

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

**NOV 20 1998**

**MICHAEL N. MILBY** Clerk

IN THE UNITED STATES DISTRICT COURTS  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Equal Employment Opportunity )  
Commission, )  
Plaintiff, )  
V. )  
World Fitness Centers, Inc. )  
Defendant. )

Civil Action No. H-98-0913

**CONSENT DECREE**

On March 31, 1998, the Equal Employment Opportunity Commission (the "Commission") filed a Complaint against the Defendant, World Fitness Centers, Inc., claiming that Defendant violated the Americans With Disabilities Act of 1990 (the "ADA") when Defendant terminated Charging Party, Deborah Burns, from her position as a receptionist because of her disability, epilepsy. On April 30, 1998, Defendant filed its Answer denying the Commission's claims of disability discrimination.

Defendant has transferred ownership of its Houston health club facilities to an unrelated third party. Defendant hereby covenants and promises that the transfer of its Houston facilities was an arms-length transaction to an unrelated third party.

Based on the foregoing recital and to avoid the uncertainties of litigation, the Commission and Defendant have agreed to settle the lawsuit by entry of this Consent Decree (the "Decree").

**I. GENERAL PROVISIONS**

A. As part of the Decree, Defendant has agreed to:

- (1) pay \$10,000 to Charging Party, Deborah Burns,
- (2) be enjoined from discriminating against qualified individuals with epilepsy or other disabilities,

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- (3) provide epilepsy education to all corporate owners, officers, shareholders, managers and supervisors, and
- (4) conspicuously post a notice of equal employment rights in all of Defendant's remaining facilities.

B. Defendant's consent to entry of the Decree does not constitute an admission of the allegations in the Complaint, wrongdoing, liability or violation of the ADA or any other federal or state law.

C. The Commission and Defendant stipulate to the jurisdiction of this Court and waive a hearing and entry of findings of fact and/or conclusions of law and trial by jury on all matters.

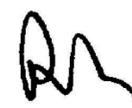
## II. RELIEF TO CHARGING PARTY

A. Within 14 days of entry of the Decree, Defendant will pay Deborah Burns the sum of \$10,000. The mode of payment to Deborah Burns will be by Cashier's Check sent by certified mail to Deborah Burns at 10939 West Road, #907, Houston, Texas 77064.

B. When the payment is sent to Deborah Burns, a copy of the Cashier's Check will be sent to the Commission c/o Guy D. Kidd, EEOC, Senior Trial Attorney, 7th Floor, Houston, Texas 77002.

C. The \$10,000 payment to Deborah Burns constitutes compensatory damages and therefore Defendant will not withhold any taxes from the payment.

D. Deborah Burns will be responsible for payment of any and all taxes due in connection with the \$10,000 payment.



### III. INJUNCTION AND EDUCATION

A. Defendant agrees to be enjoined from discriminating against qualified individuals with epilepsy or other disabilities under the ADA and affirmatively agrees to follow the anti-discrimination edicts of the ADA.

B. Defendant agrees to provide mandatory epilepsy employment education and training for all corporate shareholders, owners, officers, managers and supervisors. Within 45 days of entry of the Decree, Defendant will certify in writing to the Commission that all corporate shareholders, owners, officers, managers and supervisors have read the pamphlet attached hereto (as Exhibit A) titled Management by Common Sense, "A Frank Look At Epilepsy In The Workplace" (referred to as the "Pamphlet"). Defendant's written certification will include the name of every corporate shareholder, owner, officer, manager and supervisor (collectively referred to as "Agents"), the dates the Agents read the Pamphlet, a written signature from each of the Agents certifying that they have read the Pamphlet, and as to each, a designation as to whether the signatory is a shareholder, an owner, an officer, a manager and/or supervisor, and as to each, indicating the full address of his or her main office. Additional copies of the Pamphlet may be purchased from the Epilepsy Foundation of Houston by calling (713) 789-6295. If any of the foregoing Agents have not received the education and training within 45 days of entry of the Decree, the Defendant will notify the Commission in writing when they will receive the training and will subsequently confirm in writing that it has been provided with details of same as noted above.

