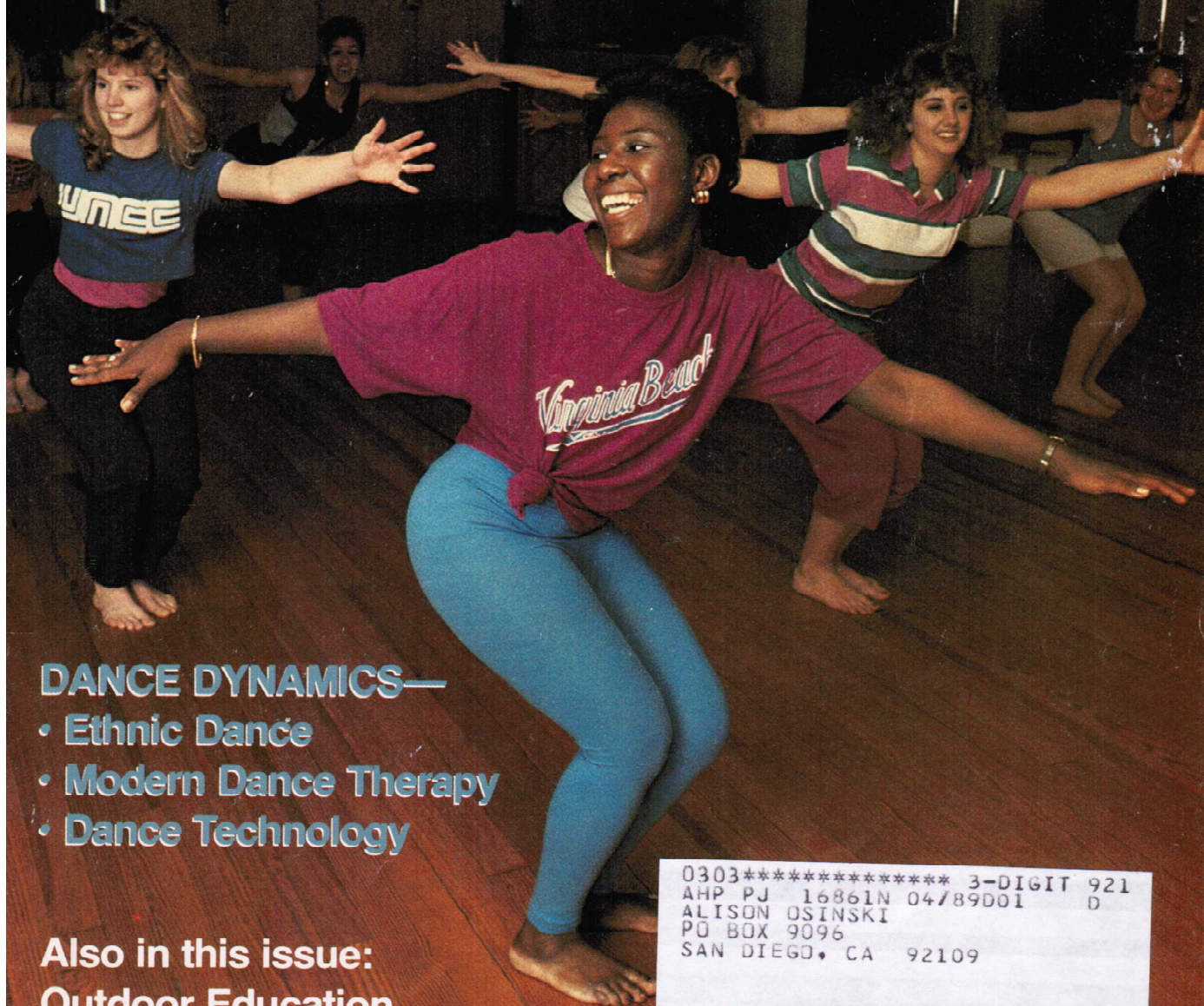


Journal

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MAY/JUNE 1988



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LEGAL RESPONSIBILITIES OF LIFEGUARDS

Avoiding Lawsuits

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In our ever increasingly water-oriented and litigious society, individuals are suing for damages resulting not only from catastrophic injuries or drowning, but also for what might be considered minor water or aquatic-facility related accidents. As a result, many communities, organizations and aquatic facilities are having problems obtaining and retaining insurance coverage, as well as difficulty in being able to afford the astronomical increases in the cost of liability insurance.

Those of us who train professional lifeguards can help reverse this trend. Without dissuading mature, interested and qualified candidates from pursuing employment as lifeguards, we must inform them that lifeguarding is a high risk career. At the completion of the initial lifeguard training course, guards should know how to avoid or lessen their chances of becoming involved in a lawsuit. Lifeguards should have an understanding of their legal responsibilities to patrons and to employers to competently perform this job.

All lifeguards should be given basic instruction in the laws which affect their careers. It should be emphasized that the law focuses on obligations or duties. Civil law is concerned with obligations owed to individuals. Duties owed individ-

uals, where promises have not been made, is the concern of tort law.

When translated from the Latin "tortus," tort literally means twisted or bent. The concern of tort law is to make an individual whole again by compensating him for damage resulting from an injury.

Civil liability arises when one fails to perform an act that should have been performed (nonfeasance), or performs a wrongful or improper act (misfeasance). For example, a lifeguard who fails to recognize a drowning victim and therefore does not make a prompt rescue, may be found nonfeasant because he failed to act. A guard who rescued a victim using the traditional cross-chest carry and deep-water lift method of removal from the water, when a possible spinal injury was indicated, may be found misfeasant because he acted improperly.

