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Vanina Wilson

Dennis Wilson

Business Administration & Accounting Dept., St. Michael's College, Colchester, VT.

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Does Ballet Discipline Require More Than Market Discipline? A Proposal for State Licensing of Ballet Instructors and Schools

By Vanina and Dennis Wilson*

I. Introduction

The school's chief instructor shook her head sadly as she watched the student clean out her locker and put away her warm-up clothes for the last time. An unsuccessful competition followed by two failed auditions had dashed whatever hopes the student might have had for a career in ballet. Yet, mused the school's head, although this student had excellent ballet physique and audience-pleasing "pizzazz," two years of coaching and private lessons could not eliminate bad habits ingrained in her by poor primary instruction. In conditions of stress such as competitions and auditions, the student fell back on bad technique and habits developed early in her ballet training and never corrected by instructors. That technique and those habits could not escape the trained eye of judges and company casting directors. Now she was giving up in discouragement. A saying flashed through the instructor's mind: "of all the words of tongue and pen, the saddest are these: it might have been."¹

* Vanina and Dennis Wilson are husband and wife. Vanina is an instructor at the Vermont Ballet Theater School in Essex, Vermont. She received her ballet training from Raymond Franchetti and Gilbert Mayer, professors of the Ballet School of the Paris Opera, and Claire Motte, Prima Ballerina of the Paris Opera and danced professionally in France before retiring from the stage. She received her Juris Doctor degree from George Mason University.

Dennis Wilson teaches in the Business Administration and Accounting Department at St. Michael's College in Colchester, Vermont. He worked previously for the Consumer Product Safety Commission and on the staff of the U.S. House of Representatives Committee on Energy and Commerce. He received his Juris Doctor degree from the University of Iowa.

¹ This paragraph is a dramatization from experiences described in GENEVIÈVE GUILLOT & GERMAINE PRUDHOMMEAU, *GRAMMAIRE DE LA DANSE CLASSIQUE* 275

Despite the scenario described in the preceding paragraph, ballet instruction is alive and well in the United States today. According to the most recent statistics compiled by the Census Bureau in 1997,² there were 5,367 dance schools in the United States having annual receipts of approximately \$782 million, employing 27,940 persons, and with payrolls totaling approximately \$223 million.³ These figures represent an increase from 1992 of 11.4% in the number of dance schools, an increase of 36% in the amount of receipts, an increase of 20% in the number of employees and an increase of 34% in the annual payroll.⁴ The Census Bureau also estimates that as of 2002, there were 586 dance companies with revenues totaling \$533 million, and a total annual payroll of \$203 million.⁵ Although not all dance schools focus exclusively on ballet, most offer some ballet instruction.⁶ Thus, numbers alone would be cause for rejoicing; apparently ballet still makes many American children and their parents dream. But these numbers mask a serious problem in the quality, and even in the safety, of ballet instruction that is regulated solely by the marketplace. The time has come for states to impose a licensing system to ensure that ballet schools offer a safe environment for dance students. To protect ballet students and their parents from the physical and economic hazards of incompetent instruction, ballet teachers must have adequate knowledge of ballet technique, along with a sound and relevant understanding of anatomy, biomechanics, and psychology.

(Librairie Hachette 1969), ODETTE JOYEUX, LE MONDE MERVEILLEUX DE LA DANSE 22 (Librairie Hachette 1967) and the personal observations of author Vanina Wilson.

² These figures were published in 2002, and are the most recent industry statistics available.

³ U.S. Census Bureau, Industry Statistics Sampler: NAICS 611610 Fine arts schools (2002), available at <http://www.census.gov/epcd/ec97/industry/E611610.HTM>.

⁴ *Id.*

⁵ U.S. Census Bureau, 2002 Economic Census, Summary Statistics for the United States: 2002, Table 1, Arts, Entertainment, & Recreation—Industry Series, Performing Arts, Spectator Sports, & Related Industries, available at <http://www.census.gov/econ/census02/guide/INDRPT71.HTM>. (last visited Jan. 30, 2006).

⁶ This statement represents the personal observations of the authors of dance school advertisements, descriptions and syllabi.

II. Hazards of Ballet

A. Physical Hazards

Because ballet requires an enormous combination of strength, flexibility and turnout,⁷ ballet students and professional ballet dancers are inherently prone to injuries.⁸ These physical hazards are rarely apparent to audiences, since ballet dancers' excellence is judged, in part, by how effortless they make the performance appear. Even ballet students and amateur ballet dancers are subject to numerous types of ailments and injuries,⁹ something about which parents seeking ballet instruction for their children may be largely unaware. Parents who are avid balletomanes are often no more immune from this ignorance than are other parents, and are also unable to judge the

⁷ For a description of turnout, see notes 11-15, and accompanying text, *infra*.

