Starting Strength

Government Licensure for Personal Trainers:
A Solution in Search of a Problem

by

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"There is always a well-known solution to every human problem that is neat, plausible, and wrong."
– H.L. Mencken

For the personal trainers out there: what if I told you that you could be fined or imprisoned because you or one of your associates trains clients without having a particular one of the over 140 personal training certifications in existence? What if I told you that you could be legally prohibited, under pain of criminal punishment, from practicing your craft because five or six unelected bureaucrats disagree with your particular training methodology?

Or maybe you're not a gym owner or personal trainer – maybe you're just someone with a sedentary day job who wants to work with a personal trainer who you trust, who makes you feel better, and who gets you the results you want. What if I told you that you could be legally prohibited from working with that particular trainer because those same bureaucrats don't like the particular personal training certification he or she has? What if I told you that ***you*** could even be held criminally liable for working with that particular trainer? (Do you even know what personal training certification your trainer has? Do you even care, so long as you get results?)

You'd probably call me paranoid, or dismiss me as spouting some crackpot fascist conspiracy that I read on the John Birch Society webpage.

You'd also be wrong.

The District of Columbia has already passed a law legally prohibiting one from providing personal training services without a state-conferred license.[1] The D.C. Department of Physical Therapy is currently drafting implementing regulations.[2] You read that right – professionals specializing in rehabilitating *injured, disabled, and chronically ill patients* will be drafting and enforcing regulations governing fitness professionals who train *non-disabled, relatively-healthy people*. Over the last five years, legislation has been introduced in ***five*** States (Florida, Georgia, Maryland, Massachusetts, and New Jersey) similarly prohibiting provision of personal training services without a license.[3] These bills would carry hefty fines and jail terms of up to a year for violators. Nevada seriously considered such

regulation in 2006. In 2010 and 2011, respectively, California and Texas proposed voluntary licensing schemes for personal trainers.[4]

Unless you've closely followed efforts to regulate the personal training profession (which I have found very difficult even as an attorney who has a practice area devoted to the fitness industry), or unless you viewed my presentation last year to the Starting Strength Coaches Association during its annual conference, you likely have not heard of any of this.

Now you may be thinking: so what? Isn't it a good thing to have personal trainers demonstrate that they have some minimum degree of competence? Exercise is dangerous, right? Isn't your brother's sister-in-law's former roommate crippled for life because he deadlifted or something like that?

Let's put aside arguments against licensing based on general political or philosophical viewpoints, since not everyone (this author included) is categorically opposed to governmental regulation.[5] The problem is that state-required personal training licensing is unnecessary and would cause legal pandemonium, both for the fitness industry and for the consuming public. As discussed further below, recent personal training licensing proposals would provide little or no benefit to the consuming public; are unworkable; and would require a hand-picked cabal to arbitrarily decide standards of care and requirements of practice, backed up by threat of criminal liability commensurate with serious offenses like drunk driving and assault.

Who is trying to regulate?

Before getting into the problems with personal training licensure, let's examine the fountainhead of the licensing impetus. The primary modern advocate for personal training regulation is the Coalition for the Registry of Exercise Professionals, or CREP. CREP is the lobbying arm of the US Registry of Exercise Professionals (USREPS), whose members consist of the Cooper Institute (CI), the American Council on Exercise (ACE), the American College of Sports Medicine (ACSM), the National Council on Strength and Fitness (NCSF), the National Strength and Conditioning Association (NSCA), the National Exercise Trainers Association (NETA), and the Pilates Method Alliance (PMA). Each of these organizations has its own personal training certification.

If you examine the most recent proposed personal training legislation, odds are you'll find USREPS/CREP's fingerprints on it in some way. For example, USREPS member organizations have been working with the District of Columbia since ***2008*** to develop the personal training law that was ultimately enacted in 2013,[6] and USREPS is currently helping to draft implementing regulatory language.[7] CREP also sends copies of its "Sample Legislation" (a copy of which is appended to this article) to state legislatures around the country. Georgia Senate Bill 204 (2011) contains a lot of the same language as CREP's sample legislation. Four USREPS member organizations met with Massachusetts State Representative Paul Brodeur in connection with Massachusetts House Bill 1005 (2011), introduced by Mr. Brodeur and State Representative Robert Fennell. Mr. Fennell has introduced identical bills in 2013 (Mass. HB 209) and 2015 (Mass. HB 185).[8] Florida Senate Bill 1616 (2013) includes many similar concepts to CREP's sample legislation, and ***requires*** that a USREPS member organization (ACE) be represented on the standard-setting board.[9]

In short, the modern push for personal training regulation is not a consumer grassroots movement or a local response to a perceived local problem, but rather a concerted effort from a handful of personal training certification organizations requesting that ***they*** have input in deciding who may practice personal training and who may not. Just keep that in mind as we discuss the myriad problems with the proposed personal training regulations.

Regulation – Bad for Personal Trainers, Gyms, and Clients

Although I am a litigator by trade, a good bit of my legal practice involves advising businesses (from one-man shops to Fortune 500 companies) on matters relating to administrative law, legal compliance, asset protection, and risk management. As a result, I have a great deal of background in reading, understanding, and interpreting statutes and regulations by federal and state government. I'd like to think that my professional background allows me to honestly appraise the benefits and disadvantages of proposed legislation – and in my view, as discussed below, personal training licensure would inject a great deal of legal uncertainty while providing no meaningful benefit to the fitness profession or the consumer.

Problem with Personal Training Licensing #1: It's unnecessary.

Let's begin with a basic principle: government licensing requirements should not be imposed unless there is an actual, serious problem in a profession. Licensing always imposes costs on consumers (typically in the form of higher prices), and often societal costs as well, such as lower availability of professional services and increased taxes for legal enforcement.[10] We don't want to incur those costs unless doing so would prevent a harm outweighing those costs. Sure, it's ***possible*** that your local barista will muck up your coffee order and seriously injure you – there are many instances of coffee establishments being sued because their coffee was not properly prepared and caused injury, and I'm sure with sufficient Googling you could even find a coffee-preparation-related fatality or two. But we don't legally require that baristas attend Coffee School to receive a Coffee-Making Certification because, even though consumers may be seriously harmed from time to time by ill-prepared coffee, the total costs imposed by a coffee-licensing system outweigh the benefits.

So what about personal training licensure? Calls for licensing are typically based on anecdotal evidence of people being seriously injured while weight training with a personal trainer. But the actual numbers show that recreational weight training is one of the lowest-risk physical activities in which one can participate, with an infinitesimally-small ***0.0035 injuries per 100 participation hours*** – a rate far lower than soccer (6.2 injuries/100 hours), rugby (1.92), basketball (1.03), cross country (0.37), physical education class (0.18; who knew the giant parachute was so dangerous?), football (0.10), squash (0.10), or badminton (0.05).[11] And this holds true even though many people train horribly, even comically wrong. As far as I know, no one is clamoring for mandatory licensure of badminton coaches, despite that badminton has over 14 times the injury rate of weight training.

