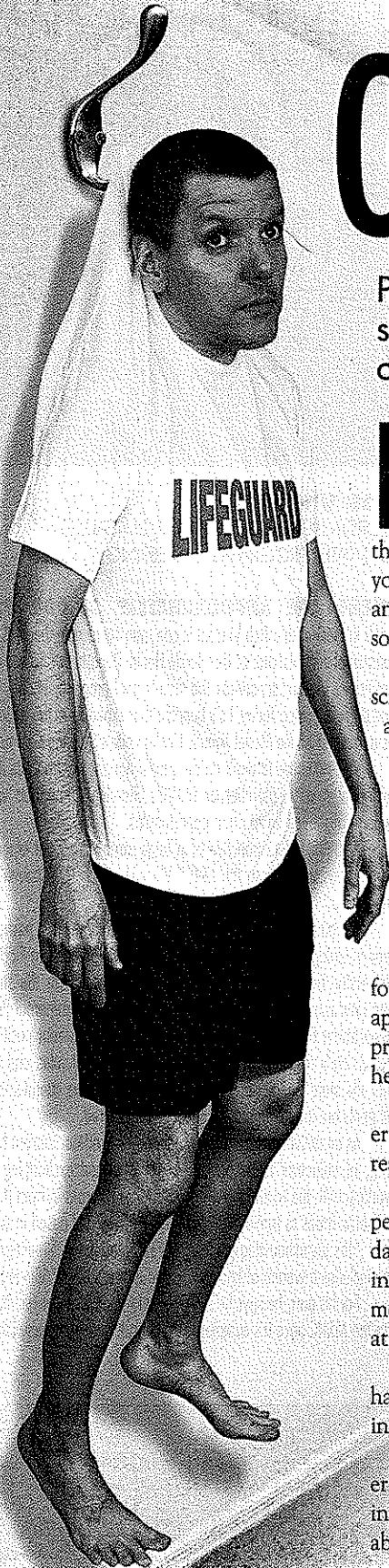




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On the Hook?

Potential liability is a fact of running a facility. But setting clear expectations — and consequences — can help you and your lifeguards avoid the legal tangle.



Health, happiness, money, peace of mind — which would you be willing to give up for the rest of your life? Most of us would respond “none of the above.” But if you are found negligent, your liability will affect you for your life, and, yes, you most likely have to give up some of the above.

Negligence is a legal term used to describe either omission or commission of an act, which means that individual failed to meet a legal duty or obligation. For negligence to exist and a lifeguard to be found liable, five conditions must be met.

Duty. A lifeguard has a legal duty to act when on the job. Lifeguards receive a salary based on their assumption of that legal duty.

Breach. If a lifeguard does not perform his or her legal duty in a manner appropriate to the standard of care in the profession, that lifeguard breaches his or her legal duty.

Damages. If a patron’s person, property or interest is harmed, damages have resulted.

Proximal cause. If a lifeguard does not perform his or her legal duty and as a result damage happens to the person, property or interest, the criterion for proximal cause is met. The breach of duty must have a causative link to the damages.

Foreseeability. The lifeguard should have been able to predict the possibility of injury under the situational circumstances.

If lifeguards, pool managers or any other operators are found guilty of negligence in a court of law, they are held legally liable. Once found liable, damages may be assessed. In a court of law, damages means

money — significant amounts of money, that may (or may not) be paid by an insurance company. Lifeguards can end up in serious debt for the rest of their lives. Additionally, very few aquatic programs will hire an individual previously judged negligent.

Along with monetary damages, negligent lifeguards are going to find their health, happiness and peace of mind affected. Negligence results from damages. This type of damage is usually catastrophic — loss of life, loss of limb, permanent disability, destruction of property, inability to make a living. Guilt from contributing to this type of damage is not easily overcome. It is something young lifeguards must live with for the rest of their lives. Depending on the degree of personal involvement, post-traumatic stress disorder also may result. Life will not be the same again.

How do you impress on your lifeguards that each and every on-the-job action they take carries the potential for negligence for which they could be held liable? How do you further help them understand liability is for life?

Each and every day, make sure job performance has consequences. Positive consequences tell a lifeguard they are meeting their duty to patrons, and accurately foreseeing and acting to deter dangerous situations that could result in damage.

Positive consequences are more than a pat on the back. Some positive consequences include salary bonuses for additional “off the clock” work enhancing patron experiences, participant safety and/or general program quality; public recognition for quality performance;

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pay raises; and complimentary guest or family passes.

Negative consequences tell a lifeguard they are breaching their duty, as described in their job description, and damages with proximal cause could result. Negative consequences are more than "please don't do that again." Consequences must be significant. While no consequences will ever be as significant as that for a judgment of negligence and the resulting liability, consequences must be significant enough to cause the lifeguard to change so the problem behavior and/or poor performance does not occur again. Negative consequences include salary docking for tardiness, inappropriate uniform, and/or inappropriate on-duty behavior; pay reductions; requiring additional review or testing; and removal from active duty (and full pay) until performance deficiencies have been remedied.

No matter what type of consequences you institute in your program, recognize that they might not be popular with all employees. Negative consequences, in

particular, may appear to be unfair or judgmental. Often an individual, in light of negative consequences, may attempt to vindicate him or herself by saying, "But I

Negative consequences, such as salary docking or removal from active duty (and full pay), tell a lifeguard they are breaching their duty.

tried." Effort does not negate results when those results do not meet job expectations and negligence results.

The best way to head off those criticisms is to make your expectations clear at the start of the season. Include potential consequences, positive as well as negative, in your explanation of expectations. Your lifeguards should know what you think

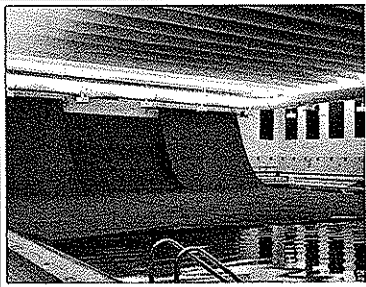
constitutes appropriate job performance. Lifeguards also need to know there will be consequences for their job performance, positive as well as negative consequences.

As an aquatics professional, you are responsible for the performance of your employees. You, too, can be found negligent. Remember, negligence is very serious and liability — yours and that of your lifeguards — is for life. ■


Author's note: Information in this column is meant to be informational and should not be construed as legal opinion. Definitions included here have been generalized from Dougherty, N.; Auxter, D.; Goldberger, A.; and Heinzmann, G. (1993). Sport, Physical Activity and the Law. Champaign, Ill.: Human Kinetics (pp. 236-237).

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