160 - THE PERCEPTION OF THE DAMAGE LIABILITY OF RECENTLY FORMED IN PHYSICAL EDUCATION

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INTRODUCTION

The damage liability is still not very debated in the field of the physical education in our country, the recent regulation of the profession placed such subjects as urgent. Silveira (2002) it points in its work the great number of matters published in the press, exposing cases of accidents in academies with serious lesions and even death, current of the professionals' of Physical Education omission or its subordinates. The author points although such cases pass, per times anonym, in the face of the territorial extension of our country or due to punishment absence or the involved professionals' liability.

In order to understand the reach of the damage liability, it is interesting to stand out that she is part of the contemporary era, by means of an increment of thoughts literature linked to the theme, as it mentions Venosa (2004), fruit specifically of the " new social " needs. Inside of this the present article seeks the study of the Damage liability in recently-formed of the course of Physical Education of a public University of the state of Paraná. Such professionals have for obligation to know the inherent risks to its performance, as well as the limits of its responsibility.

Initially he/she will start to illuminate the meaning of damage liability, for then to delineate its characteristics.

The essence of the Damage liability, is the need of with the life in society respect rights and we execute duties. With the violation of a duty (to owe juridical original), it happens the illicit, the forbidden, that is to say, other duty appears (to owe juridical secondary) which Cavalieri Filho (2001), it denominates " to owe juridical of repairing a damage ".

The damage liability only happens when there is it happens together violation to a juridical duty (primary) and the damage, due to such violation.

To speak in responsibility, implies in not making a mistake with the obligation concept. The obligation exists in function of a juridical duty that is previous (primary). The responsibility for its shift exists in function of a successive juridical duty, it is worth to say that elapses of the previous.

Retaking the concept of responsibility, so soon somebody assumes the commitment of executing certain obligation, it is assuming an original juridical duty, if not to execute such obligation, the violation is evidenced to an original juridical duty and with that the responsibility, that is subdivided in objective and subjective.

Since 1990, with him publication of the Code of Defense of the Consumer, a true revolution was established inside of the damage liability, time that is applicable to all the consumption relationships, be in the ambit of the public or private right. He/she points out the author that came to fire a new type of responsibility - the responsibility in the consumption relationships - (CAVALIERI FILHO, 2001).

As the professional's of Physical Education Responsibility:

[...] that that, for illicit act, to cause damage the other, it is forced to repair it. Only paragraph: There will be obligation of repairing the damage, independently of blame, in the cases specified in law, or when the activity usually developed by the author of the damage to imply, for its nature risk for the other rights. (Art. 927, Civil Code, 2002)

It is also in the paragraph 4.° of the article 14 of the Code of Defense of the Consumer (1990): " The liberal professionals' personal responsibility will be select by means of the blame " verification what means to say that the liberal professionals, while vendors of services, answer eventually for the repair of the damages caused for: defects of such installment, information insufficient inadequate and/or on use or risks, since the blame existence is verified (imprudence or negligence) (SILVA, 2005).

The blame existence is the difference between the objective responsibility and the subjective responsibility. After this brief of the concept of damage liability it objectifies, executes to mention that such to owe of reimbursing it embraces the material damages and moral of its conducts.

In the regarding responsibility objectifies what it is taken into account it is the damage, there is not to speak in wil or it accuses. It is worth to say, it is just enough that remains configured the damage and there be causal connection (DINIZ, 2004).

In order to repair a damage, two are the possible forms: natural or specific repair and for the pecuniary compensation. The system of the specific repair corresponds better to the end of recuperating, but the compensation in money is legitimated, for the consideration that the patrimonial damage carts decrease of the patrimony and this is an arithmetic concept (STOCO, 2004).