A plaintiff, the injured party, must prove negligence on the part of the defendant in order to obtain compensation for injury. Negligence is conduct falling below the standard established by law for the protection of others against unreasonable risk of harm. Plaintiffs must show a legal duty owed by a defendant, a breach of that duty, and a causal relationship between the defendant's conduct and the resulting damage to the plaintiff.

Standards of care owed to individuals vary. Any determination of negligence is based on standards for performance of the professional lifeguard. Ignorance of such professional obligations is no excuse for failing to meet them. Guards must function in a competent manner and fulfill duties of reasonable care. Standards of care are determined by the level of the activity, the type of participants involved, and the environmental conditions present during the activity. For instance, a guard owes a greater standard of care to invited guests, children, and handicapped individuals.

A lifeguard's primary concern is for the safety of others. Primary obligations include preventative, rescue, and follow-up duties. Accidents can be prevented by eliminating hazards (hazardous situations or behaviors) and by reducing risks, thereby reducing probability of injury. All emergency situations should be responded to immediately and proper first-aid procedures followed. Enforcing facility rules and regulations and informing patrons of their purpose is also the guard's responsibility. However, additional duties assigned by a supervisor should never interfere with a guard's primary obligations.

Although most lifeguards are aware of their obligations, acci-

dents still do occur, and individuals who should have been protected from injury do bring legal proceedings against lifeguards and their employers. The most common reasons for lifeguards being sued include: injury to patron resulting from contact with sharp objects in the water or on the deck or shore; failure by lifeguard to make a

prompt rescue; inadequate supervision and/or insufficient number of guards on duty at the time of an accident; inadequate, inaccessible, or improperly maintained rescue equipment; substandard qualifications and/or training of lifeguards at the facility; and inadequate maintenance of the facility.

Given this understanding of both

legal and job responsibilities, how can lifeguards avoid liability?

First, *plan for emergencies*. Develop emergency action plans: written and rehearsed procedures of what to do when an emergency occurs. A comprehensive list should be compiled of potential emergencies likely to occur in an aquatic environment. Along with emergency action plans, primary as well as secondary responses to all likely emergencies should be considered. Lifeguards should have a thorough understanding of how to administer first-aid care to patrons involved in any of these emergency situations. Even minor emergencies can become life threatening if not treated properly, quickly and without confusion.

Make sure personnel are qualified and thoroughly understand their responsibilities. Guards should be properly certified (Advanced Life Saving, Life Guard Training, Water Safety Instructor, Certified Pool Operator, National Association of Underwater Instructors, Cardiopulmonary Resuscitation, Standard First Aid, etc.) as required by their particular job. Guards should be trained for work at their specific facility. Competency should be tested preseason, and at regular ongoing inservice training sessions.

Make sure the number of guards on duty at all times is adequate for the size and layout of the facility, the number of patrons using the facility, the environmental conditions which might limit a guard's ability to perform his job, and the activities being conducted. Guards should never work alone. Guards must be attentive at all times while on duty. There must be constant and uninterrupted supervision. Guards should be reminded of surveillance duties, proper scanning techniques, and their assigned areas or zones of responsibility. Lifeguards should rotate to a new position regularly to help maintain attentiveness. We know adults cannot concentrate for a period of more than about 40 minutes, therefore guards should not be expected

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to work in excess of 40 minutes at a time without being relieved from surveillance duties for at least a short period of time.

Properly design and maintain facilities and equipment. Identify potentially hazardous areas, equipment and activities. Have a consultant evaluate plans prior to construction or renovation since design defects can easily become maintenance defects. Inspect the premises daily. Strictly obey state or local health codes pertaining to bathing facilities. Keep everything in good repair. Discover facility defects or broken equipment before patrons do. Warn patrons of any potential danger. Then immediately repair, remove, or prevent patron access to the hazardous area or broken equipment.

Keep accurate records. Document everything. Duplicate, file and save accident and incident reports. Individual guards involved in rescue situations should retain a copy of the report for their personal records. Legal proceedings may take a period of three to five years till settlement. Records often become lost. Employees' memories often dim as to the specific facts of an accident after such a length of time—facts defense attorneys can use to their client's advantage. In many cases, the statute of limitations where a minor is involved allows the minor to file a lawsuit for compensation for damages until two years after reaching the age of majority, regardless of how long ago the accident occurred. When filling out a report, include a complete description of the accident, rescue procedures and treatment given. List the sequence of events as they occurred. Be careful not to admit fault. Draw a diagram of the accident site or take photos. Describe the conditions of the facility at the time of the accident. Have witnesses sign and date statements. Attach to the report a list of topics covered in preseason training, preemployment applications and tests, and job descriptions of involved employees. Also attach maintenance reports, daily logs,

health department inspection reports and employee work schedules.

Establish a well understood communication system. Standardize the signals. Decide whether whistles, air horns, public address systems, flags, hand and equipment signals, or some other form of communication is most appropriate. Make sure the system decided upon is understood by both staff and patrons.

Develop, post and distribute facility use and safety rules. Rules must give meaningful warning. Be very explicit with a rule's language. If you mean that children must have direct parental supervision at all times, then say so. Staff and patrons should know why a rule exists. The danger and consequences of not obeying a rule must be pointed out. Remember, rules must be seen and understood. Use universal or pictorial signs if possible. Most importantly, existing rules should be enforced consistently and firmly.

By following these recommendations, lifeguards can help to significantly reduce the probability that they or their employers will become involved in litigation as a result of a preventable water accident. Elimination of hazards through planning, preparation, training, vigilance and regular facility maintenance will reduce the number of patrons injured, and make pools and beaches safer and more enjoyable places to play, exercise and work.

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