It's not just medical journals finding a lack of injuries from weight training. In 2010, the California Senate Committee on Business, Professions and Economic Development had this to say with respect to proposed personal training licensure:

> It is unclear whether requiring these individuals to complete certain programs will enhance the quality of their service or improve safety, particularly since ***there is not a substantial body of data highlighting serious harm or injury stemming from services offered by personal trainers*** in California.[12]

In other words, the ***data*** shows that serious injuries resulting from personal training are rare, despite the anecdotes you may hear from time to time. Given the relative safety of weight training under the guide of a personal trainer, licensure simply isn't needed.

Problem with Personal Training Licensing #2: It won't make personal training safer.

Another basic principle: licensing should not be legally required unless it will actually improve consumer safety. There's no evidence that this would be the case for the personal training profession. As a general matter, there is little evidence that licensing improves quality or safety of ***any*** given profession. Just last month, the Department of the Treasury, the Council of Economic Advisers, and the U.S. Department of Labor (all under a Democratic administration, it's worth noting) jointly authored a report on occupational licensing. Examining numerous studies on licensing's impacts on several different industries, the report concluded that **"*most research does not find that licensing improves quality or public health and safety*."**[13]

This is not to say that licensing would *never* improve quality or safety in *any* profession, and the government report was careful not to make such a categorical statement. But the report does indicate that licensing will only improve quality or safety in exceptional cases. Empirically speaking, improved quality due to state-imposed licensing is the exception, not the rule.

And there is no indication that personal training is one of the exceptions. If a trainee is injured during a training session, it will almost always be while performing a movement incorrectly. Yet almost no personal training certifications require candidates to demonstrate proficiency in coaching actual, live trainees to perform particular movements (e.g., squat or bench press). Think about that for a second: you can get a personal training certification from the ACE, NASM, ISSA, ACSM, or NSCA (the five most popular personal training certifications) without ever having to demonstrate that you are capable of teaching someone a movement in real time.[14]

Thus, not only is there no evidence that personal training has caused a spate of injuries to the consuming public, but there is no evidence that personal training licensure would meaningfully prevent the few isolated injuries that do occur. We do know, however, that requiring licensing will increase the cost of services to the consumer. It always does. Increased cost for no meaningful benefit? Sounds like a really bad deal.

Problem with Personal Training Licensing #3: The ambiguities in the proposed personal training regulation bills inject significant uncertainty into the law and may impose criminal liability on unwitting individuals.

Proposed personal training licensure laws carry stiff penalties for noncompliance – up to a year in prison,[15] as well as hefty fines ranging from $1,000 to $5,000 depending on the State.[16,17] Even more draconian, Florida SB 1616 would impose these penalties not only on unlicensed trainers, but on ***consumers*** who knowingly employ an unlicensed trainer.[18]

These are the same penalties that can be imposed for drunk driving, assault, theft, and even negligent homicide in most States. So you'd think the proposed personal training licensing laws are at least clear on who and what they cover. But they aren't – not even close – and it is nearly impossible to tell who is and is not bound by proposed personal training licensure laws.

The definition of "personal training services." The root of the problem is in the definition of personal training services. Here's the definition that CREP proposes in its Model Law:

> A 'Personal Fitness Trainer' develops and implements and individualized approach to exercise using premeditated, non-choreographed exercise programs, utilizing collaborative goal-setting, behavioral

> coaching techniques, and other strategies to increase self-efficacy, motivation, self-regulation, overcoming barriers to change and technical coaching and instruction in physical fitness and conditioning for an individual client, or organized group of clients, who require pre-participation evaluation or instruction prior to engaging in the exercise regimen. Personal fitness trainers may work with any individual who does not require medical clearance prior to engaging in exercise or who has been cleared for exercise by a medical physician with a recommendation to participate in physical activity without the need for medical supervision. 'Personal fitness trainer' shall include personal trainers, personal fitness trainers, fitness coaches, Pilates teachers and persons performing similar physical fitness training instruction regardless of the designation used. This definition does not include group exercise instructors, physical activity leader [sic] or certified athletic trainers.[19]

Even the IRS blushes at that one. CREP's definition is so verbose that no proposed legislation has used it, but many laws have borrowed parts of it. For example, the District of Columbia's licensing law defines a "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.[20]

This definition is nearly identical to that proposed in Georgia SB 204, and is substantively similar to Florida SB 1616,[21] New Jersey SB 695 (2010),[22] and Massachusetts HB 185,[23] although the Massachusetts law expressly excludes all group exercise instruction from its ambit.[24] Maryland's HB 747's (2010) definition of personal training services is arguably the broadest, as it includes both the foregoing activities and enumerates several others, such as "encourag[ing] healthy behavior modifications."[25]

Clearly these regulations encompass the guy who develops a weight training program for you and supervises you while you perform the various exercises. But what about other types of activities that involve "training and instruction in physical fitness"? Gymnasts, cyclists, martial artists, track and field participants, and participants in other sports often hire coaches to create individualized approaches to make them better at their chosen activity. Don't these coaches – at least the good ones – also engage in "collaborative goal-setting, behavioral coaching techniques, and other strategies to increase self-efficacy, motivation, self-regulation, overcoming barriers to change and technical coaching and instruction in physical fitness and conditioning"?[26]

What about Zumba, yoga, spinning, aerobics, and the various other group fitness activities that have become popular? These instructors spend a lot of time creating routines for their clients, and their routines are designed to better their clients' physical fitness and conditioning.

What about weight training seminars or workshops, like those that Starting Strength or Crossfit put on? They're not only supervising weight training, but training and instructing on multiple levels.

What about the teacher who receives a small pay increase to coach youth sports? It is not uncommon for youth sports coaches to also develop a physical training regimen for their kids to prepare for the upcoming season, and to supervise them in the weight room, especially in school districts strapped for cash.

What if you and your training partner help develop each other's programs, and coach each other on exercise form during your training sessions? What if, while you and your partner are training, a new gym member asks you for help in working on his form or developing a programming regimen, and you decide to help because you're knowledgeable and a nice person? CREP's and other States' proposed legislation do not require that one be paid to be providing personal training services – the

only outlier is the DC law, which exempts "gratuitous personal fitness trainings services provided by a friend or family member."[27] (Query: can someone who comes to you for help, whom you've never met before, be considered a "friend"? -Shrug-)

Taking the definition of "personal fitness trainer" or "personal training" at face value in the proposed laws, there is no reason to believe that any of the foregoing would fall outside the definition of a personal fitness trainer. Sure, the Powers That Be charged with enforcing the licensure laws may decide to exempt some or all of the above activities to avoid a regulatory nightmare, but there's no principled reason to exempt any of those activities ***based on the proposed statutory language***.