In the physical practices, so much the personal trainer as the teachers in the academies, included the owners, they should worry about the apprentices' health, not to place in risk the physical integrity with the muscular activity apparels, to attempt for the search of the health and not to allow the consumption of substances. In the plan of the damage liability the professional that not to execute the professional ethics it happens the rules of this institute. As it is a profession that offers service should have the duty of caring for the people that trust in its professional knowledge (ALMEIDA et al., 2007).

METHODOLOGY

The present study is characterized as descriptive research, because it objectified to diagnose and to analyze the knowledge of the recently-formed with relationship the damage liability in its future professional performance. The study is considered retrospective, time that the analysis of the practice was accomplished starting from data gone by the proprietors of the teaching establishments. The " used design " allows to classify it as " Survey " or rising study.

They participated in the present study 20 (twenty) recently-formed professionals of physical education of a public University in the city of Irati, State of Paraná. It executes to illuminate that everybody participated voluntarily of the research, and they signed the Term of Free and Illuminated Consent for researches with human beings.

As instrument was elaborated a questionnaire structured with open subjects and closed starting from themes selected in a total of 7 (seven) subjects which divide in three parts:

- Knowledge about Damage liability (subjects 1 to 3);
- Limits of the Damage liability (subject 4 and 5);
- To owe of Reimbursing (subjects 6 and 7).

RESULTS AND DISCUSSION

In relation to the knowledge about damage liability is observed that half of those recently-formed (ten) they tell that they already heard to speak in damage liability, but when analyzing what they understand for Damage liability, two answers went " I don't

know " and in the eight in which there were justify, meets a great variety of definitions, being the common thought that is only responsibility in obeying the laws and a duty with the society:

" ...to exercise and to obey the right " laws

" ... responsibility of on its acts before the society, justice "

" ...a responsibility that we have as professionals in relation to society "

Usually, with relationship to the knowledge about Damage liability the interviewees affirm to have it, as in the teachers' of Physical Education case inside the State of São Paulo with more than 3 years of performance (MELO & FREIRE, 2006) and professionals of dentistry of the State of Paraná (FERNANDES, 2000). In the case of these recently-formed it is observed that half of them, they never heard to speak in Damage liability. When analyzing the definitions of the recently formed on the theme, these also accompany the difficulty in define, of the teachers of physical education (MELO & FREIRE, 2006), and proprietors of teaching establishments (VARGAS & LAAT, 2007). In counterpoint they diverge of the define for other professionals of the area of the health, the ones which according to Stoco (2004), they possess a closer speech of the real concept of Damage liability, time that they are the more time answering judicially with the consequences of its acts.

In the subject number three, which approached about the knowledge and differentiation among the damage liability Objectifies and Subjective damage liability, all the twenty recently-formed they didn't demonstrate knowledge on such concepts, being exempted besides of being justified. In this case, total balance is demonstrated in the obtained data, time that the totality of those questioned, they totally ignore such a decisive factor to the acting of its profession it is as professionals liberal and/or personal of services.

The ignorance concerning the matter in study, does with that the professional futures are more susceptible to condemnations in lawsuits involving repair of damages, which in a large part of the cases, it would be avoided easily and even forewarned.

On the demand of medical exams in its students before I begin it of the practices of the physical activity, everybody demonstrated concern in requesting previous medical exams. Such concern though it is disentailed of the damage liability, finding in the answers indications of limits of the areas of the medical professional's performance and professional of physical education and also methodological subject of the class:

" ...because is aware that I cannot make medical " diagnoses as professional

" ...saber to prescribe the activities for the students with safety "

About the responsibility for the occurrence of lesions in its students during the classes, 14 (fourteen), that is 70% of the interviewees, they affirm that they feel responsible for the occurrence of lesions except for accidents, with answers as:

“I have to be responsible for everything, as facilities and execution of the classes..."

" If I pass of the physiologic limits of each one, the responsibility is mine "

What brings the idea that the Subjective Damage liability and the surveillance duty, they are not recognized formally, but applied unconsciously by the pedagogic characteristic of work.