⁸ CLAUDE BESSY, *LA DANSE POUR PASSION* 186-89 (J.C. Lattès 2004).

⁹ Statistics compiled by the United States Consumer Product Safety Commission ("Commission") show that in 2003 there were an estimated 38,400 injuries associated with dance in the United States serious enough to require treatment in a hospital emergency room. United States Consumer Product Safety Commission, National Electronic Injury Surveillance System (NEISS), Product Code 3278, Dance Apparel, Equipment and Activity. An estimated 892 of these injuries were associated specifically with ballet. *Id.* A search of the 1206 reported cases in 2003 found 28 such cases in which ballet was mentioned specifically and the nationwide estimate of 892 was derived from that reported number of injuries. E-mail from Tom Schroeder, Statistician and Director of Data Systems, U.S. Consumer Product Safety Commission to Dennis B. Wilson (June 3, 2005, 8:52 a.m. EDT) (on file with the authors). The NEISS is a statistically valid sample of hospital emergency rooms in the United States, which enables Commission staff to make estimates of injuries suffered nationwide from the sample collected by the NEISS. U.S. Consumer Product Safety Commission, *National Electronic Injury Surveillance System*, <http://www.cpsc.gov/LIBRARY/neiss.html>, last visited Feb. 15, 2006. The NEISS counts only those injuries that result in a dancer being taken to the emergency room for evaluation and treatment. *Id.* Author Dennis Wilson had experience working with and interpreting the NEISS estimates while serving with the Commission. Based on that experience the estimates of injuries derived from the NEISS would not include the type of chronic injuries seen in a physician's office or clinic. Thus, it is highly likely that the NEISS underestimates the injuries associated with ballet. Based also on author Dennis Wilson's experience with the NEISS estimates, they include reports of injuries to both professional and non-professional dancers and a detailed review of the injury report from the hospital emergency room, or a follow-up investigation would be necessary to differentiate injuries suffered in occupational (professional) dancing from those suffered by amateurs or students.

competence of instructors. After all, watching professional ballet performances, no matter how extensively, does not enable an observer to evaluate how novices should be introduced in ballet, or how overall ballet instruction should be structured and performed to minimize the potential for injury. The incapacity of children themselves to appreciate the risk of ballet, coupled with their incapacity to recognize poor instruction that remains outside the realm of outrageous, should be self-evident. Even properly instructed students will have some injuries, especially students intensively engaged in ballet. Differentiating the "normal" injuries from those that are the result of—or aggravated by—poor instruction, is nearly impossible for a parent.

The fundamental mechanics of human orthopedic anatomy and the unnatural body positions involved in the performance of ballet give rise to certain risks inherent in ballet training.¹⁰ That danger begins before the dancer even moves. A ballet dancer's body must achieve a certain "turnout," or the ability to turn the legs and feet from the hip joints to a 90° position, which requires that the head of the femur rotate within the hip socket.¹¹ The amount of stretching of the muscles around the hips this requires may injure ligaments and cartilage around the hip socket,¹² therefore great care must be taken when introducing and performing the turnout. Since a natural turnout of 180° (90° on both hips) is rare, many dancers compensate through a practice known as "over turning," in which the foot and lower leg are externally rotated beyond the degree of turnout available at the hip joint.¹³ Unless spotted and corrected by an attentive instructor, over turning creates an even greater potential for damage than ordinary turnout, including severe weakening of the trunk muscles

¹⁰ See, e.g., JUSTIN HOWSE & SHIRLEY HANCOCK, DANCE TECHNIQUE AND INJURY PREVENTION 104-44 (Theatre Arts Books 1988) (containing a discussion of the physical injuries that are suffered by ballet dancers).

¹¹ GAIL GRANT, TECHNICAL MANUAL AND DICTIONARY OF CLASSICAL BALLET 122 (Walter J. Ryan ed., Dover Publications, 3d ed. 1982) (1967); VALERIE GRIEG, INSIDE BALLET TECHNIQUE 49-57 (Princeton Book Company 1994).

¹² HOWSE & HANCOCK, *supra* note 10, at 55; GRIEG, *supra* note 11, at 52.