C. Defendant agrees that it will provide job coaching for qualified individuals with disabilities (both job applicants and/or employees), in order to assist the individuals with



disabilities in performing the essential functions of their job.

D. When notification is required under the Decree, it will be provided to the following:

For the Plaintiff: Guy D. Kidd, State Bar of Texas No. 00785532, Equal Employment Opportunity Commission, Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002, (713) 209-3405, Fax: 2093402.

For the Defendant: David D. Schein, Law Offices of David D. Schein, State Bar No. 17736400, Federal I.D. No. 3641, 1111 Heights Boulevard, Houston, Texas 77008, (713) 880-9563, Fax (713) 880-2674.

**IV. MISCELLANEOUS PROVISIONS**

A. Within fourteen (14) days of entry of the Decree, Defendant will conspicuously post a copy of the Notice (attached as Exhibit B) in all of its remaining facilities. The Notice will be signed by Defendant's President. Defendant will provide the Commission with a roster listing the addresses of each of its facilities, and the names of managers to be held responsible for assuring the continued posting of the Notice.

B. A copy of the Notice will remain posted in all of Defendant's facilities for a period of two years after entry of the Decree.

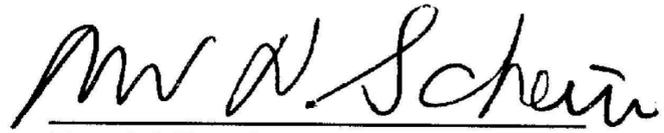
C. Each Party will bear its own attorneys fees and costs.

D. The Decree will remain in effect for two years following its entry by the Court.

AGREED TO AS TO FORM AND CONTENT:



Guy D. Kidd  
Attorney-in-Charge for Plaintiff  
Equal Employment Opportunity  
Commission  
Houston District Office  
1919 Smith Street, 7th Floor  
Houston, Texas 77002  
(713) 209-3405  
(713) 209-3402 (fax)  
Texas Bar No. 00785532

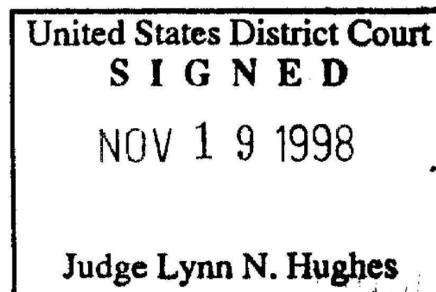


David D. Schein  
Attorney-in-Charge for Defendant  
Law Office of David D. Schein  
1111 Heights Boulevard  
Houston, Texas 77008  
(713) 880-9563  
(713) 880-2674 (fax)  
Texas Bar No. 17736400

Signed this Nov. 19 day of Nov., 1998



Lynn N. Hughes  
United States District Judge



UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

NOV 18 1998

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I like to think of myself as a good manager. I always strive to make informed and sensible management decisions, and I'm proud of my capable staff. I never gave much thought to epilepsy in the workplace. It never came up, and I saw no point in actively recruiting applicants with a disorder I knew so little about.

Then one day a job candidate—my *strongest* candidate—told me that she had epilepsy. Frankly, I had many concerns about hiring Joanne. Yet her qualifications seemed outstanding. So I mustered the courage to let her know my concerns. Joanne's answers really put my mind at ease.

I learned some important things about epilepsy from that short conversation with Joanne—enough to convince me that epilepsy wouldn't prevent her from doing an excellent job. Since then, I have known other people with epilepsy. I have found out that many different kinds of seizures exist and tend to affect people in different ways. As a manager, the most important thing I have learned is that all it really takes to manage epilepsy effectively in the workplace is a little common sense.



***So, if you've hired someone with epilepsy, and you want to know about seizure management . . .***

Let me guess what some of your concerns might be and offer a few insights from my own experience.

