Exercise professionals are in a unique position to provide improved health and well-being, reduce the risk for injury and disease, lower the occurrence of depression and emotional stress, and even enhance a person’s look and confidence. But all this good may still go unrewarded if you make a mistake (or are perceived to make a mistake), and if the client or customer thinks the mistake impacted them physically, emotionally, or financially.
America is the 5th most litigious country in the world and has the highest number of lawyers per capita. According to the American Bar Association, there are currently 1,338,678 lawyers practicing in the United States, which translates to about one for every 300 people. This creates two major problems for practicing professionals; 1) lawsuits are common and there is no negative stigmatism to suing someone, 2) with so many lawyers there is a competitiveness to drive business, so many will take a case without upfront money or cost unless they win. So how does one protect themselves against these risks and confidently practice their trade? Buying professional liability insurance is one step in protecting oneself from personal financial harm. Professional liability insurance, also known as errors and omissions insurance (E&O insurance), helps cover you and your company if you are found negligent while providing recommendations or your professional services.

Professional liability insurance helps protect you and your company against any claims stating that the professional advice or services you provided caused a client or customer harm, due to mistakes on your business’s part or because the business failed to perform some service. Generally, the protection is aimed at tort law. A tort is a wrongful act or an infringement of a right (other than under contract) leading to civil legal liability. Essentially, tort law is the area of law that protects people from bad acts of others, intentional or not. When a person commits a tort, they violate civil law, and potentially criminal law as well, but that is handled in a separate court.

If a person is damaged by someone else’s wrongful act, they can bring a claim for compensation against the person who commits the tort. The purpose of tort law is to ensure that wrongdoers pay for the damage that they cause, instead of victims “paying” for the damage. As mentioned, a tort can be a crime, however tort law is never criminal law. Whether or not the state pursues criminal charges is irrelevant to tort law, because a person can always pursue a civil remedy in the courts. The O.J. Simpson trials are testament to this fact, in that he was cleared criminally for the murder of Nicole Simpson but found guilty of wrongful death in civil court. The latter cost money, but there was no cause for jail time.

Tort law does not need a prosecutor or technically even a lawyer, as anyone can legally draft a complaint. The complaint is a formal court document that lists what the other party did wrong and asks for the relief allowable under the law. In exercise professions it is assumed that physical injuries are the common cause of a tort, but it represents just one area of damages from a tort, as a person can have emotional injuries as well. They might have lost their peace of mind, their privacy or even their business or personal reputation. Any of these physical or emotional losses might give a person grounds to bring a claim for recovery under tort law, which again may be intentional or not.

Negligence is another area of tort law for which professional liability is necessitated. Everyone in society has a duty to act in a way that doesn’t pose a risk to any other person. When a person acts in an unreasonably or dangerous way, they act negligently. When their negligent act damages someone else, they can be liable.
A few of the ways that negligence can occur in exercise professions include:

- Not clearing individuals for exercise
- Improper programming
- Improper instruction
- Overstretching a client Excessive training volume/intensity relative to the audience
- Incorrect environmental management
- Lack of a safety plan
- Instructing in areas of little or no expertise
- Improper equipment set-up
- Improper use of equipment
- Exposing client personal data

It is presumed that the above list is inclusive of unintended negligence, even though fiduciary care was unmet it was likely not the goal of the professional. There are sometimes torts that are deemed intentional and may or may not be considered criminal.

- Assault
- Battery
- Intentional infliction of emotional distress
- Bullying
- Invasion of privacy
- Defamation

These cases may have further implications within the coverage of law, but would definitely all fall under tort law and would subject the trainer to professional and even personal liability.

Based on this information it makes sense that all exercise professionals should hold a policy. Many exercise professionals think because they work at a gym facility they are fully covered. This may or may not be the case. If paid as a 1099 sub-contractor, the facility has no responsibility to cover your professional insurance.

In fact, if they do they would likely be considered an employer, which creates other liability issues with the IRS. If working only for a single employer to provide exercise professional services and being paid as a W-2 employee, again you may or may not be covered. If the facility has a policy that covers all employees then you would be covered; if they do not carry such a policy, then everyone is exposed at a high risk for liability under tort law. In some states certain kinds of professional practices are required to carry professional liability insurance, but rarely are exercise-based businesses subject to these requirements, so never assume to be covered by a company you work for, always ask for proof.

When working independently you become the business, so you would certainly need to get a policy. It’s part of professional practice, and a client may require a business to have professional liability insurance as a condition of a contract to do work. Another key element to remember, if you work directly with customers by providing services, a customer/client can sue even if you’ve done nothing wrong. If a customer or client believes for example, they received inferior service, mistakes were made or they received bad advice from your company, they may make a claim or even sue your business. The burden of proof falls on them, the costs fall on you to defend even frivolous lawsuits, which often run into the tens of thousands in lawyer’s fees, even if you win.

Professional liability insurance helps cover common claims including negligence, misrepresentation, violation of good faith and fair dealing, and inaccurate advice. Depending on the terms, a professional liability insurance policy may also help cover privacy violations.
Having professional liability insurance can help protect you and your business from the time-consuming work and costly expenses that come with mounting a legal defense after a client sues.

Now that we have established the importance of coverage for exercise professionals, how much do these policies cost? Professional liability insurance rates are impacted by a few different factors. Because businesses in different industries can get E&O insurance coverage, the policy rates usually differ from company to company. When it comes to professional liability insurance, there isn’t one policy that applies to every business; for individuals it is much easier based on what you do inside your own practice.

For example, a professional liability insurance rate for a group exercise instructor may be different and have a lower premium than the insurance policy to cover a HIT class training center.

A business’s professional liability insurance cost can be impacted by:

- Policy coverage limits and other terms of the policy, such as the retroactive period
- The type of business
- The location of the business
- The size of the company, number of employees, and number of clients
- Years in business
- Claims history
- Depending on the state, your credit score may affect the insurance rate

Some factors may also reduce the rate of an E&O insurance policy. Here are a few things that can result in a cheaper rate:

- Having a clean claims history
- Choosing a higher deductible for your professional liability insurance
- Having a quality control process in place to catch or limit potential errors before products or services are delivered to a client
- Depending on the state, your credit score may lower your insurance rate

When getting a business liability insurance quote, you may be asked to provide some documentation, such as:

- Copies of contracts
- Documentation procedures
- Any information about previous errors and omissions coverage
- Quality control processes
- Employee training initiatives

These documents are used by the insurance company to evaluate the risk associated with your business.

There are a number of factors to be aware of when determining how much professional liability insurance coverage to get for your business. Work with a specialist that can help you pick the right amount of professional liability insurance coverage for you and your business, at the right price. Never be under-insured, but do not pay for extra insurance you do not need either. The NCSF offers discounted liability policies for certified members, which have high coverage limits at low costs. For more information go to https://fw.phly.com/fwgeneralfitness3.aspx?id=Hoffman.

What is Professional Liability Insurance

The CEU Quiz is now available online at: http://www.ncsf.org/continueded/onlineceu.aspx