consisting of several horizontal lines of varying lengths and colors (teal, white, and light blue) extending from the right side of the slide towards the center.

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 **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”

Waiver Enforceability:

Larsen V. Vic Tanny
130 Ill.App.3d 574 (1984)

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:

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