¹³ HOWSE & HANCOCK, *supra* note 10, at 173. The observations of Dr. Howse and Ms. Hancock are particularly cogent, since Dr. Howse was the consultant orthopedic surgeon, and Ms. Hancock was physiotherapist, to the Royal Ballet School. See also *Job v. Cleveland Dance Ctr.*, 577 N.E.2d 396, 399 (Ohio Ct. App. 1989) (discussion of possible chronic injuries associated with turnout in an action by a former ballet dancer and ballet instructor to recover worker's compensation).

and a greatly increased rate of lumbar spine injury, including stress fracture.¹⁴ Unfortunately, some instructors insist on 180° turnout from students who are physically incapable of it, creating an even greater potential for injury.¹⁵

The risks associated with pointe work¹⁶ are more evident, since the toes are obviously not designed to bear the body's weight. Nevertheless, not all of pointe's hazards are generally appreciated by parents and ballet students.¹⁷ Schools and instructors often find themselves under pressure from students and parents to begin pointe work as soon as possible. However, training to dance on pointe should not start before the child is physically and technically ready.¹⁸ Growth must have settled in the feet, and the dancer must be strong in the feet and around the ankles, with full control of all the relevant joints.¹⁹ The dancer must also have sufficient strength in the trunk, and have achieved the necessary level of turnout in the hip and thigh area.²⁰ While muscles may be strengthened by exercise, bone ossification is largely a matter of age, and there is nothing a student

¹⁴ HOWSE & HANCOCK, *supra* note 10, at 173-76.

¹⁵ *Id.* at 173. Dr. Howse and Ms. Hancock are particularly critical of this practice, noting that, "[o]n average, it takes a bad teacher eight months to so weaken a previously adequately strong dancer that the risk of a serious back injury is imminent." *Id.* They note further that "[t]eachers who demand a flat turnout demonstrate their total ignorance of the mechanics of the body and by this culpable attitude must accept complete responsibility for injuries they cause to their students. This situation is not only cause of injuries but it is also greatly detrimental to the development of a good technique." *Id.* Dr. Howse and Ms. Hancock also identify many other injuries (e.g., lordosis, tight Achilles tendons, rolling and swayback knees) that can result from both technical faults and anatomical variations among students. *Id.* at 170-73, 181-82, and 186-87. These causes may arise from poor teaching or even from a properly instructed student who is inattentive or lazy. *Id.* at 164-65.

¹⁶ See GRANT, *supra* note 11, at 89 (discussing "pointe" as referring to the raising of the body on the tips of the toes). Pointe was introduced to ballet in the late 1820s or early 1830s, and is performed on pointe shoes, in which the tip consists of a box constructed by several layers of strong glue between layers of material. *Id.*

¹⁷ See also GRIEG, *supra* note 11, at 104-12 (discussing the of hazards of pointe work).

¹⁸ *Id.* at 106.

¹⁹ HOWSE & HANCOCK, *supra* note 10, at 106.

²⁰ *Id.* at 60.

can do to hasten the process.²¹ A good teacher will postpone dancing on pointe until the child is ready, which may never happen. Such postponement decreases the risk of injury, allows the student to achieve the correct technique more readily and accurately, and finally to progress rapidly once she does begin dancing on pointe.²² Unfortunately, too many teachers—pressured by students and parents, or simply ignorant of the risks—start their students on pointe before the students are physically capable. Dancing on pointe remains hazardous even for students with the proper hardness of bone and sufficient muscular strength.²³ Proper alignment of the whole body, an adequate arch of the foot, the achievement of a sufficient three-quarter pointe, and stretched knees must precede dancing on pointe to minimize the risk of injury.²⁴ Ballet teachers must understand and appreciate these risks, be attentive to potential problems facing the dancers, and pace the dancing instruction before introducing pointe work to ballet students.

The health hazards of ballet are not limited to orthopedic injuries. Girls working to become ballerinas are especially susceptible to anorexia and other eating disorders.²⁵ Although ballet instructors have no control over what their students eat, they are likely to be in a position to identify suspected eating disorders, given that instructors observe students' physiques closely over a period of time, and are aware of the pressure on dancers to keep their weight down and the associated behavior such pressure may induce. Ballet instructors suspecting such disorders can inform parents so that parents may seek proper medical attention and nutritional counseling for their daughters.

The physical risks of ballet extend to the facilities in which

²¹ *Id.* at 59-60.

²² *Id.* If premature pointe work can be harmful, deferral of pointe work to ages as late as sixteen will not impede a potential career in ballet. *Id.* at 60.