And that's the problem. Intended or not, the statutory language of proposed personal training licensing laws is so overbroad that it swallows nearly all types of athletic coaching. And it's not just me saying this. Take this statement during a June 28, 2013 hearing on the bill that eventually became the DC personal training licensure law:

> The proposed definition for 'personal fitness trainer' is very broad and could potentially encompass individuals who are not in fact personal fitness trainers. . . . Given the uncertainty and the questions as to the necessity and capacity to regulate personal trainers, as well as potential impact, we respectfully recommend that the language related to personal fitness trainers be deleted from the bill at this time to allow for further discussion and study.[28]

That's Alison Lichy, then-President of the D.C. Chapter of the American Physical Therapy Association. Her warning should have carried considerable weight given that members of her Chapter are on the DC Board of Physical Therapy, the agency that will actually implement the DC law. The DC government, however, ignored her,and now, despite that the DC bill passed in 2013, the DC Board of Physical Therapy still is trying to figure out how to implement the regulations.[29]

Worse, the overbreadth problem inherent in a definition of "personal trainer" does not seem to be fixable. In 2006, Nevada passed SB 47, which established a subcommittee to explore creating a licensing scheme for personal trainers. The subcommittee folded after three years, expressing frustration with, among other things, "[t]he difficulties in trying to ascertain an appropriate jurisdiction for the industry."[30] Translated into non-legalese: "we don't know how in the blue bloody hell to define 'personal trainer.'"

If government officials tasked with drafting and enforcing the laws cannot figure out who is covered by proposed personal training licensing schemes, there's no way you can. That, in and of itself, should disqualify personal training licensure from serious consideration.

Exemptions to regulations. As noted above, one of the major problems with proposed personal training licensing laws is that their language applies to ***every*** type of fitness endeavor – even activities like group martial arts, Zumba, yoga, and spinning. Georgia SB 204, Florida SB 1616, and Maryland HB 747 do not have any clear exceptions that exempt these types of group activities, and New Jersey SB 695 expressly states that it equally applies to "group fitness instructors."[31] Only the DC law, Massachusetts HB 185, and CREP's model legislation attempt to account for the "group fitness" problem – but their approaches, far from offering clarity, only inject more arbitrariness and uncertainty into the licensing cauldron.

Massachusetts HB 185 simply exempts all group exercise from licensing.[32] The bill defines a "group exercise instructor" as "an individual who instructs more than one person at one time, with or without equipment, in exercises designed to improve cardiovascular conditioning, muscular strength, flexibility and weight loss in classes that include, but are not limited to, martial arts, Pilates, yoga, kickboxing, boot camp, spinning and any other group class that is taught at a fitness facility."[33] DC

Code § 3-1209.08(c)(4) similarly exempts the supervision of athletic activities (including weightlifting) by coaches, physical education instructors, or gym instructors.

You've probably recognized an obvious oddity in Massachusetts HB 185 and D.C. Code § 3-1209.08: so long as personal training occurs in the context of a group class, it is exempt from licensure under the language of the exceptions. This creates the somewhat absurd situation where an unlicensed person providing weight training coaching to one person would be in legal hot water, but that same person providing weight training coaching (or "supervision") to two or more people at the same time would not. Talk about arbitrary and nonsensical! CREP (somewhat self-interestedly) complained about this very problem, noting that Massachusetts HB 185's complete exemption for group fitness instructors "could result in a significant number of individuals circumventing the requirements for practice in the Commonwealth[.]"[34]

But CREP's solution isn't much better: its model legislation exempts group fitness instructors, but only if they – and I'm not making this up – "provide choreographed exercise leadership ***to music***."[35] Needless to say, CREP has not explained why a personal trainer suddenly becomes less dangerous to his clients once music starts playing. In fact, the data shows the opposite – whereas weight training has an injury rate of 0.0035 injuries per 100 participation hours, the injury rate for aerobic dance is ***285 times*** higher, at 1 injury per 100 participation hours.[36] One study found that over 1 in 4 Zumba participants experienced an injury over an average of 11 months of participation,[37] an injury rate unheard of with traditional personal training services.[38]

Again presumably to avoid the "group fitness" problem, CREP's model legislation also exempts "physical activity leaders" from licensing requirements,[39] defined as "a lay person leading varied levels of physical activity to groups of people."[40] Leaders of hiking clubs or gym teachers in school PE classes would certainly fall within the "physical activity leader" exception. Then again, so would someone leading Crossfit workouts of the day (WODs) or named Crossfit workouts (e.g., Fran, Murph), since these involve non-individualized routines performed by people of different physical activity levels. But given that USREPS members have repeatedly referenced Crossfit certifications and programs in calling for trainers to hold "recognized" or "accredited" certifications,[41] it is inconceivable that USREPS's model legislation would permit Crossfit affiliates to continue "business as usual" after its enactment – especially since USREPS's model legislation requires that half of the regulating Board be people with NCCA-accredited certifications.[42]

In short, even if a particular type of group activity (such as Crossfit WODs) falls under the text of CREP's "physical activity leader" exception, there is a very real possibility that it would be subject to licensure requirements anyways because the Powers That Be have deemed that particular group activity too dangerous. The ***last*** thing one a professional licensing framework should establish is a vague jurisdictional standard where determination of whether activities require licensure falls solely to the whim of an administrative authority – especially one that could financially benefit from the outcome. But such an arbitrary heckler's veto is precisely what CREP's proposed legislation would entail, and it is highly problematic for that reason.

Problem with Personal Training Licensing #4: Proposed legislation confers an unjustified oligopoly on acceptable personal training certifications.

The flat out unworkability of the language in proposed personal training legislation is one primary reason to oppose it. Its creation of an unjustified monopoly (or, more accurately, an oligopoly – market control by a small number of participants) in the personal training profession is another.

The oligopoly is created in two ways. First, personal training licensing bills significantly restrict the personal training certifications that are deemed "acceptable" for licensure. I have found over 140 personal training certifications in the United States. Proposed laws in Florida, Massachusetts, Georgia, and New Jersey, however, would only recognize personal training certifications accredited by the National Commission for Certifying Agencies (NCCA).[43] The NCCA only accredits 16 personal training certifications (all of USREPS's seven members are included). [44] Maryland HB 747 is even more restrictive, requiring those practicing "limited personal training" (which includes many functions inherent in the personal training profession) to hold a personal training certification from a program approved by ACE.[45] I'm sure it's no surprise that CREP's model legislation only recognizes NCCA-accredited certifications as well.[46]

You may be asking: why is this problematic? Doesn't accreditation by the NCCA show that those personal training certifications are better than others? Well, not really. As other commentators have noted, the NCCA is primarily concerned with the process for giving certifications, not the substance behind those certifications.[47] And just because a certification is not NCCA-accredited does not mean that it is inferior. The certifying organization simply may never have bothered to apply for NCCA accreditation, or it may have sought accreditation from a different organization. For example, Crossfit's Level 1 certification is accredited by the American National Standards Institute (ANSI), and USA Track and Field's coaching certification is accredited by the National Council for Accreditation of Coaching Excellence (NCACE). Interestingly, neither ANSI nor NCACE has accredited the personal training certifications offered by USREPS members. The Aasgaard Company, which awards the Starting Strength Coach credential,[48] has elected not to seek NCCA accreditation – like, I would imagine, many of the organizations offering the other 124+ personal training certifications. Lack of NCCA accreditation is hardly an indictment of a personal training certification, and there is no inherent reason why personal training certifications other than the 16 accredited by the NCCA should be categorically excluded from consideration as a matter of law.