I operate by the rule that a good manager treats all employees equally, and this rule has worked just as well with people who have seizures as with anyone else. Workers with epilepsy rarely require any kind of special treatment; in fact, the more they are able to integrate, the better.

All that aside, there are a few things every good manager needs to know in the event of a seizure, to ensure that things run smoothly in the workplace.

***Epilepsy is a very common, hidden disorder that can affect anybody, anywhere, at any time.***

About 1% of the general population has some form of epilepsy or seizure disorder. Epilepsy does not discriminate by race, sex or age. It is not a disease, but an episodic disorder with a number of causes, including birth defects, childhood illness, tumor, head injury, or neural infection. Often *no* cause can be found. For most, seizures are brief and infrequent, and between seizures people with epilepsy are as healthy as anyone else.

***There are many different kinds of seizures.***

I read somewhere that as many as twenty different seizure types exist. The more experience I have, the more I realize that seizures manifest themselves differently for different people. Some seizures result in impaired consciousness, others in involuntary movements, and yet others only in brief lapses in

attention. The surest way to know what to expect during a seizure is to ask the person with epilepsy, since most people will have the same seizure characteristics every time one occurs.

Although they are quite individualized, most seizures do fall into a few major categories, and it's good to be familiar with these.

Seizures can be described as brief, temporary changes in the normal functioning of the brain's electrical system. They can be either *generalized* (affecting the whole brain) or *partial* (affecting only a portion of the brain).

***If your employee has . . .***

***Tonic-clonic seizures.*** When most people think of epilepsy, they probably think of these seizures, previously referred to as "Grand Mal." Basically, the seizure is a convulsion. A person loses consciousness, falls, and experiences stiffening and jerking for 2 to 5 minutes. For first aid:

Clear the area of unnecessary onlookers, remove sharp or hard objects, turn him/her on one side and loosen his/her collar (for easier breathing). Have someone stay with him/her to offer reassurance when consciousness returns.

Do not put any hard objects in the mouth or hold the tongue (it cannot be swallowed, and you and the person could get hurt). Do not restrain him/her or try to use artificial respiration during a seizure. And do not give liquids during it or immediately afterwards.

If the individual is someone who has not told you of his/her epilepsy, look for medical identification. Once you're sure it's epilepsy, there's usually no need to take the individual to an emergency room unless the seizure lasts more than 10 minutes or unless he/she has incurred another injury during it.

***Absence seizures.*** Previously referred to as "Petit Mal" seizures, absence seizures can be difficult to spot, as they consist only of brief lapses of attention sometimes accompanied by blank staring. No first aid is required.

***Simple partial seizures.*** Consciousness is not impaired with simple partial seizures, and what happens during this type of seizure is determined by the portion of the brain affected. Jacksonian seizures, for example, interrupt motor control. They usually begin with finger or toe twitching and can spread to a hand, arm or leg. People having sensory seizures may

experience a distorted environment, see shapes or colors, smell unusual odors, or just "feel funny." Simple partial seizures last only a few minutes and do not require first aid.

**Complex partial seizures.** These are the most elusive of all! Complex partial seizures also called "psychomotor" or "temporal lobe" seizures, occur quite commonly among adults but with many variations which make them the most difficult to understand. Complex partial seizures may last for a few minutes and people having them will appear disoriented and dazed, and may pick at their clothes, chew, mumble or wander. First aid is simple:

Have someone guide the person away from obvious hazards *without* using actual physical restraint.

Speak calmly and reassuringly until the seizure passes, but don't expect the person to respond to instructions.

***Yes, you can accommodate for seizures in the workplace.***

About 20% of the people who have epilepsy are *not* able to gain control over their seizures with medications. In other instances, brief periods of more frequent seizure activity can occur with people who are normally seizure free. Most often, these seizures will happen to newly diagnosed individuals while they try to find the most effective medication with the least side effects, or with people undergoing medication changes.

When seizures are likely to occur during work hours, some accommodations may be needed. Some people with epilepsy need to work stable shifts, or only day shifts. Others need to pace themselves and take regular breaks. Yet others only need coworkers to treat them with sensitivity if and when seizures occur.