²³ JOYEUX, *supra* note 1, at 27. As pointed out by Claude Bessy, the former director of the l'École de Danse de l'Opéra de Paris, in an interview contained in a documentary about the school shown as an addition to the DVD of the ballet *Coppelia* (coproduction of ARTE France, Opera National de Paris, and Telemondis April 2001)(on file with the authors) when dancing on pointe, the entire weight of the body rests on a base of approximately three centimeters per shoe.

²⁴ GEORGETTE BORDIER, ANATOMIE APPLIQUE A LA DANSE 437 (Amphora 1978).

²⁵ Lisa Capone, *Medical Insights Born of Dance: Doctor Draws on her Ballet Career to Raise Awareness of Eating Disorders*, B. GLOBE, Nov. 4, 2004, at 1.

instruction is given or in which dancers practice or perform.²⁶ Contact with the floor is essential to proper dancing, and a floor surface that is slick, has insufficient spring, or which contains splinters may injure a dancer at any level of ability.²⁷ Such an injury has the potential to end the career of a dancer performing leaps and turns.²⁸ Studios must be large enough for students to perform the required exercises. Even considerations as mundane as properly cleaned showers and a locker room can be important. A case of athlete's foot is a nuisance for a weekend athlete; it can be torture to a dancer whose very livelihood may ride on the condition of the feet.²⁹

Despite its hazards, ballet can be performed within an acceptable level of risk of injury.³⁰ Central to the minimization of injury in ballet is the role of the instructor.³¹ A well-qualified and attentive ballet instructor or coach prevents students or performers from engaging in moves and positions that are likely to result in injury, or at least can minimize the risk for serious injury. All of the inherent hazards in ballet can be controlled and minimized provided the instructor is aware of them and is able to teach the student the proper techniques that decrease the risk of injury. A ballet teacher must understand perfectly the technique that he or she is teaching, be able to demonstrate to the students in detail the best way to perform the technique, and finally explain the reason why the technique is best performed in the manner demonstrated.³² Such an exercise requires that the instructor be knowledgeable not only in musicality and the ballet technique itself, but also in human anatomy and biomechanics.³³

The instructor should understand and explain a movement or

²⁶ BESSY, *supra* note 8, at 154.

²⁷ HOWSE & HANCOCK, *supra* note 10, at 75-76. For cases in which the floor surface was alleged to be the cause of a ballet student's injury, *see* note 51 and accompanying text, *infra*.

²⁸ BESSY, *supra* note 8, at 154.

²⁹ Personal experience of author Vanina Wilson.

³⁰ HOWSE & HANCOCK, *supra* note 10, at 73 (stating that "[a]ll dance injuries are caused by faulty technique. Dance injuries are not an Act of God").

³¹ GRIEG, *supra* note 11, at xiii-xv. JOYEUX, *supra* note 1, at 22. HOWSE & HANCOCK, *supra* note 10, at 164.

³² JACQUELINE CHALLET -HASS, LA DANSE CLASSIQUE ENSEIGNEE AUX ENFANTS 43 (Amphora 1997).

³³ GRIEG, *supra* note 11, at xiii-xv.

position and its physical consequences, both for aesthetic purposes and for safety. It is the instructor's responsibility to ensure that the teaching of ballet technique is never at the detriment of the correct placement of the dancer's body. Despite the teacher's proper recommendations and best efforts, students' laziness or inattentiveness also contribute to injuries.³⁴ A good and conscientious teacher must, therefore, keep such students away from increasingly difficult moves or, perhaps even from dance class entirely if their attitude puts them at risk. An instructor who does all this not only minimizes the risk of injury, but also makes it more likely that the ballet experience will be happy and positive for his or her students.

B. Economic Hazards

As shown by the statistics above, parents and students pay a great deal of money for ballet instruction. But as has also been noted, it is difficult for parents, even those who are avid balletomanes of professional companies, to judge the quality of ballet instruction. Comparing students to professional ballet dancers is pointless. No student, no matter how talented and well-instructed, will dance at the outset as well as a professional dancer. Moreover, ballet is an art form that takes years to master, and in which progress is slow, even for talented students with knowledgeable instructors. The results of poor quality instruction may only become evident later, when the student has developed bad habits that later instructors or coaches find difficult to correct, and which cause dance company directors to reject applicants for dancing employment.³⁵ These characteristics of ballet instruction create risks for the amateur and for the pre-professional ballet student. Amateur ballet students and their parents may not get their money's worth because the instructor is incompetent. The ballet student is more likely to suffer injuries and fail to appreciate ballet as well as he or she might if given competent instruction.³⁶ Students with the physical potential and the interest in performing professionally may have their careers permanently compromised by poor teaching at the outset of ballet instruction.³⁷

³⁴ HOWSE & HANCOCK, *supra* note 10, at 164. Author Vanina Wilson's personal observations and experience with dance students also support this proposition.