Second, personal training licensing bills provide that USREPS members have reserved seats on the administrative body enforcing the personal training regulations.[49] Some representation is substantially disproportionate. Florida SB 1616 provides that five of nine board seats must be filled by personal trainers certified by the National Academy of Sports Medicine (NASM), the ACE, or the Aerobic and Fitness Association of America (AFAA).[50] CREP's model law requires that four of eight board seats be filled with personal trainers holding NCCA-accredited certifications.[51]

With this type of representation – and the exclusion of trainers holding "unrecognized" certifications – it is not unreasonable to believe that the administrative agencies enforcing the personal training laws will, over time, begin reverting to protectionism. Protectionism is great for those who are part of the "in-group" – they can keep competition out and charge higher prices as a result. But it is a death-knell for those holding "unrecognized" certifications and a disaster for the consuming public, who will be forced to contend with fewer personal training options and higher prices for the limited remaining services. Proposed personal training licensing schemes do not even attempt to prevent this danger.

Problem with Personal Training Licensing #5: Proposed legislation will impose legal repercussions for failing to conform to "standards of practice" imposed by government fiat.

This problem with personal training licensing bills is arguably the worst of them all. Legislative proposals, you see, do not merely preclude certain individuals from providing personal training services. They

also require that the enforcing authorities create "standards of practice" that can be used as a bludgeon for personal trainers who may have a different view of what types of training are best for their clients:

- CREP's model legislation authorizes the "board" (the administrative agency charged with enforcing the personal training licensing laws) to "enforce established practice and qualifications guidelines for exercise professionals,"[52] and to suspend or revoke a license for violating any of the "rules and regulations adopted by the board."[53]
- Georgia SB 204 would require the board to "establish guidelines for personal fitness trainers in this state," and it permits the board to "suspend or revoke the license of any licensee if he or she has . . . [v]iolated or conspired to violate or failed to abide by the law, this chapter, or rules and regulations adopted by the board as provided for in this chapter."[54]
- Maryland HB 747 would permit the board to revoke or suspend a personal trainer's license if he "is guilty of unprofessional or immoral conduct in the practice of personal training" or "fails to meet appropriate standards for the delivery of personal training[.]"[55] The bill does not define what constitutes "unprofessional or immoral conduct" or "appropriate standards" for personal training services.
- Florida SB 1616, the most extreme, requires the board to "[e]stablish a code of ethics and standards of practice and care for personal trainers" and adopt rules relating to "the allowable scope of practice regarding the use of equipment, licensure requirements, . . . protocols, and other requirements necessary to regulate the practice of personal training."[56] The bill permits the board to take disciplinary action for "[i]ncompetency or misconduct in the practice of personal training" or "[g]ross negligence or repeated negligence in the practice of personal training," among other things.[57]

If you are a personal trainer or gym owner, this should terrify you, even if you have an NCCA-accredited personal training certificate. Because it means that a simple majority of government bureaucrats can end your livelihood if you run afoul of what they deem to be an "appropriate practice."

Let me illustrate. The left two panels in the figure below show what the ACSM – a USREPS member pushing hard for personal training licensure – defines as a "squat" [58].

Figure 1. Start *(left)* and finish *(center)* positions for the squat, as described in the *The ASCM's Resources for the Personal Trainer*. *Right*, The bottom position of the full squat with hip (B) below kneecap (A) as depicted in *Starting Strength: Basic Barbell Training*.

I'm sure a lot of you personal trainers and lifters out there are literally LOLing. What the ACSM considers a "squat" would be considered a "quarter squat" – or perhaps generously a "half squat" – by a vast number of athletes and personal trainers. It is well above what a substantial part of the personal training industry and most powerlifting federations define as a proper squat, where the crease of the thigh (A) is below the top of the kneecap (B), as shown in the panel on the right.

Now suppose that, in accordance with the personal training licensing bills above, the Powers That Be decide that the ACSM's depiction is the "industry-accepted" way to teach new trainees to squat – rather plausible, given that the ACSM, as one of the largest NCCA-accredited personal training certifications, is very likely to be represented on the enforcement board. This now means that if you instruct your new trainees to perform a below-parallel squat (what many of us would call a "real squat," or just a "squat"), you can be subject to discipline, including revocation of your license and termination of your livelihood as a personal trainer. And you would be subject to discipline ***even though there is substantial medical evidence and biomechanical analysis that below-parallel squats are safer and more effective than above-parallel squats*** if performed correctly.[59]

See the problem? Proposed personal training licensing bills require that a small number of individuals, from a small number of certifying organizations, decide acceptable standards of practice for ***everyone***. Disagree with their decision? Have studies showing that other options are safer and more effective than their decreed standard? Tough – either find a new profession or don't get caught. And because proposed personal training licensure laws only countenance a handful of "acceptable" personal training certifications, correction of wayward "industry standards" would be extremely difficult because "outsiders" lacking an NCCA-accredited personal training certification do not even have a seat at the regulatory table. It's groupthink at its worst – except that the consequences impact not only fitness professionals, but their clients as well.

CONCLUSION

Although I hold a Starting Strength Coach certification, I don't have much of a personal training practice – it's very difficult to do as a full-time lawyer in a large law firm. And I'm not a libertarian who worries about tents and camels' noses.

But personal training licensure – or more accurately, my intense distaste for it – is a very personal issue to me for another reason. Last year, I squatted 402 lbs. at a powerlifting meet. (Also benched 270 lbs. and deadlifted 402 lbs.) It's a paltry weight by competition standards (I didn't place at the meet), but for me, it represented a personal accomplishment that, even as recently as 2012, was "impossible." After all, only football players and serious powerlifters or weightlifters can squat four bills, and I am a chess player and board gamer who stopped playing competitive sports when I was nine.

I was only able to squat that weight because two years earlier, I happened upon Mark Rippetoe and his seminal book, *Starting Strength* (then in its second edition), and attended one of his seminars. Mind you, in the three years prior to discovering *Starting Strength*, I had hired personal trainers certified by the NASC and the ACSM – but I never cracked a 250 lbs. squat under any of them, and I had gawdawful form on more or less every lift. That June 2012 seminar forever changed the course of my life.

Mark Rippetoe does not have an NCCA-accredited personal training certification – he formally relinquished his NSCA credential in 2009. Had these personal training licensure bills been law in 2012, I would not have been able to attend Rip's seminar, and would have remained a weaker, less healthy person, perhaps under the guidance of a third or fourth personal trainer with an NCCA-accredited certification.

Proposed personal training licensure laws would have real and serious impacts on real people's lives in a way that I don't believe licensure proponents have fully thought out. I wrote this article because it's important that people working in the fitness industry and the general public understand

these consequences. Even if licensure proponents are animated by a noble purpose, the road to Hell is paved with good intentions, as the saying goes. It is my belief that government-imposed personal training licensure would create a legal quagmire and impose new costs and layers of bureaucracy to solve a problem that, according to the data, is more imagined than real.