For some jobs, safety may be a concern. By asking a few questions, it's pretty easy to determine what



potentially dangerous circumstances to avoid. You might ask, for example, if consciousness is impaired during a seizure, or if the worker tends to fall. If so, in some circumstances, you would want him/her to avoid driving a motor vehicle, or work on ladders, roofs and other high places. Protective helmets can prevent falling injuries. If you have further questions, it's a good idea to ask if you may consult with his/her treating physician about possible employment restrictions.

When an aura (warning) occurs in sufficient time to permit someone to move to a safe place, some of the above precautions may not be necessary. Remember, *there is no reason to institute blanket rules for people with epilepsy*, as the needed safety precautions will depend on individual seizure characteristics.

***No one is born with the ability to understand and accept epilepsy.***

Understanding comes with experience. And unlike many other disorders, none of us will ever fully understand epilepsy, because people experience seizures so differently. But we can learn to understand and accept the seizures which occur in people we care about and those with whom we spend time.

For most, handling seizures is easy. Each episode lasts for only a brief period of time, and afterwards people are able to resume their lives immediately or after a brief rest. The same is true when seizures occur on the job.

A measure of sensitivity, a willingness to ask questions and a little common sense can work wonders when it comes to dealing with less than positive reactions to epilepsy among supervisors and coworkers. Often a small amount of education can nip a problem in the bud. Satisfied workers are productive workers, and one of a manager's most important jobs is to build a stimulating and satisfying work environment for everyone.

## ABILITY TO DRIVE

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Every state licenses people with epilepsy to drive, though eligibility requirements vary. In most instances people who have been seizure free for 6-12 months can drive. Those who do not drive are usually successful in using public transit systems.

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## WORK ABSENCES

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The odds are that most people with epilepsy will *never* have a seizure on the job. Modern medications can control seizures for most. Others may have very predictable seizures that occur outside of working hours. The few who *do* have frequent seizures may be very willing to make up for any lost time.

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## MEDICATION SIDE EFFECTS

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Regular use of one or more medications is the standard modern treatment for seizures. A number of drugs exist, and doctors sometimes need to experiment to find the best ones with the least side effects for each person. Many people on epilepsy medication experience *no* side effects at all. For those who do, side effects are often mild and occur at the beginning of drug therapy. The most common effects include: drowsiness, nausea, rash, irritability, clumsiness and overgrown gums. Some drugs may cause emotional changes. Yet even those who are inconvenienced by side effects can learn to work around them very successfully.

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## STRESS-INDUCED SEIZURES

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There is no such thing as a "stress-free" work environment. Yet, people with epilepsy work successfully in all kinds of jobs. This is because workers with epilepsy generally adapt to stress just as other workers do, with the same individual differences that other workers have. For example: long hours, extreme heat or cold, or irregular meal schedules could trigger seizures in one individual with epilepsy, but another may be fine unless exposed to blinking lights. Someone else might have a seizure due to emotional stress (for instance, from a death in the family) and others may have no stress-related seizures at all. The point is, no two people are alike, so it's best not to assume that all seizures are induced by stress, or by the same kind of stress.

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## WORK WITH "DANGEROUS" EQUIPMENT/MACHINERY

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You may be surprised to learn all that people with epilepsy can do! Again, it's very individualized, but I have known people with epilepsy who have worked successfully with heavy equipment and machines with moving parts, at hot grills, on roofs, and with cutting machines. Remember, there are many kinds of epilepsy. Some people (those who have partial seizures) never lose consciousness. Some have enough of a predictable warning that they can find a safe place before the seizure begins. Yet others only have nocturnal seizures—they're fine as long as they are awake. Of course, if you have questions about a worker's ability to perform a hazardous job, you can always ask for a letter from his doctor. Again, a little common sense will help decide what is reasonable for any given worker.