³⁵ GUILLOT & PRUDHOMMEAU, *supra* note 1, at 275.

³⁶ HOWSE & HANCOCK, *supra* note 10, at 73-74.

³⁷ GUILLOT & PRUDHOMMEAU, *supra* note 1, at 275.

III. Existing Protections

A. Organizations

What present protections do ballet students and their parents have from the physical and economic hazards described above? There are organizations and associations of dance instruction in the United States, such as Dance Educators of America,³⁸ the National Registry of Dance Educators,³⁹ and National Association of Schools of Dance,⁴⁰ that deliver certificates⁴¹ of teaching based upon some

³⁸ Dance Educators of America (DEA) states that its membership is limited to persons presently or previously engaged in teaching performing and stage arts, and one or more branches of dance. Dance Educators of America, Membership Requirements, <http://www.deadance.com/requirements.html> (last visited Feb. 2, 2006). Members must be at least 20 years old, have a minimum of four years of teaching experience in one or more dance subjects, and pass two examinations from five choices (although the Membership Application lists six choices). *Id.* The examinations are based on books available from DEA and a passing grade is seventy-five percent, although an applicant may otherwise qualify for membership based on certain articles of the DEA Constitution. *Id.* Applicants pay a fee of \$50.00 and members pay an annual fee of \$150 and agree to abide by a Code of Ethics. *Id.* DEA also offers a teacher training and certification program that includes a portion on classical ballet. Dance Educators of America, Teacher Training and Certification, <http://www.deadance.com/teachertraining.html> (last visited Feb. 2, 2006).

³⁹ The National Registry of Dance Educators states that its membership is limited to dance educators who practice in the United States. National Registry of Dance Educators, What You Need, <http://www.nrde.org/whatyouneed.html> (last visited Feb. 2, 2006). Applicants must supply extensive information and documentation regarding their educational background, dance education, performance and teaching experience. *Id.* They must also agree to the Code of Ethics for Dance Educators and the Guidelines for the Safe Practice of Teaching Dance. *Id.* Applicants must serve a two year probationary period and may then be offered full membership, which is renewed every five years. *Id.* The website of the National Registry of Dance Educators lists four honorary registered dance educators and thirty-five registered dance educators. National Registry of Dance Educators, Registered Members List, <http://www.nrde.org/registeredmember.html> (last visited Feb. 2, 2006).

⁴⁰ The purpose of the National Association of Schools of Dance is to develop a closer relationship among schools and programs of dance for the purpose of examining and improving practices and professional standards in dance education training. Mary Beth Garrick, *Higher Education*, DANCE TEACHER, Dec. 2002, available at http://www.dance-teacher.com/backissues/dec02/higherEd_continueEdGuide5.shtml.

⁴¹ Morris M. Kleiner, *Our Guild-Ridden Economy*, WALL ST. J., Oct. 15,

mix of training, membership in the association or organization, and, in some cases, dance instruction experience.⁴² As businesses, these organizations and associations must generate revenue, and economic survival may not necessarily depend on the thoroughness and quality of their members' ability as dance instructors. There is usually no outside authority to evaluate the criteria used by these organizations and associations, or to check and see how they are being applied. Associations and organizations tend to "sell" their services by delivering some kind of certificate of method such as Vaganova,⁴³ Royal Academy of Dance,⁴⁴ or Cecchetti.⁴⁵ Methods are usually more about style and syllabus than about the fundamentals of ballet,⁴⁶ and if these foreign names sound good on a certificate and a dance school brochure, they do not necessarily mean that their holders offer

2005, at A7 (noting that a certification program means that a person may perform the occupation but may not use the title conferred by the certificate).

⁴² See notes 38-40, and accompanying text, *supra*.

⁴³ The Vaganova Method is a syllabus developed by Agrippina Vaganova, who was a ballerina for the Impartial Theater in St. Petersburg, Russia. See GRANT, *supra* note 11, at 122. After the Russian Revolution she retired from performing and began teaching in 1921. *Id.* In 1934 she published a textbook entitled *Fundamentals of the Classical Dance*. *Id.* Vaganova's method became the basic method of the entire Soviet choreographic school. *Id.* This method is still being developed by Vaganova's followers. Examples of schools claiming certification in the Vaganova method are the Academy of Classical Ballet in Oakland, California whose contact information is available at <http://www.acb-oakland.com/vaganova.html>, the Vaganova Ballet Academy of Trabuco Canyon, California, at <http://www.dance-teacher.com/backissues/dec02/higherEd.continueEdGuide5.shtml>, the Pennsylvania Academy of Ballet of Narberth, Pennsylvania, <http://www.dance-teacher.com/backissues/dec02/higherEd.continueEdGuide4.shtml> and the Philadelphia Dance Conservatory Vaganova Festival, at <http://www.dance-teacher.com/backissues/dec02/higherEd.continueEdGuide4.shtml>.