Already in those that don't agree, with the responsibility for lesions in its students, (six negative answers), interesting to highlight:

"Lesions happen anywhere, I don't have the student it is accused it extrapolated its limit, it was not controlled "

What demonstrates that the professional future in I comment, it attributes to a " negligence" of its student the lesion, even in atmosphere that it should be controlled, without risks for the apprentices during the class.

In the subject 6 (six) a situation-problem was placed in a performance in the school area, in the one which 90% of the questioned don't pay with the treatment costs, I marry a student during its class (with sporting content) it arose in a wall, without its authorization and knowledge and of there it dropped.

Justify as:

" He arose without my authorization "; " He was disobedient "; " He infringed the rules " and until " Because the student is donkey ".

Two of the interviewees just affirm that pay with the costs:

" The student is in my class, then I am responsible ".

A contradictory answer was still observed:

" I didn't order him to arise there, although if that happens it was because I didn't have control of the group ".

Another situation-problem, it was proposed: a student in the muscular activity academy, after following the orientations of the professional's safety, hurted if during the straight supine exercise. He/she wondered on the costs of the treatment. In such subject, different from the previous, an exact division was observed among the interviewees (50%) being the positive answers in the following ones have:

" ...I has pay with the costs because in this exercise I should always be attentive to the that the student to execute "

in the negative answers stand out:

" ...bad luck of him because it put a lot of weight " or " ...a responsibility is of the academy ".

The pay disposition with the expenses was aimed as one of the primordial factors in professionals liberals of the health interviewees' area for Cavali (2003).

CONCLUSION

In the face of the recent regulation of the profession, with what it cannot in the Physical Education as area still in expansion, precarious the knowledge on the professionals' limits. Though with the first cases judged about the explicit professional's performance it will be the limits, mistakes in the professional exercise. As larger the expansion of a certain occupation, more the society and professionals know its rights and duties.

When considering referring subjects to the duty of reimbursing and to the damage type that takes to the compensation, most of the interviewees evidenced an almost total ignorance to the subject.

The ignorance or partial knowledge of the legislation and the controversy existence, demonstrated in the answers, they take the recently formed to an understanding concerning the theme in I comment, they demonstrated excessive concern with the financial subject, though without enough knowledge of the legal norms in order to prevent eventual occurrences, what can generate insecurity in the professionals of Physical Education, which feel unprotected in the face of the occurrence of eventual lawsuit.

For the exposed, it is ended that the existent knowledge on the theme is small, perhaps due to the lack of the subject during the academic formation. It executes to mention that the absence of knowledge of the legislation on the theme, it cannot be used as allegation for don't repairing the damage.

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THE PERCEPTION OF THE DAMAGE LIABILITY OF RECENTLY FORMED IN PHYSICAL EDUCATION

ABSTRACT

The present study aimed to diagnose and to analyze the perception of recently-formed of the area of physical education with relationship the damage liability in its future professional performance. They participated 20 recently-formed professionals of physical education of a public University in the city of Irati, State of Paraná. As instrument was used a questionnaire starting from themes selected as damage liability, its limits and duty of reimbursing. Considering referring subjects to the knowledge, compensation, subject of that duty and damage type, most of those questioned evidenced an almost total ignorance on the subject. This ignorance or partial knowledge of the legislation and the controversy existence, demonstrated in the answers, they take the recently formed to an understanding misunderstood concerning the theme, they demonstrated excessive concern with the financial subject, though without enough knowledge of the legal norms in order to prevent eventual occurrences, what can generate insecurity in these professionals, which feel unprotected in the face of the occurrence of eventual lawsuit.

KEY-WORDS: recently-formed, perception; damage liability.

