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## **A Public at Risk: Personal Fitness Trainers without a Standard of Care**

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### **Introduction**

In 2002, an overweight, sedentary, and middle-aged man suffered a heart attack during his first workout with his “certified” personal trainer. During the workout, the man repeatedly asked to stop because he was experiencing fatigue, heat, thirst, breathlessness, and chest pain. The trainer responded to requests to stop and complaints of fatigue by questioning his client’s masculinity and by continuing the workout. In the lawsuit that followed (*Rostai v. NESTE Enterprises*, 2006), the court did not have the option to consider a statutorily defined standard of care since no licensing requirements existed for those who design and/or lead fitness programs. The court examined the facts and law as presented including the trainer’s conduct, expert testimony, as well as a doctrine known as “primary assumption of risk.” In the end, the court held that under this doctrine, the trainer owed no duty to protect a client from the risks inherent with exercise or to avoid challenging him beyond his current capacity during an initial training session. Simply put, the client assumed the risks associated with exercise, including a risk as serious as a heart attack [1, 2].

The conclusions reached by the *Rostai* court epitomize the concern of professional exercise physiologists who urge the statutory adoption of a standard of care that imposes minimal education standards for those who practice exercise physiology. For example, the President of the American Society of Exercise Physiologists (ASEP), recently questioned the justice of requiring a license to cut hair but not to “put a middle-aged, obese, hypertensive, arrhythmic client on a treadmill” [3]. The basis of licensing laws regulating professional standards is the protection of public health from unreasonable risk of harm [4, 5]. Statutes mandate a standard of care in some

professions by regulating factors such as minimal educational qualifications, competency testing, delimited areas of practice, and physical inspection of sites. So, the question is fairly asked: On what basis of law or policy is the patron in a hair salon protected but not the client under the direction of a personal trainer?

The purpose of this paper is to address the risk to public health when personal fitness trainers are allowed and encouraged to prescribe exercise, without sufficient background and training to fully understand the critical role of exercise intensity and progression to the safety and well being of clients. The *Rostai* case is critical for both legal and educational reasons and will be heavily relied upon throughout this paper. From a legal perspective, the case is unique because it specifically considers the conduct of a personal trainer and relieves the trainer for liability in negligence based upon the doctrine of primary assumption of risk. From an educational perspective, the case is riddled with gross misunderstandings about fundamentals of exercise physiology and fails entirely to recognize the distinction between a “fitness trainer” and an exercise physiologist. Until there is resolution of these issues, an unwary public will remain at risk when subjected to the “fitness trainer” without a standard of care.

### **Negligence: Duty v. Assumption of Risk**

Negligence is conduct that falls below a standard of care established by law for the protection of others against unreasonable risk of harm. To prevail on a negligence claim, the plaintiff has to show that the defendant both owed and breached a duty of care to the plaintiff. The existence of duty and whether a particular person’s conduct constitutes a breach of duty are circumstance-specific. General principles of negligence obligate each person to a standard of care of an ordinary, reasonable, and prudent person under the same or similar circumstances. However, public policy, case law, and statutory law drive legal determinations of whether a person is entitled to protection under the circumstances [6].

The doctrine of **primary assumption of risk** is an exception to the general rule that all persons have a duty to use due care to avoid injury to others and, when applied, the doctrine acts as a complete defense to negligence. The doctrine applies to sports or recreational activities where “conditions or conduct that otherwise might be viewed as dangerous often are an integral part of the sport itself” and their removal would alter the nature of the sport. [6; 7, p. 315]. The doctrine typically applies to sporting activities or other related forms of recreation (e.g., down hill skiing, white water rafting, rock climbing, a long distance bicycle race, skateboarding). In these types of activities, the “integral conditions of the sport or the inherent risks of careless conduct by others” make the possibility of injury obvious and relieve a defendant of a duty of care for the particular risks of harm associated with the activity. The overriding consideration

is to avoid imposing a duty which might “chill vigorous participation” in the activity and “thereby alter its fundamental nature” or purpose [8].

