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The Worst Case Scenario: Why Amber Myers Drowned In Her Swimming Class

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MANAGEMENT STRATEGIES IN RECREATIONAL SPORTS

**A Collection of Papers Presented at the
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Association Conference**

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THE WORST CASE SCENARIO: WHY AMBER MYERS DROWNED IN HER SWIMMING CLASS

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Introduction

Aquatic programs for young children have increased dramatically in popularity over the past several decades. Hickey-Hughes and Langendorfer (1986) have estimated that five to ten million young children from ages 6 months to 6 years may be enrolled in some type of swimming instructional program annually. With the publication of the new YMCA of the USA Y Skippers program (1987) and the American Red Cross Infant/Preschool Programs (1988), the popularity of swimming instructions for young children can be expected to continue into the next decade and probably the next century.

While these programs continue in popularity, they also have been associated with controversy. Several groups including the Council for National Cooperation in Aquatics (1971, 1985) and the American Academy of Pediatrics (1980, 1985) have expressed concerns about infant swimming (i.e., children under three years of age). An increasing

attention to the inherent danger associated with water, especially related to the rudimentary developmental status of young children's understanding of that danger (Langendorfer & Bruya, 1988; Langendorfer, Grey, & Bruya, 1989). These same educators have called for instituting risk management systems for aquatic instructional programs in order to address the inherent dangers, risks, and liability to aquatic professionals.

The increasing awareness of the dangers and risks to young children along with the standard of care promoted by the nationally standardized aquatic programs for young children can be anticipated to increase the awareness of aquatic professionals. However, until *all* aquatic instructors, facility managers, and government officials become aware of, and act upon, the dangers and need for care, the possibility for tragedy exists. This course is about such a tragedy, about the factors leading up to and contributing to it, about what could have been done to prevent it, and how it applies to aquatic professionals everywhere.

Case Facts

On August 3, 1987 at the Tides Bath Club on the Gulf Coast of Florida, four and one-half year old Amber Nicole Myers suffered a near drowning incident during her swimming lesson. Her parents had enrolled Amber (and her younger brother) in the Bath Club's summer instructional program first in 1985 and then again in 1987 under the direction of a local "legend," Mr. George Symons, 68 year old veteran of 30 years of aquatic instruction. They had hoped to make their daughter "water-safe" or "drownproof" as a result of her lessons and learning to swim.

The near drowning (defined as a water-related incidence in which the victim is still technically alive when being brought from the water) occurred at the end of a one-hour swimming lesson. During this

lesson, Amber had been instructed by several teenage instructors under George Symons' supervision and training. In the course of this instruction, these instructors had four and one-half year old Amber swim across the 10-15 yard width of the pool a number of times (perhaps as many as twenty widths by their testimony). Throughout the lesson, Amber was very upset and protested repeatedly and in a variety of ways, including running away from the pool and clinging to her mother and a vertical post. Each time, she was returned to the lesson, either by her mother or one of the instructors. In the midst of the lesson, because of her protests, she was shifted from one instructor to another who had fewer students.

At the end of the lesson period (after almost an hour in or around the water), the lesson was concluded by the swimming of a length of the pool (called "the long way" by the instructors and children). The instructor, Mike Hatton, a 17-year old high school student, reportedly swam in the water with the children. After the length, which reportedly was done for conditioning and endurance purposes, most the children were dismissed. However, Amber was required to swim a second lap in spite of further protests including sitting down and crossing her legs. She was assisted down to the deep end by Mike Hatton and made to go back in the water and swim the second length while he swam along.

At the end of the length in the shallow water, Amber reportedly stood up and then passed out with foam coming out of her mouth. Mike Hatton grabbed her and called for George Symons. Mr. Symons reportedly grabbed her around the chest from behind and "hugged" her until she was removed from the water. Attempts at CPR were initiated, although the testimony is very contradictory. Apparently one-person and two-person CPR was administered by instructors and a trained bystander.

After some period of time, a local rescue squad whose base is fairly close to the Bath Club, arrived and continued resuscitation efforts. Amber was removed by ambulance and subsequently taken to a hospital and then life-flighted to another. She was pronounced brain dead 8 days later and removed from life support systems.

Why Did It Happen?

In searching for the reasons for Amber's tragic death, Steve and Patty Myers, Amber's parents, engaged Robert J. Carroll, a personal injury expert with the firm of Perenich & Carroll of Clearwater, FL. In the course of the investigation and subsequent litigation, Mr. Carroll took deposition testimony from a variety of witnesses including the defendants, George Symons and Michael Hatton. While distraught over the accident and death, the defendants in the subsequent wrongful death suit maintained that 1) the accident was an unforeseeable act of God; 2) it was contributed to by illness and medication taken by Amber; and 3) the parents were negligent in bringing an ill child to lessons. The defendants also implied that they were merely acting as agents for the parents and that their actions were with the full advice and consent of the parents.

