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D.C. PERSONAL-TRAINER LICENSURE ON HOLD—*FOR NOW*

D.C. CrossFit affiliates weigh in as District's Council re-examines legislation.

BY ANDRÉA MARIA CECIL

All: Tai Randall/ CrossFit Journal

The District of Columbia has paused enforcement of its law requiring licensure of so-called "personal fitness trainers" while it hammers out the details of what, exactly, it's requiring.

The law—most often called the Omnibus Health Regulation Amendment Act—makes D.C. the country's first municipality to require licensure of personal trainers.

First introduced Feb. 28, 2013, the legislation went into effect March 26, 2014. D.C.'s Department of Health oversees its enforcement. But, as Rayna Smith understands it, the agency is "very, very much behind in getting those regulations out." Smith is committee director for the Council of the District of Columbia's Committee on Health and Human Services, the committee that will spearhead any changes to the measure.

When it came to the licensure and regulation of athletic trainers and personal fitness trainers, there were "a few issues with some individual entities that wanted changes," Smith said.

Smith said everything is up for debate, from the process of registering with the mayor's office and the amount of the required fee to whether the two professions will remain under the purview of the Department of Health's Physical Therapy Board.

"Nothing is necessarily off limits."

> "So basically they made a law that they don't understand."
> —Tom Brose

Thus, the council will "double back," she said, so "everyone gets a fair say in the process, especially if it's going to regulate their occupation."

CrossFit DC owner Tom Brose, who has been managing gyms for nearly a decade, had his own analysis: "So basically they made a law that they don't understand."

Though legislation governing Washington, D.C., personal trainers went into effect March 26, 2014, enforcement is on hold as a committee tries to sort out various issues with the law.

Tom Brose of CrossFit DC takes issue with the idea that a law would help consumers differentiate between physical therapists and personal trainers.

Critics of fitness licensure contend that government fees ultimately make working out more expensive for consumers, which is a poor result given the current obesity problem in America.

The Fine Print

Personal trainers are among nine total occupations included in the amendment to the Health Occupations Revision Act of 1985. Others are athletic trainers, audiology assistants, dentists and veterinarians. Under the law, those who had already been practicing one of the nine occupations before the measure's effective date "may engage in that practice, regardless of whether that person is licensed" for one year after the law's effective date. However, athletic trainers and personal trainers need not worry because D.C. officials have paused enforcement, Smith said.

The rule defines "personal fitness trainer" as "a person who develops and implements an individualized approach to exercise, including personal training and instruction in physical fitness and conditioning for an individual and a person who performs similar physical fitness training regardless of the designation used."

That definition, too, could be reviewed, Smith said.

As it stands, such a broad definition "could include many fitness professionals who do not consider themselves 'personal trainers,'" wrote David L. Herbert in the June 2014 issue of Fitness Trainer magazine. Herbert is an Ohio lawyer who has helped such organizations as the American College of Sports Medicine (ACSM) and the National Strength and Conditioning Association (NSCA) write published standards and guidelines, and he has also served as their legal counsel.

The law's current language could be interpreted as any "individualized" training, including group classes that scale loads, repetitions and movements to an individual's physical and psychological tolerances.

Jim Bathurst, director at CrossFit Foggy Bottom in D.C., was concerned about the ambiguous terminology.

"It's very loosely defined," he said, "and, again, that's exactly the problem. What I'm worried about, of course, is, ya know, are we gonna get hit with some fines in two or three months because we didn't meet some requirement that we didn't know about?"

There are 23 CrossFit affiliates in D.C., and Bathurst was one of several leaders who knew little or nothing about the Omnibus Health Regulation Amendment Act.

"I don't think the D.C. Council did a good job in letting the public—and especially the fitness world—know (about) this legislation," Bathurst added.

The Council uses the District of Columbia Register—a weekly government legal bulletin—to publish its intent to act on new legislation, to post public-hearing notices and to inform the public of when it passes a law. The D.C. Register is an online publication issued in PDFs that are typically more than 100 pages, and some of them aren't searchable. The "Omnibus Health Regulation Amendment Act" appeared in five issues of the Register:

1. March 8, 2013: This issue was 786 pages, contained the bill's title and stated that Council Chairman Phil Mendelson introduced it "at the request of the Mayor."

2. June 7, 2013: This issue was 460 pages and included a one-page announcement of a public hearing on the bill "to regulate several health professions that are currently unregulated and to strengthen the oversight of the practice of veterinary medicine by incorporating it as a health profession." There was no mention of "personal fitness trainer."

3. June 14, 2013: This issue was 415 pages and announced a new date and location for the public hearing.

4. Feb. 14, 2014: This issue was 255 pages; 23 of them were dedicated to the entirety of the bill itself, announcing its passage.

5. April 11, 2014: This issue was 166 pages and included a one-page announcement that the bill had become law.

D.C. officials also "have met with, and actively engaged all of the interested Fitness organizations and Facilities," Senora Simpson, chair of the Physical Therapy Board, said in an email.

The board, she continued, also works "very closely" with the American Physical Therapy Association and its local chapter.

"This effort has been afloat for the past 5 years!!"

Like Bathurst, District CrossFit owner Andrew Killion hadn't heard of the law either.

"You learn very quickly in D.C. that there's so many rules and regulations that it's not really worth keeping up with them," he said.

"Welcome to D.C.," he added.

Brose, however, had heard of the law.

"There's a lot of talk in D.C. with the tax on gym memberships. And this (law) came in behind that without anyone realizing exactly what they're doing," he said, referencing D.C.'s 5.75 percent sales tax that in October 2014 was extended to health clubs. Personal-trainer fees are exempt from the sales tax.