Primary assumption of a risk applies broadly and includes some activities that merely resemble sports. An activity may qualify as a sport if the activity is done for enjoyment or thrill, requires physical exertion and skill, and involves a challenge containing a potential risk of injury [8, p.1229]. In *Rostai*, for example, working out in a gym with a personal trainer was an activity subject to primary assumption of risk and was the specific basis on which the court relieved a personal trainer of any duty to his client [1].

***Rostai v. Neste Enterprises (2006) 138 Cal.App.4th 326***

In *Rostai*, a middle-aged, overweight, and sedentary man contracted with a “certified” personal trainer for a customized workout and had a heart attack at the end of the first session [1]. The court found that the trainer knew that Rostai was not physically fit and was overweight at the initial training session [1]. The trainer testified that he did not investigate Rostai’s health history or current status prior to the first workout and that he had never heard of the term “cardiac risk factors” [9]. The court applied the “law” of risk and duty to the “facts” of the workout and held that the trainer owed no duty of care to the client at all. Specifically, the court held that Rostai assumed the risks integral to exercise, including the risk of a heart attack, and that his personal trainer did not breach a duty of care simply by leading a challenging and strenuous initial workout [1].

The workout started with level treadmill work for 12 to 13 minutes at 3 to 4 mph. This was followed with weights on an incline bench (overhead lifts, 10 repetitions at 40 lbs per repetition, followed by 10 more repetitions with slightly heavier weights). Rostai then asked for a break, but the trainer said, “Later,” and had Rostai do 10 push-ups. Rostai asked again for a break, telling the trainer that he was really tired and out of breath, to which the trainer responded, “Don’t be a pussy” and “First, give me 10 sit-ups.”

Rostai completed the sit-ups and then returned to the incline bench to repeat the earlier weight exercise but with the next heavier weight and at a faster tempo. After 4 or 5 repetitions, Rostai said he could not do any more and stopped. The trainer reputedly pointed to a nearby woman and said to Rostai, “Come on, don’t you want to get some of this ass?”

Rostai was then instructed to lie down on a mat and lift both legs simultaneously. He stopped after performing one leg lift. The trainer grabbed Rostai’s legs and pushed them toward Rostai’s head 10 to 12 times. Toward the end of this exercise, Rostai told the trainer that he was out of breath, could not breathe, and needed some water but he did not tell the trainer that he was experiencing chest pain. The workout stopped because Rostai felt he could not continue. After pouring water over his head, Rostai laid down on the floor in

extreme pain and, after about 5 minutes, said “Call 911, I think I'm having a [heart attack](#).” Rostai was right and later that day underwent emergency angiography and emergency surgery for the placement of two coronary stents.

Rostai sued the trainer alleging that the trainer’s conduct breached a standard of care that caused the heart attack. Specifically, Rostai alleged that the trainer failed to properly assess Rostai’s physical condition and cardiac risk factors and that the trainer’s training approach was too aggressive. These failures, according to Rostai, constituted a breach of duty that caused the heart attack to occur during the workout under his trainer’s supervision [1; 10, p. 6].

Rostai’s supporting evidence included the declaration of an expert, an associate professor in exercise science at the University of Southern California. The expert’s declaration explicitly referenced the manual received by the trainer in obtaining his certification with the American Muscle and Fitness Personal Training Institute (AMFPT). The manual contained sections commenting on the importance of limiting the time of the first workout to no more than five or ten minutes, carefully observing clients for shortness of breath (especially if they are seniors or overweight) and noting that cardiovascular health problems may be exacerbated by exercise [11]. In reliance upon AMFPT standards in the organization’s manual, the expert declared that “greater scrutiny should be exercised in monitoring individuals at health and fitness clubs . . .” [1, 9].

The trainer testified in a deposition what he was aware that the first workout should be at a lower intensity and that exercise could exacerbate certain health problems, including cardiovascular disease. He also testified that he had never heard of the terms “cardiac risk factors” or “heart risk factors”. A physician testified that the heart attack suffered by Rostai, a plaque, could have been caused by any number of factors including sleeplessness, stress, nutrition, and exercise [9].