As a result of the over thirty depositions and interrogatories taken in the course of the investigation and suit, a number of facts were determined. Most importantly, it was discovered that initial claims about Amber's illness were unfounded. She had been administered a standard antibiotic prescription the previous week as a precaution, but had no symptoms nor was she taking medicine at the time of the accident.

In the course of the investigation, the first author, Robert Carroll engaged the services of the second author, Dr. Stephen Langendorfer of Kent State University, as a plaintiff expert witness. Upon review

of the depositions and case facts, it was the opinion of Dr. Langendorfer that a pattern of neglect, omission, and violations of basic standards of minimum care for aquatic instruction of young children was present to an alarming degree. In particular it was discovered that:

- no instructors held certification for instructing children (i.e., no one held a current American Red Cross Water Safety Instructor certificate or Authorization);
- no lifeguards were on duty during instruction;
- the lifeguard, first aid, and CPR certification of persons periodically serving in the role as lifeguards was totally inadequate or non-existent;
- no emergency action plan (EAP) had been developed or was in use;
- no inservice practice of emergency procedures had ever taken place;
- no documented inservice instructor training could be demonstrated;
- no records of attendance or performance existed;
- the specific methods used to instruct preschool swimming were inappropriate and did not meet Red Cross, YMCA, or CNCA guidelines.

In October, 1987, an out-of-court settlement of \$950,000 was paid by the Tides Bath Club to the plaintiffs to end all claims and litigation. As a result of the out-of-court settlement, however, no official acknowledgement of negligence or liability was admitted.

How to Prevent a Future Tragedy

Despite the lack of an actual verdict, the legal precedents in this case are noteworthy. The testimony in this case sets the minimum standards of care specifically for operation of infant/preschool aquatic

programs and more generally indicate minimum needs in all aquatic programs and settings. In general, the testimony of experts set the minimum standard of care for lifeguarding and instructing young children as those published and endorsed by the American Red Cross in their Lifeguard Training and Water Safety Instructor courses. Specifically, this indicates that persons and organizations operating aquatic programs and facilities **MUST**:

- provide currently certified lifeguards;
- document the certification requirements of those persons;
- have lifeguards on duty in appropriate locations at all times during pool operation;
- have a written Emergency Action Plan (EAP); and
- have lifeguards practice that EAP on a regular basis anticipating as many scenarios as possible.

In addition, when courses of instruction are offered to young children and other clientele, operators **MUST**:

- use persons currently certified and authorized to teach the specific clients being instructed;
- provide on-going inservice training in appropriate methods, health and safety concerns, and other important instructional topics;
- use an instructional philosophy appropriate to the clients;
- insure that methods and activities employed are appropriate to the developmental, skill, and psychological levels of the clients;

- maintain documentation of attendance and performance levels of all clients enrolled in instruction;
- provide parent orientation and education for infant and preschool swimming lessons, and similar orientation in other recreational sports programs; and
- insure the health and safety of all clients by individualizing lessons on a need basis.

It is also recommended that a comprehensive risk management program for anticipating, detecting, and correcting potentially hazardous conditions or practices be in place. Such a risk management system could effectively prevent most accidents from happening, reduce the severity of those that do, minimize human suffering, and control the risk and liability of recreational facilities and programs.

CONCLUSIONS

The Amber Myers story is a tragic one. It was, in the opinion of the authors, an easily preventable tragedy. It also would be easy to point the finger of blame solely at the defendants or to condemn preschool swimming programs in general as being dangerous. Neither of these outcomes is seen to be productive.

For Amber Myers' death not to be totally in vain, aquatic professionals must accept certain facts and responsibilities:

- aquatic environments are inherently dangerous and risky;
- aquatic professionals must do everything in their power to acknowledge these dangers and control the risks;
- there are accepted minimum standards of care to which all aquatic professionals must adhere

regardless of the types of programs or facilities being operated; and

- national agencies must do everything in their power to educate the public in general as to these standards of care so that they can act as reasonable consumers.

Recreation sports professionals must examine their own programs and practices to determine unacknowledged dangers or risks which could cause a tragedy similar to the Amber Myers story. Although this case pertains to a swimming program, other recreational programs require the same prudent standards of care. It is only through careful examination that we can prevent further tragedy and litigation.

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