Personal training licensure is, in short, a bad solution in search of a problem. And even for Democrats like me, that is always the wrong reason to legislate.

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Although the opinions in this article are those of the author only, and do not necessarily reflect the views of Porter Wright, they also have the advantage of being correct.

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References and Notes

1 D.C. Code § 2-1209.08 *et seq.*

2 *See* D.C. Board of Physical Therapy Meeting Minutes, May 19, 2015, at 4, *available at* http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/May%202015%20Minute%20PT%20Open%20session.pdf ("The board discussed the draft of language for personal fitness trainer regulations and made changes. The board received recommendations from the public.").

3 Ga. S.B. 441 (2009-10); Md. H.B. 747 (2010); N.J. S.B. 695 (2010); Ga. SB. 204 (2011); Mass. H.B. 1005 (2011); Fla. H.B. 1257 (2012); Fla. S.B. 984 (2012); N.J. S.B. 731 (2012); Fla. S.B. 1616 (2013); Mass. H.B. 209 (2013); Fla. S.B. 1616 (2014); Mass. H.B. 185 (2015).

4 Tex. H.B. 3800 (2011); Cal. S.B. 1043 (2009-10).

5 I, for example, believe that regulation in general, and licensing schemes in particular, have their place, and I am part of a (justifiably) licensed profession.

6 Senora Simpson, the Chair of the Board of Physical Therapy, acknowledged in her testimony before the DC Committee on Health on June 28, 2013, that the Board began "conferring with . . . the American Physical Therapy Association (APTA), the Federation of State Boards of Physical Therapy (FSBPT), the American College of Sports Medicine (ACSM), and the National Council on Strength and Fitness (NCSF)" to develop the legislation since 2008. *See* https://drive.google.com/file/d/0B8wI0BJ2R7tMMF9nVklBWHpYMmRleTUwR0pTbTdvd0d5ZDg0/view.

7 http://www.usreps.org/Pages/policywefollow.aspx.

8 http://www.usreps.org/AnalyticsReports/CREP%20NIRSA%20Poster.JPG.

9 Fla. SB 1616 (proposed § 468.8511(2)).

10 Dep't of the Treasury Office of Economic Policy, Council of Economic Advisers, and Dep't of Labor, *Occupational Licensing: A Framework for Policymakers*, at 7, 12 (July 2015). Some bills would be more expensive to enforce than

others. For example, Maryland HB 747, proposed § 11.5-204(C) (2010), provides that all eight members of the enforcement board are entitled to compensation and reimbursement for expenses.

11 Brian P. Hamill, *Relative Safety of Weightlifting and Weight Training*, 8 J. of Strength and Conditioning Research 53, 56 (1994).

12 Cal. S. Cmte. on Business, Professions and Economic Development, Report on SB 1043, at 5 (May 3, 2010) (emphasis added). California SB 1043 was identical to the earlier SB 374 introduced in 2009. *Id.* The report notes no support for either bill from the general public as of April 28, 2010, but notes opposition from the California Physical Therapy Association. *Id.*

13 Dep't of the Treasury Office of Economic Policy, Council of Economic Advisers, and U.S. Department of Labor, *Occupational Licensing: A Framework for Policymakers*, at 13 (July 2015) (emphasis added).

14 In fact, the Aasgaard Company, which awards the Starting Strength Coach credential, is the only organization I am aware of that ***requires*** demonstrated proficiency in real-time coaching through different movement to receive ***any*** certification offered by the organization. I have not personally reviewed the requirements to earn every one of the 140+ personal training certifications that exist, but suffice it to say, very few certifications require demonstration of require demonstration of real-time coaching ability.

15 Ga. SB 204 (proposed § 43-5A-14); Fla. SB 1616 (proposed § 468.852); Fla. Rev. Stat. §§ 775.082, 775.083; Md. HB 747 (proposed § 11.5-312(A)).

16 Ga. SB 204 (proposed § 43-5A-14) ($5,000 fine); Fla. SB 1616 (proposed § 468.852) ($1,000 fine); Md. HB 747 (proposed § 11.5-312) (court may impose $1,000 fine, administrative agency may impose $5,000 fine).

17 CREP's model legislation contains a provision providing for imprisonment and a fine, but it leaves the penalty up to the legislator. Model Bill § 43-XX-14. D.C. Code § 3-1209.08 and New Jersey SB 695, § 12 (2010), do not specify a penalty, but instead requires the enforcement board to determine how to enforce the law. California SB 1043 and Massachusetts HB 185 do not contain any enforcement mechanisms whatsoever, which appears to be a product of incompleteness rather than design. Indeed, the legislative analysis of California HB 1043 noted that the bill "does not specify any recourse for a person who violates the title act," and recommends that "[t]he Author may want to consider what penalties should apply to violation of this title act." Cal. S. Cmte. on Business, Professions and Economic Development, Report on SB 1043, at 5 (May 3, 2010).

18 Fla. SB 1616 (proposed § 468.852).

19 Model Bill § 43-XX-1(3).

20 D.C. Code § 3-1209.08(a).

21 Fla. SB 1616 (proposed § 468.851(5)) (defining a "personal trainer" as "a person who evaluates a client's health and physical fitness; develops a personal exercise plan or program, or core-induced activity, for the client; and demonstrates, with or without equipment, exercises designed to improve cardiovascular condition, muscular strength, flexibility, or weight loss").

22 N.J. SB 695, § 2 ("'Personal trainer' means a person who evaluates an individual's physical fitness; develops a personal exercise plan or program for an individual; and demonstrates, with or without equipment, exercises designed to improve cardiovascular condition, muscular strength, flexibility and weight loss."). New Jersey SB 695 is confusing for other reasons as well. The official bill summary is inconsistent with the bill text in several instances. Further, the bill requires that "[a] fitness professional shall not . . . evaluate, treat, or rehabilitate a condition or injury to any individual, unless done under the direct supervision of a physician licensed in this State." N.J. SB 695, § 11(b). This provision adds yet another (and significant) layer of uncertainty to the law, as none of those terms is defined in the proposed statute.

23 Mass. HB 185 (proposed § 23A) (defining "personal trainer" as "a person who develops a personal exercise plan or program for an individual; and demonstrates, with or without equipment, exercised designed to improve cardiovascular condition, muscular strength, flexibility and/or weight loss").

24 Mass. HB 185 § 1 (adding new § 23A defining "personal trainer" as "a person who develops a personal exercise plan or program for an individual; and demonstrates, with or without equipment, exercised designed to improve cardiovascular condition, muscular strength, flexibility and/or weight loss").

25 Md. HB 727 (proposed § 11.5-101(F), (G)) (defining practicing personal training as, among other things, "demonstrat[ing] fitness and conditioning exercises and provid[ing] instruction using fundamental exercise science principles," "implement[ing] programs to motivate clients to maintain healthy behaviors and encourage healthy behavior modifications," "develop[ing] appropriate fitness and conditioning exercises for persons who are at least 13 years old and who . . . are in good health; or . . . have controlled medical conditions and have been authorized to perform independent physical activity by a physician licensed under this article," "design[ing] programs to motivate clients with controlled medical conditions to adopt and maintain healthy lifestyle behaviors," and designing similar programs for people who have movement dysfunction, neuromuscular or orthopedic conditions, or other special needs who have been cleared by a physician to perform independent physical activity).