With this evidence, the court concluded that at most the trainer did not accurately assess Rostai's level of physical fitness. Further, the *undisputed evidence* failed to show that the trainer acted recklessly or that he breached a duty of care to Rostai.

He [the trainer] also may have interpreted Rostai's physical complaints, including his tiredness, shortness of breath, and profuse sweating, as the usual signs of physical exertion due to lack of conditioning rather than as symptoms of a heart attack. There is no evidence, however, that defendant [the trainer] acted with intent to injure Rostai or acted recklessly and thereby increased the risk inherent in the activity itself. Because the undisputed evidence in this case fails to show that defendant [trainer] breached a duty of care owed to Rostai....[1, p. 336].

The court further concluded that ordinary negligence was not a sufficient basis to impose liability upon the trainer. In order to state a cause of action against a personal fitness trainer, a plaintiff must allege and prove that the trainer acted either with intent to cause injury or that the trainer acted recklessly in that the conduct was “totally outside the range of ordinary activity involved in [personal fitness training]” [1]. This raises the question of explicit AMFPT’s standards for the first exercise session and the importance of observing a client’s response to exercise (see above). The length of this first workout was in direct contradiction to AMFPT. The issue of “ordinary” within a professional context goes to the heart of whether those who practice exercise physiology under these circumstances should be held to knowledge of cardiac risk factors and circumstances that may precipitate an event.

### **The *Rostai* Court’s Analysis: Duty v. Risk**

The *Rostai* court analyzed the doctrine of primary assumption of risk by focusing on its overriding consideration. The overriding consideration is to avoid imposing a duty that might chill vigorous participation in the implicated activity and thereby alter its fundamental nature [1, pp. 331-333].

Defendant argued that imposing a duty on personal trainers to avoid subjecting their students to a strenuous workout would invariably chill vigorous participation in fitness training and alter its fundamental nature by undermining the very purpose of private fitness training [10, pp. 14-15]. Defendant argued that trainers were not cardiologists who could monitor response to exercise in a sophisticated laboratory setting but were obligated to administer strenuous workouts in order to achieve either a fitness or appearance benefit. Liability for negligence would deter trainers from vigorous training and radically alter the fundamental nature of fitness training.

If liability were imposed on personal trainers for miscalculating, even negligently, the amount of exertion their students’ cardiovascular systems could tolerate, trainers, fearing liability, would be unwilling to administer strenuous workouts...Students would be thwarted in their efforts to improve their overall level of fitness and appearance. The very purpose of private fitness training would be undermined [10, pp. 14-15].

Imposing liability on [the trainer] here because he pushed Plaintiff and did not, in hindsight, accurately “assess and evaluate” the condition of Plaintiffs cardiovascular system before the workout began would severely alter the fundamental nature of fitness training. Not knowing who among their students was a “ticking cardiac time bomb” with an undiagnosed heart condition, trainers would never push their students. Students would stagnate and never achieve their fitness goals. This is precisely the sort of chilling effect which would deter fitness instructors from vigorously training their students and radically alter the fundamental nature of private fitness training [10, pp. 14-15].

The court agreed completely with the Defendant in holding that the obvious purpose of working out with a personal trainer is to improve physical fitness and appearance that requires participation in strenuous exercise. The inherent risks include physical distress in general, soft tissue injuries, and damage to the heart.

In order to accomplish that goal, the participant must engage in strenuous physical activity. The risks inherent in that activity include physical distress in general, and in particular muscle strains, sprains, tears, and pulls, not only of the obvious muscles such as those in the legs and arms, but also of less obvious muscles such as the heart. Stress on the cardiovascular system as a result of the physical exertion that is an integral part of fitness training with a personal trainer is a risk inherent in the activity. Eliminating that risk would alter the fundamental nature of the activity [1, p. 333].

In addition to consideration of inherent risks, the court addressed the question of duty by examining the parties' relationship while participating in the activity; specifically, the role of the trainer whose conduct is at issue was considered. The court analogized this relationship to those in competitive sports by citing examples of differential duties of care owed in baseball, touch football, and high school swimming. The pedagogical relationship between coach and athlete was also cited by the court. The court disputed the client's characterization of the trainer's role and held that the relationship of trainer to the client was to instruct and challenge.