⁴⁴ The Royal Academy of Dancing began in 1920 by a small group of dance professionals. Royal Academy of Dance, History, <http://www.rad.org/uk/01who/011history.htm> (last visited Feb. 2, 2006). It presently offers a ballet teacher education program, the completion of which entitles instructors to be included in the Academy's Register of Teachers. Royal Academy of Dance, Registered Teacher Information, <http://www.rad.org.uk/03membership/REGTEACHER.htm> (last visited Feb. 28, 2006).

⁴⁵ The Checchetti Council of America has a syllabus for the Checchetti Method available at <http://www.cecchetti.org/main.php?smPID=PHP::index.php> (last visited Feb. 2, 2006).

⁴⁶ Personal observation of author Vanina Wilson in attending seminars on ballet instruction.

competent instruction in the fundamentals of ballet. Parents should, in fact, be wary about any commercial dance school boasting a certain method. The Vaganova method, which is presently in high demand and very trendy,⁴⁷ has done wonders at the Vaganova Ballet Academy in St. Petersburg, Russia.⁴⁸ But that Academy accepts only those students who meet rigorous physical criteria;⁴⁹ the Vaganova method as taught in the Academy is not well suited for students who do not have sufficient natural gifts for ballet to meet its syllabus. It may, in fact, be a recipe for disaster in a dance school which does not select its students, as is the case in most American/U.S. dance schools.⁵⁰

B. Tort Liability

The United States civil justice system (the tort system) does little to protect ballet students from the most insidious hazards of poor ballet instruction. It is certainly true that ballet dancers have sued their instructors, ballet schools or even their professional companies.⁵¹ Such suits, however, are for sudden traumatic injuries,

⁴⁷ A review of advertisements of dance schools in such dance-related magazines such as *Pointe* and *Dance* reveals that many such schools advertise the use of the Vaganova method in their instruction.

⁴⁸ A history of the Vaganova Ballet Academy and a description of its present operations can be found on its website at <http://www.vaganova.ru/eng.html> (last visited March 7, 2006).

⁴⁹ According to the Vaganova Ballet Academy, every year approximately 4,000 children visit for consultation with ballet staff. *Id.* Three hundred of these children are selected and auditioned, but of these only sixty will be accepted for the First Grade. *Id.* The examination consists first of the child's physical aptitude: proportions, height of jump, degree of turnout and so on. *Id.* The second part of the examination is judged by medical specialists who determine the future possibilities of the child. *Id.* The third part of the examination assesses the child's musicality, rhythm, coordination and artistic talent. *Id.* But of the sixty candidates who pass even this rigorous examination, only approximately twenty-five will actually complete their studies at the Academy and graduate. *Id.*

⁵⁰ For a discussion of the hazards of inappropriate use of the Vaganova method, see HOWSE & HANCOCK, *supra* note 10, at 174-75. Author Vanina Wilson has also observed the hazards of the Vaganova method used in instructing students for whom that method was not suitable.

⁵¹ Ballet students have also successfully sued makers of ballet equipment that was responsible for injuries. *See Larranmendy v. Myres*, 272 P.2d 824, 827 (Cal. App. 2Dist. 1954) (novelty company owners liable for burns sustained by plaintiff in dancing act); *Pearlman v. Garrod Shoe Co.*, 11 N.E. 2d 718, 718 (N.Y. Ct. App. 1937) (shoe manufacturer found liable for death of eight year old dance student

such as falls into an orchestra pit,⁵² falls on slick or splintered floors,⁵³ falls in a particularly difficult dance routine,⁵⁴ collisions with obstacles in a dance studio,⁵⁵ or burns suffered when a smoke-making device set fire to a ballet costume.⁵⁶ One ballet student unsuccessfully sued his instructors for intentional and negligent infliction of emotional injury as a result of an alleged homosexual relationship.⁵⁷ Three reported decisions involving dance *instructors* indicate the difficulties that a dance student would face in proving chronic injuries.