26 Indeed, USA Track and Field, the Mixed Martial Arts Conditioning Association, and USA Cycling all have their own coaching certifications. http://www.usatf.org/Resources-for---/Coaches/Coaching-Education.aspx (USATF), http://mixedmartialartsconditioningassociation.com/mma-conditioning-coach-training-details/ (MMACA), https://www.usacycling.org/steps-to-becoming-a-coach.htm (USA Cycling). There are even coaching certifications for sports like baseball or football. The Babe Ruth League Coaching Education Center offers several levels of coaching certifications for youth baseball coaches. *See* http://www.baberuthcoaching.org/promotions/oct09.cfm/. USA Football boasts itself as the "national leader in football coaching certification." *See* http://usafootball.com/coach.

27 D.C. Code § 3-1209.08(c)(2).

28 Alison Lichy, Testimony to the District of Columbia Committee on Health (June 28, 2013).

29 *See* Andrea Maria Cecil, *DC Personal Trainer Licensure on Hold – For Now*, Crossfit Journal (Feb. 17, 2015), *available at* http://journal.crossfit.com/2015/02/dc-personal-trainer-licensure-on-holdfor-now.tpl.

30 Letter of Rob Conaser, Chairman, Subcommittee for Fitness Professionals to Director, Legislative Counsel Bureau, at 2 (Feb. 20, 2009).

31 N.J. SB 695, §§ 2, 4.

32 Mass. HB 185 § 2 ("The certification requirements set forth in section 23F½ shall not apply to . . . Group exercise instructors[.]").

33 Mass. HB 185 § 1 (definition of "group exercise instructor").

34 CREP, *Policy We Follow*, analysis of Mass. HB 185, *available at* http://www.usreps.org/Pages/policywefollow.aspx.

35 Model Bill § 43-XX-1(3), (4).

36 Edward T. Howley and Dixie L. Thompson, Fitness Professionals' Handbook 417 (6th ed. 2012) ("Injury is always a potential risk in any fitness program, and group exercise classes are no different. One review found that about 44% of students and 76% of instructors reported injuries resulting from aerobic dance, with the injury rate being 1 injury per 100 hr of activity for students and 0.22 to 1.16 injuries per 100 hr for instructors.").

37 Jill Inouye, et al., *A Survey of Musculoskeletal Injuries Associated with Zumba*, 72 Haw. J. Med. Pub. Health 12 (Dec. 2013) ("Participants were mostly female (82%), averaged 43.9 years of age (range 19 to 69 years), and took an average of 3 classes/week (1–2 hours/class) for an average of 11 months. Fourteen participants (29%) reported 21 prior Zumba-related injuries. Half of the 14 injured sought care from medical providers for their injuries. Of the 21 injuries, the most frequently injured sites were knees (42%), ankles (14%), and shoulders (14%).").

38 Another difficulty raised by CREP's exception is its failure to define what constitutes being "choreographed . . . to music." Is it merely enough for an exercise leader to have music playing while performing exercise movements, or do the movements have to have some relationship to the particular rhythms of the music? And what constitutes "music" for this purpose, anyways? John Cage's *4'33"* is, as the song title implies, 4 minutes and 33 seconds of silent notes – would CREP's "group exercise instructor" exception be satisfied if the exercise leader played *4'33"* on repeat?

39 Model Bill § 43-XX-1(3). It also does not include athletic trainers, but athletic trainers are a narrow subset of professionals that work with sports injuries. Many States already regulate athletic trainers, so that is a separate issue that will not be addressed in this article.

40 Model Bill § 43-XX-1(5).

41 *See, e.g.*, Michael F. Bergeron, et al., *Consortium for Health and Military Performance and American College of Sports Medicine Consensus Paper on Extreme Conditioning Programs in Military Personnel*, 10 Current Sports Medicine Reports 383, 387 (2011) (suggesting that overexertion injuries resulting from "extreme conditioning programs"

such as "Crossfit" could be mitigated if, among other things, clients were overseen by personal trainers having certifications "from recognized nonprofit certifying organizations (*e.g.*, ACSM, NSCA)"); Nick Clayton and NSCA, *Personal Training Certification: Navigating the Professional Quagmire*, 2 Fitness Trainer 46, 46 (June 2014) (contrasting "an accredited certification" recognized by the NCCA with a "Crossfit Level 1 Trainer Certification Course"); Guy Leahy, *Evidence-Based Physical Training: Do Crossfit or P90X Make the Cut*, NSCA, *available at* http://www.nsca.com/education/articles/evidence-based-physical-training-do-crossfit-or-p90x-make-the-cut/ (specifically noting that Crossfit's trainer certification is not NCCA certified, whereas NSCA and ACSM are).

42 Model Bill § 43-XX-2(a)(i) (at least four of eight board members must be "currently certified through a national certification program that is accredited by the [NCCA]").

43 Florida SB 1616 and Massachusetts HB 185 require that would-be trainers have an NCCA-accredited certification. Fla. SB 1616 (proposed § 468.8516(4)); Mass. HB 185 § 2. Georgia SB 204 requires that a personal trainer applicant pass an examination that the board of fitness trainers creates – unless he has a certification from an NCCA-accredited organization, in which case the board may waive the exam. Ga. SB 204 (proposed §§ 43-5A-6(c), 8(b)). New Jersey SB 695 requires "fitness professionals" (which include both personal trainers and group fitness instructors) to have an associate's degree or better in a health and fitness field, or to complete a 200-hour classroom study (with 50 hours of an internship) and pass an exam – but this requirement may be waived for currently-practicing fitness professionals who have an NCCA-accredited personal training certification. N.J. SB 695, §§ 5, 6. The proposed law also requires that the enforcing "board" approve the NCCA certification, and that the currently-practicing fitness professional apply to the board within two years of enforcement regulations being promulgated.

44 http://www.credentialingexcellence.org/p/cm/ld/fid=121 (select "Fitness and Wellness").

45 Md. HB 747 (proposed § 11.5-303(C)(1)).

46 Model Bill §§ 43-XX-8(b), 43-XX-10(4), (5).

47 *See, e.g.*, Mark Rippetoe, *Big Brother is Watching You Squat – State Regulation: What Coaches and Trainers Need to Know*, T-Nation (July 29, 2015), *available* at https://www.t-nation.com/training/big-brother-is-watching-you-squat/.

48 The Starting Strength Coach credential is only awarded after a candidate (1) participates in ***25 hours*** of classroom and coaching instruction at a Starting Strength seminar; (2) passes a "platform evaluation" at the seminar by demonstrating an ability to coach actual people in real time to correctly perform the squat, deadlift, bench press, overhead press, and power clean; and (3) assuming a passing score on the platform exam, passes a written exam that typically takes more than 20 hours to complete. Only around 10 percent of all individuals who attend Starting Strength seminars ultimately earn a Starting Strength Coach credential, which is far and away among the lowest passage rates in the fitness industry.