Although [Rostai] phrases his claim against [the trainer] in terms of failing to adequately assess plaintiff's physical condition and in particular his cardiac risk factors, the essence of plaintiff's claim is that Shoultz, in his capacity as plaintiff's personal fitness trainer, challenged plaintiff to perform beyond his level of physical ability and fitness. That challenge, however, is the very purpose of fitness training, and is precisely the reason one would pay for the services of a personal trainer. Like the coach in other sports or physical activities, the personal trainer's role in physical fitness training is not only to instruct the participant in proper exercise techniques but also to develop a training program that requires the participant to stretch his or her current abilities in order to become more physically fit. The trainer's function in the training process is, at bottom, to urge and challenge the participant to work muscles to their limits and to overcome physical and psychological barriers to doing so. Inherent in that process is the risk that the trainer will not accurately assess the participant's ability and the participant will be injured as a result [1, p. 334].

To instruct is to challenge, and the very nature of challenge is that it will not always be met. It is not unreasonable to require a plaintiff who has chosen to be instructed in a particular activity to bear the risk that he or she will not be able to meet the challenges posed by the instructor, at least in the absence of

intentional misconduct or recklessness on the part of the instructor. Any other rule would discourage instructors from asking their students to do anything more than they have done in the past, would therefore have a chilling effect on instruction, and thus would have a negative impact on the very purpose for seeking instruction: mastering the activity [1, p. 334].

It is important to note that *Rostai* was decided on the basis of a summary judgment, a “trial on paper” that precludes the need for a jury. A prerequisite to summary judgment is undisputed facts that allow a judge to decide a case as a “matter of law.” As a matter of law and with “undisputed” facts, the *Rostai* court held that *Rostai* assumed the risk of a heart attack and, therefore, the trainer had no duty of care to him. One can only surmise the benefit to *Rostai* had there been a successful challenge to “undisputed” facts and had there been a jury trial. One can only imagine the benefit to legal precedent and protection of the public had a professional exercise physiologist been able to testify openly in court regarding such things as the purpose of fitness training, the proper role of a personal trainer, the relationship between client and trainer, acute physiological responses to exercise, physiological risk factors based upon age, weight, and lifestyle, and the proper determination of intensity during a workout.

### **The Professional Exercise Physiologist’s Analysis of *Rostai***

The following section offers comments on the *Rostai* case from the perspective of an exercise physiologist. It is not a legal analysis; rather it is a statement on how exercise physiologists should function and what protection should be afforded the public. This section takes exception to the *Rostai* court’s analysis of the circumstances and offers a decidedly different interpretation.

Licensing statutes mandate a standard of care in cosmetology [12] and other professions, such as massage therapy [13] and physical therapy [14], by regulating such things as minimal educational qualifications, competency testing, delimited areas of practice, and physical inspection of sites. The same policy consideration, protection of public health, underlies the requirements of the American Society of Exercise Physiologists (ASEP) for Board Certification of Exercise Physiologists [15] and the accreditation of college/university academic programs [16]. Hence, in regards to the ASEP perspective, the challenge isn’t to secure a legally mandated requirement to obligate a trainer as it is to educate the public as to the professional role of the Board Certified Exercise Physiologist (EPC). The EPC is a credible healthcare professional who understands that exercise is medicine [17] and as such, then, the exercise prescription and other safety measures during exercise are critical to the safety and well-being of the client/patient.

In *Rostai*, the trainer was certified through AMFPT, an online organization that advertises “you can begin your **compelling** new career as a fully certified trainer today for only \$69.95” [18]. The following information was taken from the

AMFPT website. Note the explicit qualifications: “If you have exercise and experience with dieting yourself, you may have the ability to be a good fitness trainer.” AMFPT’s certification process includes inducements such as it’s easy and fast, one day process, and that “you can become a fully certified Personal Trainer this week without waiting, driving to a distant site, or even leaving your house.” Clearly, this is not a professional certification by any reasonable standard.

