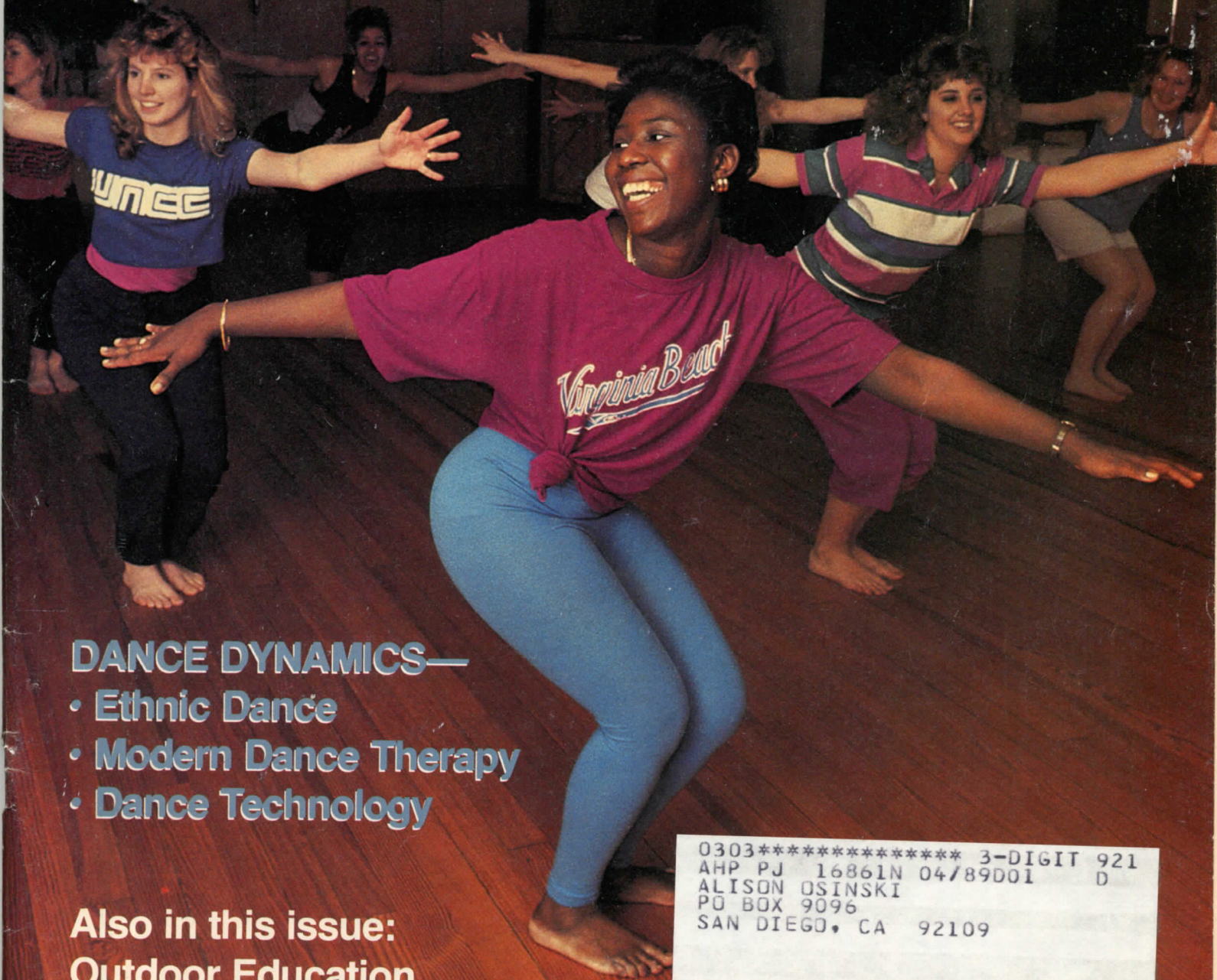


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ALISON OSINSKI  
PO BOX 9096  
SAN DIEGO, CA 92109



Legal Responsibilities of Lifeguards  
How to Avoid Lawsuits

Alison Osinski, Ph.D.  
Assistant Professor and Aquatic Specialist  
San Diego State University  
San Diego, CA 92182

In our ever increasingly water-oriented, but 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 experiencing problems in obtaining and retaining insurance coverage, as well as difficulty in being able to afford the astronomical increases in 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 instill an appreciation for the fact 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 whom they will be charged with protecting, and, an understanding of their responsibilities to their employers to competently perform the job they are being employed to do.

All lifeguards should be given instruction which will result in a basic understanding of the law. It should be emphasized that the concern of law is obligations or duties. Civil law is concerned with obligations owed to individuals. Duties owed individuals where promises have not been made, is the concern of tort law.

Torts literally mean when translated from the Latin, "tortus", 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 rescues a victim using a traditional approach, 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. The standard of behavior upon which negligence is based, or the standard of care owed by lifeguard, is one of a professional. Ignorance of obligations owed is no excuse. Guards must function in a competent manner and exercise duties of reasonable care. Standards of care are determined by: the level of the activity, the type of participants, and environmental conditions. For

instance, a guard owes a greater standard of care to an invitee, 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 from occurring in a water related environment by eliminating hazards, hazardous situations or behaviors, and by reducing risks, and therefore the 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. But, additional duties assigned by a supervisor should never interfere with primary obligations.

Although most lifeguards are aware of their obligations, accidents still do occur, and individuals who should have been protected from injury do institute legal proceedings against lifeguards and their employers. The most common reasons for lifeguards being sued include: patrons injured as a result of contact with sharp objects in the water or on the deck or shore, failure to make a prompt rescue, inadequate supervision and/or number of guards on duty at the time of an accident, inadequate, inaccessible, or improperly maintained rescue equipment; lack of qualifications and/or training training for 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, which are written, 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. Emergency action plans should be developed and primary as well as secondary responses to all likely emergencies should be considered. Lifeguards should have a thorough understanding of, and ability to provide first aid care for patrons involved in all of these emergency situations. If not treated properly, quickly and without confusion, even minor emergencies could become life-threatening.

MAKE SURE PERSONNEL ARE QUALIFIED AND THOROUGHLY UNDERSTAND THEIR RESPONSIBILITIES. Guards should possess proper certification (Advanced Life Saving, Life Guard Training, Water Safety Instructor, Certified Pool Operator, National Association of Underwater Instructors, Cardiopulmonary Resuscitation, Standard First Aid...) appropriate to their particular job. They should be trained for work at the specific facility. Competency should be tested pre-season, and at regular on-going in-service 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 should understand 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 forty minutes, therefore guards should not be expected to work in excess of forty 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 defects or broken equipment before patrons do, warn patrons of the potential danger, and immediately repair, remove, or prevent access to the defect 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 and employees' memories often dim as to the specifics of an accident after such a length of time -- facts defense attorneys use to their client's advantage. Remember, 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 it's been since the accident occurred. When filling out a report, include a complete description of the accident and 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 pre-season training, pre-employment applications and tests, and job descriptions of involved employees. Also attach maintenance reports, daily logs, health department inspection reports and employee work schedules to the report.

ESTABLISH A WELL UNDERSTOOD COMMUNICATION SYSTEM.

Standardize the signals. Decide whether whistles, air horns, public address systems, flags, hand or 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 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 signage if possible. Most importantly, existing rules should be enforced in a consistent and firm manner.



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 water accident which could have, and should have, been prevented. Elimination of hazards through planning, preparation, training, vigilance and regular maintenance will result in the lessening of the number of patrons injured, and make pools and beaches safer and more enjoyable places to play, exercise and work.

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