In *Brusstar v. University of Arkansas*, Ms. Brusstar had been employed for eighteen years by the University of Arkansas as an instructor for both ballet and modern dance classes.⁵⁸ After approximately sixteen years of such employment, she began experiencing foot and leg pain.⁵⁹ An examining physician found that her foot pain was caused and exacerbated by the type of repetitive trauma experienced by ballet dancers.⁶⁰ Ms. Brusstar filed a claim for workers' compensation, contending that she sustained a compensable injury caused by the rapid and repetitive motion required by her job

when a blister caused by badly-fitting shoes became infected and eventually resulted in the death of the child).

⁵² *Tex. Tech Univ. v. Gates*, 2004 WL 2559937, at *1 (Tex. App. Amarillo, 2004).

⁵³ *Bd. of Tr. of Ball St. Univ. v. Strain*, 771 N.E.2d 78, 80-81 (Ind. App. 2002); *Hedrick v. Tigniere*, 147 S.E.2d 550, 551 (N.C. 1966).

⁵⁴ *Cox v. Ballet Ark., Inc.*, 1996 WL 494651, at *2 (Ark. App. 1996).

⁵⁵ *Samuels v. Conn. Ballet Sch., Inc.*, 1997 WL 193192, at *1 (Conn. Super. Ct. 1997).

⁵⁶ *Larramendy*, 272 P.2d at 824. In this case judgment was entered against the maker of the smoke-generating device, but the case against the ballet school was dismissed. *Id.* The accidental setting fire to a ballerina's costume is tragically reminiscent of the 1863 death of French ballerina Emma Livrey, who was severely burned when her costume came into contact with a gas jet during a rehearsal of the ballet *La Muette de Portici*. See IVOR GUEST, *LE BALLET DE L'OPERA DE PARIS* 114-18 (Flammation 2001).

⁵⁷ *Soderlund v. Kuch*, 546 S.E.2d 632, 634-36 (N.C. Ct. App. 2001). The plaintiff's claim was dismissed because it had been filed after the expiration of the statute of limitations. *Id.* at 641.

⁵⁸ *Brusstar v. Univ. of Ark.*, 1999 WL 1203718, at *1 (Ark. Ct. App. 1999).

⁵⁹ *Id.* at *2.

⁶⁰ *Id.* at *3.

as a dance instructor.⁶¹ An administrative law judge from the Arkansas Workers' Compensation Commission denied the claim, which denial was subsequently upheld on appeal by the full Commission.⁶² Arkansas workers' compensation law clearly provided that "rapid and repetitive motion" on the job could result in a compensable injury.⁶³ The Commission found that it was true that "[Ms. Brusstar] over her many years of dancing and instructing dance has caused considerable stress and deformity to her feet."⁶⁴ It also found that "[Ms. Brusstar] has performed dance steps which require both rapid and repetitive movement."⁶⁵ However, the Commission reasoned that "the repetitive strain from the dance on the hard wood floors . . . has caused degenerative changes in her metatarsophalangeal joints," and "her condition is caused more from stress due to dancing on hard floors rather than the movement she is required to perform at different intervals during the day."⁶⁶ In other words, the fact that the rapid and repetitive motion involved in dance that might *otherwise* result in compensable injuries under Arkansas workers' compensation law would not result in compensable injuries because that motion involved contact with the floor! This result leaves unanswered the question of with what object *would* a dancer be in contact, if not the floor? On further appeal, the Arkansas Court of Appeals sustained the Commission's findings, adding that the "rapid motions" in which the appellant engaged were perhaps not rapid enough, and that the appellant also danced on pointe, which was not a part of her dance instruction duties.⁶⁷ Thus, even in a forum whose function it is to compensate workers for injuries sustained on the job, a dance instructor found that she could not obtain compensation for sixteen years of cumulative damage to feet and legs.

A similar result occurred in *In re Ostuni*,⁶⁸ in which the Workers' Compensation Board denied a ballet instructor's claim for

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at *2 (citing *Malone v. Texarkana Pub. Schs.*, 333 Ark. 343, 346 (1998)).

⁶⁴ *Brusstar v. Univ. of Ark.*, 1999 WL 1203718, at *2 (Ark. Ct. App. 1999).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at *6.