> "We have a situation where we have bureaucrats and people who are government workers who are going to decide how people are trained, which is crazy."
> —Joe Freeman

Joe Freeman, owner of CrossFit Praxis, spent seven years on Capitol Hill before joining the D.C. offices of Virginia Govs. George Allen and Jim Gilmore. Freeman knows a thing or two about the legislative process in the nation's capital.

"It can be really difficult to find out what's going on," he said.

This law, Freeman said, gives reason for D.C. affiliates to organize themselves.

"Here we have a situation where we have bureaucrats and people who are government workers who are going to decide how people are trained, which is crazy."

Freeman continued: "We certainly reserve our right to pursue any option, any legal option we have, which may include suing over it. … It depends on how the regulations are drawn."

He added with a laugh: "Fortunately, D.C.'s so disorganized, we have time."

A veteran of Capitol Hill, Joe Freeman of CrossFit Praxis thinks it's "crazy" that bureaucrats want to decide how people are trained in gyms.

While licensure was passed in D.C., it has failed everywhere else, from California to Wisconsin to Florida.

Andrew Killion of District CrossFit hadn't heard of the new law but was unsurprised by additional legislation in the nation's capital.

A Solution Looking for a Problem

While D.C. is the first U.S. municipality to require licensure of personal trainers, others have been seeking to do the same.

Lawmakers have introduced similar legislation in California, Florida, Georgia, Kentucky, Maryland, Massachusetts, New Jersey, Texas and Wisconsin. All the bills failed for myriad reasons, including death in committee and withdrawal.

In D.C., the law was the brainchild of the Board of Physical Therapy, said Simpson, who also is an assistant professor at Howard University and a physical therapist of 54 years. The board is under the umbrella of the District's Department of Health.

The goals were twofold, Simpson said.

"One was to ensure that the public knew the difference (between a physical therapist and personal trainer) and that 'PT' was not going to be the acronym (for a personal trainer)," she explained.

Simpson continued: "In most cases, the public has no idea (how to tell the difference) between personal fitness trainers, PT or athletic trainers."

The second goal was to provide legal protection to both the consumer and to the trainer should any incidents arise, she said.

"If anything happens, who really has jurisdiction over these people?"

In the Oct. 16, 2013, report from the then-Committee on Health, the body noted that although personal trainers are not required to be licensed in any U.S. jurisdiction, "the Board of Physical Therapy perceives this lack oversight as a failure in light of anecdotal reports of injuries, sexual misconduct, and misrepresentation of titles by persons claiming to be competent in personal training."

It went on to say the measure is an effort to "clarify" the functions of personal trainers, physical therapists and athletic trainers and "provide accountability for consumers" by establishing a "scope of practice" and requiring personal trainers to register with the mayor and authorize the mayor to charge a registration fee. And, the report added, the bill "prohibits the usage of titles that would confuse the practice of personal fitness training with the practice of physical therapy or athletic training. It also exempts physical therapists from registering as personal trainers."

Steve Dolge balked at the language.

"Is there a problem with people walking into an office, thinking they're getting personal training and now they're in a physical-therapy office?" the owner of Second Wind CrossFit asked rhetorically.

Brose agreed.

"Is anyone gonna roll in and see 'personal trainer' and say, 'I've got this tendonitis. Can you help me?'"

Consumers are capable of deciding for themselves what good training is, Dolge noted.

"I don't think a lot of people out there are getting hurt by personal trainers," he said. "At worst, they're not getting results, in which case eventually they'll stop paying."

Simpson said personal-trainer licensure would be "similar to what hairdressers get."

Dolge couldn't reason it.

"I don't know why we need all this regulation. What is it fixing? Besides the fact that the whole process is a jumble of confusion that seems wholly unnecessary to me."

He continued: "This is a solution looking for a problem."

Freeman echoed Dolge's sentiments.

"I don't know how this does anything to improve the fitness industry or to protect the trainer, certainly."

All the interviewed CrossFit trainers also found it peculiar that a group of physical therapists would oversee regulations on personal trainers.

"I travel the country with physical therapists and CrossFit coaches. I think (physical therapists would) be the first (people) to tell you that physical therapy and CrossFit training sound similar but they're not," said Killion, a member of the CrossFit Mobility Trainer Course staff.

He went on: "It's a bit of a reach to assume that that person knows anything about athletic training."

What's Next

As of late January, the Council had no timeline as to when it would complete its fine-tuning of the law as it pertains to athletic trainers and personal fitness trainers, said Smith, the committee director.

"We're going to have to introduce a technical bill to get more people involved in the conversation. A lot of people didn't get to add their opinions before we moved the bill and it became enacted."

A technical bill would allow for changes to the Omnibus Health Regulation Amendment Act, as well as public hearings and submitted testimony.

She said she hoped it would be resolved within the first half of the year.

The Council will announce any public hearings at least two weeks prior in the D.C. Register. Those who would like to testify or submit written testimony for the hearing should contact the committee. Hearings are streamed live on http://dccouncil.us/.

"The game is on, even if we don't field the team," warned Freeman, the affiliate owner who spent a combined 15 years in government and as a lobbyist in the District.

"Things are rarely settled, I've learned over the years. You always have new folks coming and folks that can take a look at old issues. It's not hopeless. We need to establish ourselves as what we know that we are, which is the real deal." ■

About the Author

Andréa Maria Cecil is a CrossFit Journal staff writer and editor.

Washington, D.C., gym owners and trainers now have a chance to insert themselves into the review process and ensure the legislation doesn't negatively affect their interests.