49 *See, e.g.*, Ga. SB 204 (proposed § 43-5A-2) (requiring at least one member of Georgia Board of Fitness Trainers to be a personal trainer certified by an NCCA-accredited organization).

50 Fla. SB 1616 (proposed§ 468.8511(1), (2)).

51 Model Bill § 43-XX-2(a).

52 Model Bill § 43-XX-6(c).

53 Model Bill § 45-XX-10(7).

54 Ga. SB 204 (proposed §§ 43-5A-6(c), 10(c)(5)).

55 Md. HB 747 (proposed § 11.5-308(A)(3), (14)).

56 Fla. SB 1616 (proposed §§ 468.8512(4), 468.8515).

57 Fla. SB 1616 (proposed § 468.8521(1)(b), (d)).

58 *See also, e.g.*, Jeff Chandler, et al., *Safety of the Squat Exercise*, ACSM Current Comment, *available at* https://www.acsm.org/docs/current-comments/safetysquat.pdf ("The depth of the squat is generally recommended to the point where the tops of the thighs are parallel with the floor.").

59 See, e.g., Mark Rippetoe, Starting Strength: Basic Barbell Training 16-19 (3d ed. 2014) (explaining biomechanically that a properly-performed below-parallel squat is safer for the knee and back than above-parallel squats); Michael Keiner, et al., Correlations Between Maximal Strength Tests at Different Squat Depths and Sprint Performance in Adolescent Soccer Players, 2 Am. J. Sports Science 1, 4-5 (Nov. 2014) ("[W]hen compared to half and quarter

squats, the deep squat variant causes less shear and compress stress at the knee-joints and vertebral column. . . . [T]he deeper squat variant requires less weight to generate an adequate stress stimulus for the lower extremities compared with the quarter and half squats. When compared to half and quarter squats, the deep squat involves lower shear and compressive stresses on the knee joint and vertebral column."); Hagen Hartmann, et al., Analysis of the Load on the Knee Joint and Vertebral Column with Changes in Squatting Depth and Weight Load, 43 Sports Medicine 993 (Oct. 2013) (noting the potential danger of half-squats because the turning point corresponds to the greatest patellofemoral compressive forces and greatest compressive stresses at the moment of least anatomical support, and concluding that below-parallel squats "present[] an effective training exercise for protection against injuries and strengthening of the lower extremity. Contrary to commonly voiced concern, deep squats do not contribute increased risk of injury to passive tissues" in the knee or back); Hagen Hartmann, et al., Influence of Squatting Depth on Jumping Performance, 26 J. Strength and Conditioning Research 3243, 3257 (Dec. 2012) ("In deep squats, neither anterior nor posterior shear forces may be expected to reach magnitudes, which can harm an intact anterior or posterior cruciate ligament. Training studies with a duration of 8-21 weeks confirm that parallel and deep back squats do not have any negative effects on knee ligament stability. . . . Compared with the quarter squat, the deeper joint positions of deep and parallel squats offer, despite lower training loads, better tension stimuli of the leg extensors for the development of muscle, dynamic maximal strength, and dynamic speed-strength ability. This can be achieved with comparatively lower axial compressive and shear forces of the spinal column. According to the presented facts, the necessity of quarter squat training has to be seriously questioned."); Robert A. Panariello, et al., The Effect of the Squat Exercise on Anterior-posterior Knee Translation in Professional Football Players, 22 Am. J. Sports Medicine 768, 769, 771-72 (1994) (finding "no significant increase in anterior-posterior (AP) knee translation in athletes using the [below-parallel] squat exercise as part of their off-season weight training program").

Senate Bill XXX

By: Senator Name of the District Number

A BILL TO BE ENTITLED

AN ACT

To amend Title XX of the Official Code of STATE Annotated, relating to professions and businesses, so as to provide for the registration of personal fitness trainers, but not group exercise instructors, physical activity leaders or certified athletic trainers; to provide for definitions; to establish the STATE Board of Exercise Professionals and provide for its composition; to provide for qualifications, terms, and vacancies of members; to provide for officers; to provide for records; to provide for reimbursement of members; to provide for duties of the board; to provide that no person shall provide personal fitness training services to a client(s) without registration; to provide for qualifications for personal fitness trainers; to provide for applications for registration; to provide for denial, suspension, or revocation of registration; to provide for hearings; to provide for appeals; to provide for construction and application; to provide for penalties; to provide for related matters; to provide an effective date, to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF STATE:

SECTION 1.

Title XX of the Official Code of STATE Annotated, relating to professions and businesses, is amended by adding a new chapter to read as follows:

"Chapter XX

43-XX-1.
As used in this chapter the term:

(1) 'Board' means the STATE Board of Exercise Professionals.

(2) A 'Client' means any individual who has not been diagnosed with a medical condition which requires medical supervision during participation in physical activity or any individual who is medically cleared to participate in an exercise program.

(3) A 'Personal Fitness Trainer' develops and implements an individualized approach to exercise using premeditated, non- choreographed exercise programs, utilizing collaborative goal-setting, behavioral coaching techniques, and other strategies to increase self-efficacy, motivation, self-regulation, overcoming barriers to change and technical coaching and instruction in physical fitness and conditioning for an individual client, or organized groups of clients, who require pre-

participation evaluation or instruction prior to engaging in the exercise regimen. Personal fitness trainers may work with any individual who does not require medical clearance prior to engaging in exercise or who has been cleared for exercise by a medical physician with a recommendation to participate in physical activity without the need for medical supervision. 'Personal fitness trainer' shall include personal trainers, professional fitness trainers, fitness coaches, Pilates teachers and persons performing similar physical fitness training instruction regardless of the designation used. This definition does not include group exercise instructors, physical activity leader or certified athletic trainers.

(4) 'Group Exercise Instructor' means a person with specific qualifications, who receives compensation, to provide choreographed exercise leadership to music, with or without modifications for participants, using varied pieces of equipment to groups of people.

(5) 'Physical Activity Leader' means a lay person leading varied levels of physical activity to groups of people.

(6) "Athletic Trainer" means a person with specific qualifications, as set forth in Code Sections 43-5-7 and 43-5-8 who, upon the advice and consent of a physician, carries out the practice of prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of athletic injuries; and, in carrying out these functions, the athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity, or mechanical devices related to prevention, recognition, evaluation, management, disposition, rehabilitation, and treatment.

43- XX-2.