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## WORKERS' COMPENSATION PREMIUM RATES

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Some managers might assume that people with epilepsy have high accident rates. There is really no proof of this at all. In fact one Department of Labor study showed that workers with epilepsy actually had slightly *better* safety records than others. Perhaps they tend to be extra careful—that may explain the low accident rates. But even if workers with epilepsy *did* have high accident rates, it's comforting to know that my workers' compensation premiums aren't based on the medical histories of my staff. Like most companies, my firm is "class-rated," with rates based on the accident rates in my particular industrial group. Larger employers are rated on their actual accident records and the relative hazards involved in their industries. Moreover, second injury funds in several states limit employer liability for accidents which do occur on the job among workers with epilepsy.

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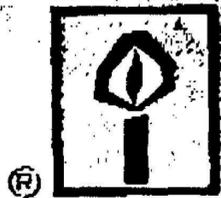
## CUSTOMER/CLIENT REACTIONS

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When Joanne applied for a position in my sales department, I wondered what would happen if she had a seizure in front of a client. Perhaps in the middle of closing a sale? What a tough question to confront her with! I expected it would really put her on the spot. I asked anyway. Without hesitating, Joanne smiled and admitted, "As a matter of fact, I just had a small seizure at the beginning of *this* interview. I'm quite used to those, and they're really easy to hide from other people." My eyes flew open—I hadn't noticed a thing! Joanne continued, "My convulsive seizures are so rare that I'd be more likely to have hiccups than one of those! And even if I did have one, it would be a bit awkward, but I could handle it. Seeing a tonic-clonic seizure may be scary to some people, but mine only last about 90 seconds, and I feel sure I can put them at ease afterwards. My sense of humor helps a lot in embarrassing situations!" Joanne sold me. She did have a remarkable way of putting *me* at ease. Looking back, I don't know how we could have afforded *not* to hire her!

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**TAPS**  
Training and Placement Service  
Epilepsy Foundation of America

**EPILEPSY ASSOCIATION  
OF HOUSTON/GULF COAST**  
2650 Fountain View, Suite 316  
Houston, Texas 77057  
(713)789-6295 FAX: (713)789-5628

# WORLD FITNESS POLICY ON NONDISCRIMINATION

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

NOV 18 1998 EE

## 1. The Federal Law:

Michael N. Milby Clerk of Court

It is against Federal Law for an employer to treat its employees differently because of the employees' race, color, gender, pregnancy, religion, national origin, disability, or age or because of their opposition to practices prohibited under Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act and the Civil Rights Act of 1991 ("Title VII"), the Equal Pay Act ("EPA"), the Age Discrimination in Employment Act (the "ADEA") or the Americans with Disabilities Act (the "ADA")

## 2. World Fitness' Policy

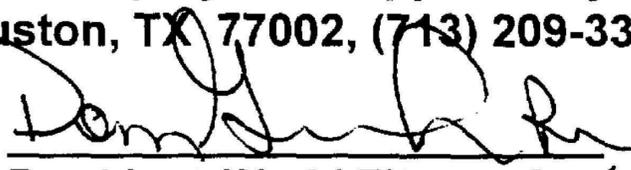
It is World Fitness' Policy to treat its employees and applicants for employment fairly and without regard to race, color, gender, pregnancy, sex, religion, national origin, disability, or age. Discrimination against any employee based on any of these factors will not be allowed or tolerated. In addition, World Fitness will not retaliate against any employee for his or her opposition to practices prohibited under Title VII, the EPA, the ADEA or the ADA.

## 3. Employment Practices:

World Fitness' anti-discrimination policy covers all employment practices, including recruiting, hiring, firing, pay rates, training and development, promotion and other terms and conditions of employment.

## 4. Employee Recourse:

Employees who believe they have been subjected to illegal employment discrimination can contact the Equal Employment Opportunity Commission ("EEOC") at 1919 Smith Street, Houston, TX 77002, (713) 209-3372.

Signed this 10 day of Nov, 1998,   
President, World Fitness, Inc.<sup>1</sup>

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<sup>1</sup>This notice shall remain posted for 2 years from the date signed.