Licensing statutes mandate a standard of care in cosmetology [12] and other professions, such as massage therapy [13] and physical therapy [14], by regulating such things as minimal educational qualifications, competency testing, delimited areas of practice, and physical inspection of sites. There are no licensing mandates for personal trainers. However, the American Society of Exercise Physiologists (ASEP) has a Board Certification program for Exercise Physiologists [15] and an accreditation program for college/university academic programs [16] so that educational standards exist for exercise professionals. The ASEP challenge is not to secure legal obligations of a personal trainer, but rather to educate the public as to the role of the Board Certified Exercise Physiologist (EPC). The EPC is a credible healthcare professional who understands the efficacious role of exercise as medicine [17] and the safety measures that should be in place to assure that an exercise prescription is appropriate for the well-being of the client/patient.

In *Rostai*, the trainer was certified through AMFPT, an online organization that advertises “you can begin your **compelling** new career as a fully certified trainer today for only \$69.95” [18]. The following information was taken from the AMFPT website. Note the explicit qualifications: “If you have exercise and experience with dieting yourself, you may have the ability to be a good fitness trainer.” AMFPT’s certification process includes inducements such as it’s easy and fast, one day process, and that “you can become a fully certified Personal Trainer this week without waiting, driving to a distant site, or even leaving your house.” Clearly this is not a professional certification by any reasonable standard.

The *Rostai* court had evidence that AMFPT’s certification process included content relevant to the circumstances of a middle-aged overweight and sedentary man beginning exercise. There was testimony that the trainer violated AMFPT standards. Additionally, plaintiff’s expert testified that that “greater scrutiny should be exercised in monitoring individuals at health and fitness clubs.” It should be noted that the testimony of the expert witness for *Rostai* was disregarded in part because it was inadmissible. How much this impacted the court is speculative. Nonetheless the court’s decision was disingenuous at best and disastrous at worst. To hold that the trainer owed no duty is simply bad thinking. To find that *Rostai* assumed the risk of a heart attack under the circumstances is irresponsible. Given the trainers approach to a first exercise bout for a middle-aged, inactive and overweight adult, it is

reasonable that the defendant was responsible for the plaintiff's heart attack. A physical trainer, coach, physical therapist, or a Board Certified Exercise Physiologist should conform to a standard of conduct and duty to avoid harm and damage to their client. For the court to affirm that the personal trainer in the Rostai case was not responsible for their conduct toward the client is clearly an example of bad thinking that lead to a bad decision.

Unfortunately, the doctrine of assumption of risk prevailed as a defense to duty in this case. The doctrine applies to sports or recreational activities where "conditions or conduct that otherwise might be viewed as dangerous often are an integral part of the sport itself" and their removal would alter the nature of the sport. [6; 7, p. 315]. On this basis, the court relieved the trainer of any duty of care to Rostai. This comparison of sport participation with participation in a fitness program represents flawed thinking and a complete misunderstanding by the court of the nature of an exercise professionals role in this setting. The undisputed facts of this case show that Rostai asked to stop exercising (i.e., he demonstrated that is was trying to avoid injury to himself), but the defendant pushed him on, relentlessly, without regard to the plaintiff's well-being or safety. This is simply a case of the defendant's failure to anticipate the health needs of his client by altering the scope of training as opposed to the nature of training.

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The defendant's use of the doctrine of primary assumption of risk "that the idea that the plaintiff had a duty to stop exercising is by virtue of the relationship between trainer and client" is fundamentally flawed thinking. Most clients would be, as the plaintiff was, subject to the authority of the personal trainer. Further, It is reasonable to assert that the defendant should have evaluated the plaintiff's cardiovascular health prior to the first training workout and tailored the workout to match the defendant's capabilities. The defendant acted recklessly in pushing the plaintiff beyond his capabilities during the workout without apparent knowledge of the danger to his client. These unsettling facts speak to the total lack of academic and scientific training necessary to customize a physical fitness program for an overweight and sedentary client.