(a) The STATE Board of Exercise Professionals is hereby established and shall be composed of eight Members with the following qualifications: The Governor is responsible for appointing members of the board, all of whom shall be citizens of the United States and residents of this state for at least two years. Board membership shall include the following:

i. Four personal fitness trainers currently certified through a national certification program that is accredited by the National Commission for Certifying Agencies (NCCA), or its successor organization, each of whom has a minimum of three years experience as a personal trainer. A minimum of one of the four shall be employed as a personal trainer in a membership-based health and fitness facility.

ii. A professor from an academic institution accredited by the Southern Association of Colleges and Schools, Commission on Colleges who specializes in the area of exercise science, kinesiology, exercise physiology, or a similar exercise-related discipline.

iii. A Medical Doctor who is board certified in sports medicine, and a representative from one of the following healthcare professions: General Practitioner, Nurse Practitioner, or a Physician Assistant.

iv. A consumer protection advocate appointed from the public at large

(b) Except as provided in this subsection for initial appointments, each member shall serve for a term of office of four years and until his or her replacement has been appointed and qualified to serve. Members shall be appointed on January 1. All terms shall expire on December 31. In making the initial appointments, the Governor shall appoint four members, each of whom shall serve for a term beginning on January 1, 201X, and expiring on December 31, 201X. In making initial appointments, the Governor shall appoint four members for a term beginning on January 1, 201X, and expiring on December 31, 201X. Incumbent members may be reappointed for subsequent terms. No member shall serve more than two consecutive terms.

(c) Each appointee to the board shall qualify by taking an oath of office within 15 days from the date of appointment. On presentation of the oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the Governor in the same manner as regular appointments.

(e) The Governor, after notice and opportunity for hearing, may remove any member of the board for incompetence, neglect of duty, unprofessional conduct, conviction of a felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter.

(f) Membership on the board shall not constitute service of public office, and no member shall be disqualified from holding public office by reason of his or her membership.

43- XX -3.
(a) The board shall elect a chairperson and a vice chairperson from among its members for a term of one year and may appoint such committees as it considers necessary to carry out its duties.

(b) The board shall meet at least twice each year. Additional meetings may be held on the call of the chairperson or at the written request of any three members of the board.

43- XX -4.
The board shall appoint a secretary to the board who shall keep a record of the board´s proceedings in a book maintained for that purpose.

43-XX -5.
Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

43- XX -6.
(a) The board shall be authorized to promulgate rules and regulations consistent with this chapter which are necessary for the performance of its duties.

(b) The board shall prescribe forms for registration applications.

(c) The board shall be authorized to issue registrations and renewals and enforce established practice and qualifications guidelines for exercise professionals in this state and enforce the established qualifications for applicants for registration under this chapter.

(d) The board shall adopt an official seal and the form of a registration certificate of suitable design.

43- XX -7.
No person shall hold himself or herself out as a personal fitness trainer or perform any of the activities of a personal fitness trainer without registering with the state under this chapter.

43- XX -8.
(a) An applicant for registration as a personal fitness trainer shall meet minimum qualifications and training requirements defined herein and shall be subject to board governance.

(b) The board shall grant registration as a personal fitness trainer to any qualified applicant who holds a current personal trainer certification, or substantially similar certification, from a national certification program that is accredited by the National Commission for Certifying Agencies (NCCA), or its successor organization.

(c) An applicant shall be a United States citizen or lawful resident of this country.

(d) An applicant must be at least 18 years of age and possess a valid driver´s license or state issued identification card.

43- XX -9.
(a) An applicant for registration as a personal fitness trainer shall submit an application to the board on forms prescribed by the board and shall submit an application fee required by this chapter or the board. As a part of that application process, the applicant shall be required to undergo a criminal history background check prescribed by and under such terms and conditions set by the board.

(b) The applicant shall be entitled to register as a personal fitness trainer if he or she possesses the qualifications enumerated in this chapter, pays the required registration and application fee, and has not committed an act which constitutes grounds for denial of a registration under Code Section 43- XX -10.

(c) Registrations issued by the board shall expire biennially. As a condition of registration renewal, the board shall require applicants to complete the required continuing education necessary to maintain current certification as described in 43- XX -8(b).

43- XX -10.
The board may refuse to issue registration to an applicant or may suspend or revoke registration of any registrant if he or she has:

(1) Committed a felony or misdemeanor involving moral turpitude, a record of conviction being conclusive evidence of the commission of the offense;
(2) Secured the registration by fraud or deceit;
(3) Is currently under warrant for arrest;
(4) Had their NCCA, or successor,-accredited certification suspended or revoked;
(5) Allowed their NCCA, or successor,-accredited certification to expire;
(6) Is in substantial violation of a valid court order for child support payments; or
(7) Violated or conspired to violate or failed to abide by the law, this chapter, or rules and regulations adopted by the board as provided for in this chapter.

45- XX -11.

(a) Any person whose application for initial registration is denied shall be entitled to a hearing before the board upon submission of a written request to the board. Those procedures set forth in the rules and regulations of the board shall apply to the hearing before the board.

(b) Any person whose application for renewal of registration is denied or who is facing cancellation, revocation or suspension of registration shall be entitled to a hearing before the board upon submission of a written request to the board and prior to any disciplinary action. Those procedures set forth in the rules and regulations of the board shall apply to the hearing before the board.

(c) Proceedings for the cancellation, revocation, or suspension of registration shall be commenced by filing charges with the board in writing and under oath. The charges may be made by any person or persons.

(d) The board shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a registration together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing or registrant against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail or statutory overnight delivery, return receipt requested, to the last known address of the applicant or registrant.

(e) At the hearing, the applicant or registrant has the right to appear either personally or by counsel, or both, to produce witnesses, to have subpoenas issued by the board, and to cross-examine the opposing or adverse witnesses.

(f) The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. Witnesses shall give testimony under oath and shall be subject to punishment for false swearing by petition filed with the superior court of the county where the hearing is held. A record of the proceedings and testimony shall be maintained.

(g) The board shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the board shall be mailed to the applicant or registrant at his or her last known address by certified mail or statutory overnight delivery, return receipt requested.

(h) On application, the board may reissue a registration to a person whose registration has been cancelled or revoked, but the application shall not be made prior to the expiration of a period of 24 months after the order of cancellation or revocation has become final; and the application shall be made in the manner and form as the board may require.

43-XX-12.

(a) A person whose application for registration has been refused or whose registration has been canceled, revoked, or suspended by the board may make an appeal, within 30 days after the order is entered, to any court of competent jurisdiction in the Superior Court of NAME County or in the applicant or registrant ´s county of residence.

(b) A case reviewed under this Code section shall be confined to a review of the administrative record. The decision of the board shall be reversed only if it is found to be clearly erroneous. Appeal from the judgment of the superior court lies as in other civil cases.

43-XX-13.

(a) Nothing in this chapter shall be construed to authorize the practice of medicine by any person not licensed by STATE Composite Medical Board.

(b) No provision of this chapter shall be construed so as to limit or prevent any person duly registered under the laws of this state to practice the profession for which he or she was registered.

43-XX-14.

Any person who violates Code Section 43-XX-7 shall be guilty of practicing as a personal fitness trainer without a current registration and shall be punished as for a misdemeanor of a high and aggravated nature by the imposition of a fine not to exceed $XX, or confinement for not more than XX months, or both."

This Act shall become effective on XX; provided, however, that provisions related to the establishment of the STATE Board of Personal Fitness Trainers in Code Sections 43-XX-1, 43-XX-2, 43-XX-3, 43-XX-4, 43-XX-5, and 43-XX-6 shall become effective on XX.