LA PERCEPTION DE LA RESPONSABILITé DES DOMMAGES CAUSéS RéCEMMENT FORMé EN éDUCATION PHYSIQUE

RÉSUMÉ

La présente étude avait pour but de diagnostiquer et d'analyser la perception de l'récemment formé de la zone de l'éducation physique de la relation avec la responsabilité des dommages dans l'exécution de son avenir professionnel. Ils ont participé récemment formé 20 professionnels de l'éducation physique d'un marché public de l'Université de la ville de Irati, État de Paraná. Comme l'instrument a été utilisé un questionnaire à partir de thèmes choisis comme la responsabilité des dommages, de ses limites et le devoir de rembourser. Vu les sujets se référant à la connaissance, à indemnisation, sous réserve de ce type de service et des dommages, la plupart des personnes interrogées témoigne d'une méconnaissance presque totale sur le sujet. Cette ignorance ou à une connaissance partielle de la législation et de l'existence de la controverse, a démontré dans les réponses, ils prennent récemment formé à la compréhension mal concernant le thème, ils ont démontré avec le souci excessif financières sujet, mais sans avoir suffisamment connaissance des normes juridiques en vue Afin de prévenir une éventuelle événements, ce qui peut générer de l'insécurité qui règne dans ces professionnels, qui se sentent sans protection face à la survenance d'une éventuelle poursuite. MOTS-CLÉS: récemment formé, à la perception; La responsabilité des dommages.

LA PERCEPCIóN DE LA RESPONSABILIDAD POR DAñOS DE LA RECIENTEMENTE FORMADA EN LA EDUCACIóN FíSICA

RESUMEN

El presente estudio tiene por objeto diagnosticar y analizar la percepción de la recientemente formada por el área de la educación física relación con la responsabilidad por daños en su futuro desempeño profesional. Participaron 20 recientemente formado profesionales de la educación física de una Universidad pública en la ciudad de Irati, en el Estado de Paraná. Se utilizó como instrumento un cuestionario a partir de temas seleccionados de responsabilidad por daños, sus límites y la obligación de reembolsar. Teniendo en cuenta los temas que se refiere a los conocimientos, la indemnización, sin perjuicio de que el deber y el tipo de daños, la mayoría de los encuestados pone de manifiesto una ignorancia casi total sobre el tema. Esta ignorancia o conocimiento parcial de la legislación y la polémica existencia, ha demostrado en las respuestas, se llevan a la recientemente formada para comprender mal entendido sobre el tema, que han demostrado una excesiva preocupación con el tema financiero, pero sin suficiente conocimiento de las normas jurídicas a fin evitar posibles incidentes, lo que puede generar inseguridad en estos profesionales, que se sienten desprotegidos ante la ocurrencia de un eventual proceso judicial.

PALABRAS CLAVE: recién formado, la percepción; Responsabilidad por daños.

A PERCEPÇÃO DA RESPONSABILIDADE CIVIL DE RECÉM FORMADOS EM EDUCAÇÃO FÍSICA

RESUMO

O presente estudo objetivou diagnosticar e analisar a percepção de recém-formados da área de educação física com relação a responsabilidade civil em sua futura atuação profissional. Participaram 20 profissionais de educação física recém-formados de uma Universidade pública na cidade de Irati, Estado do Paraná. Como instrumento foi usado um questionário a partir de temas selecionados como Responsabilidade Civil, seus limites e dever de indenizar. Considerando questões referentes ao conhecimento, indenização, titularidade desse dever e tipo de dano, a maioria dos questionados evidenciaram um quase total desconhecimento sobre o assunto. Este desconhecimento ou conhecimento parcial da legislação e a existência de controvérsia, demonstrado nas respostas, levam os recém formados a um entendimento desvirtuado acerca do tema, demonstraram preocupação excessiva com a questão financeira, todavia sem conhecimento suficiente das normas legais a fim de prevenir eventuais ocorrências, o que pode gerar insegurança nestes profissionais, os quais sentem-se desprotegidos ante a ocorrência de eventual ação judicial.

PALAVRAS-CHAVE: recém-formados, percepção; responsabilidade civil.