The idea that the plaintiff's heart attack was an inherent risk of a structured physical training program makes absolutely no sense. In this case the plaintiff hired the defendant to personally design and oversee his exercise program. The plaintiff assumed and depended on the trainer to prescribe activity that would be healthy for him. The plaintiff thought he was hiring a personal trainer who had the knowledge, training, and understanding to train people (i.e., provide the necessary guidance to lose weight and get healthier and, obviously, to do it safely). Instead of getting stronger and healthier, the "first session" could have resulted in the plaintiff's death from a heart attack. If there is no standard of care for a personal trainer then indeed, the public is at risk. Whether it is a person who goes to a cosmetologist, a massage therapist or a physical therapist, there is an expected standard of care. Without any acceptable

standards for personal trainers, the risk for a client can be compared to participation in sport activity. Athletes have come to understand that they bear the risk of their participation, and this should be different from hiring a personal trainer who designs a fitness program to help the client avoid musculoskeletal and/or cardiovascular problems. The bottom line is that fitness programs are not sports programs! The risk inherent in the activity of each is totally different. Clearly, those who participate in sports must acknowledge the risk of their participation. This is why in the absence of legally enforceable standards, the predatory nature of online and inexpensive companies that certify trainers without accountability will pose an increasing and potentially deadly risk to the public.

The question before the reader is whether a personal trainer should be held to some standard of practice. Should personal trainers be allowed to act as though they know what they are doing, but lack any standard of knowledge and practice? In the *Rostai* case the personal trainer displayed flawed behavior and recklessness in their conduct. It is clear that the personal trainer had little to no knowledge of the risk involved in training middle-aged adults and illustrates why personal trainers in general should not be allowed to practice as health professionals. Many, if not most, personal trainers lack a comprehensive educational foundation in applied anatomy, cardiovascular physiology, sports and human biomechanics, physiological assessment, and pathology to be able to safely prescribe and monitor exercise programs. Without fundamental training in these areas, personal trainers are prone to embrace irrelevant and misleading information that could be harmful to their clients. This is exactly why there should be some standard of care for personal trainers, and why the Board Certified Exercise Physiologist is the professional of choice when it comes to individualized personal training, whether it is for fitness enhancement, athletics, or rehabilitation.

Board Certification of an Exercise Physiologist as a health professional is important because it provides educational and practice standards that are needed to provide the scientific foundation for a safe exercise program. The ASEP Standards of Professional Practice [19] establish a benchmark for an exercise physiologist to meet, this assures the general public will have access to an exercise professional that can safely and accurately prescribe and oversee an exercise program.

It is possible that *Rostai* reached its conclusions based upon inadequate or unpersuasive evidence. The court's failure to recognize the most rudimentary principles of "exercise as medicine" is stunning to the professional exercise physiologist. The court erroneously concluded that vigorous exercise is necessary to achieve fitness, failed to properly distinguish skeletal and cardiac muscle, expressed a decided lack of understanding of overload or minimal thresholds to achieve a training effect, inappropriately defined the purpose of training, and failed to acknowledge disparate risks of exercise in the young

versus middle-aged. Misunderstanding on these issues is at odds with protection of public health. Resolution is as much an educational as a legal issue, and it is incumbent upon the profession of exercise physiology to dedicate resources to the implementation of a strategy that will offer a remedy. Until that time, the public will remain at risk when trainers have no standard of care to which they are legally obligated.

## Conclusion

In the case of the personal trainers, the standard of care to which they are legally obligated is ambiguous at best for a number of reasons. Case law examining the specific activity of fitness training under the guidance of a trainer is lacking. Similarly, statutory provisions regulating personal trainers are lacking. Policy premised upon strained analogies to "sport" currently and ignorance regarding fundamental principles of exercise physiology establish the personal trainer's duty of care as being entirely inadequate. Unfortunately, this leaves the client vulnerable to damages without recourse when harmed by a personal trainer whose conduct violates both a common sense approach to exercise training as well as the scientific foundations of an exercise program and prescription as identified by a Board Certified Exercise Physiologists. The burden remains with professional organizations to explicitly articulate a standard of care, and to argue before the public at large that "exercise as medicine" should be prescribed by ASEP Board Certified professionals.

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