⁶⁸ *Ostuni v. Town of Ramapo*, 779 N.Y.S. 2d 629, 630 (N.Y. App. Div. 2004).

workers' compensation on the grounds that the lower back pain she complained of could not be limited to the specific injury to which she attributed it, since she had suffered so many other injuries in her job both before and after that injury.⁶⁹ The chronic nature of ballet injuries also barred recovery under workers' compensation in *Job v. Cleveland Dance Center*,⁷⁰ since the court found that the osteoarthritis the dance instructor complained of had begun before she commenced working for the defendant employer.⁷¹ Although there is one reported decision of a court sustaining a ballet instructor's claim for workers' compensation,⁷² cases such as *Brusstar*, *Ostuni* and *Job* demonstrate the problem that dance students would face in suing successfully for chronic injuries associated with dancing, given the difficulty of attributing the injury complained of to any one incident or instructor.

There are no reported decisions involving actions brought for the type of chronic injuries to students that are likely to be caused or aggravated by poor quality instruction. Nor are there reported decisions of parents or students suing schools for tuition refunds, let alone for the "opportunity cost" of ballet students stripped of their chances of a professional career because of poor quality instruction. The absence of such cases should not be surprising. Even properly

⁶⁹ *Id.* The decision of the Workers' Compensation Board was affirmed by the reviewing court. *Id.*

⁷⁰ *Job v. Cleveland Dance Ctr.*, 577 N.E.2d 396, 402 (Ohio Ct. App. 1989).

⁷¹ *Id.*

⁷² *Sladek v. Beutel Sch. of Dance, Inc.*, 986 S.W.2d 522, 522 (Mo. Ct. App. 1999). The decision was rendered without an opinion, so it cannot be determined why this case turned out differently from most claims filed by ballet instructors for workers' compensation. *Id.* Ballet *dancers* seem to have had better luck than ballet *instructors* in obtaining workers' compensation. See *Makarova v. United States*, 201 F.3d 110, 115-16 (2d Cir. 2000) (noting in dismissing the subsequent action filed under the Federal Tort Claims Act, the previous recovery by the plaintiff under workers' compensation); *In re Brown*, 787 N.Y.S.2d 140, 140 (App. Div. 2004); *In re Markova*, 433 N.Y.S. 2d 224, 224-26 (N.Y. App. Div. 1980); *In re Berman*, 88 N.Y.S. 2d 327, 328 (N.Y. App. Div. 1949). See also *Tschida v. Cont'l Cas. Co.*, 264 N.Y.S.2d 72, 73-74 (Spec. and Trial Term, N.Y. Cty. 1965) (dancer injured in a performance held entitled to recovery under an insurance policy designed to supplement workers compensation so as to restore the injured performers to their full weekly salary during the duration of the show covered by the policy). The death of a professional ballet dancer Heidi Guenther of the Boston Ballet in 1997 led to a lawsuit by her mother claiming that pressure on Heidi to remain thin induced an eating disorder that, in turn, aggravated a heart condition. See Capone, *supra* note 25, at 1. The case was dismissed in 2001 and did not result in a reported decision. *Id.*

instructed dancers may suffer from minor sprains, muscle soreness or tendonitis. Determining which portion of a chronic injury was “natural,” or possibly even the result of the student’s own inattention to adequate instruction⁷³ and which portion was due to deficient instruction is difficult. A negligence claim is subject to defenses such as contributory negligence and assumption of risk, since most schools obtain some type of release of claim from the parents of minor students.⁷⁴ A case alleging that a dancer’s potential career had suffered because of poor quality instruction would be just as difficult. The monetary damages, especially to an amateur dancer or student, would be speculative. Finally, cases that involve sudden dramatic accidental injuries have considerably more “jury appeal,” than do chronic injury cases. For all these reasons, personal injury lawyers, who generally take such cases on a contingent fee basis, are not inclined to accept them.

IV. State Licensing

A. Precedents

Since the existing system of self-regulation and civil liability inadequately protects ballet students and their parents from the physical and economic hazards of ballet, there is a need for a state licensing system for ballet instructors and ballet schools outside of the system that licenses or certifies teachers in the public school system.⁷⁵ This proposed licensing system would require that both ballet teachers and dance schools offering ballet meet minimum qualifications in order to offer ballet instruction to the public.

⁷³ For a discussion on the possibility that a student might be injured through the student’s own inattention or laziness, see HOWSE & HANCOCK, *supra* note 10, at 164. Author Vanina Wilson has noted similar experiences in her ballet instruction work.

⁷⁴ A Google search conducted by the authors on February 16, 2006 by entering the terms “ballet” and “release of liability” turned up thirteen pages of results. While not all of the websites involved ballet schools’ releases of liability for students prior to beginning instruction, most of them were, an indication of just how prevalent such releases have become in the world of ballet instruction.

⁷⁵ The fact that after-school or weekend ballet classes operate outside a state program of licensing was noted explicitly in *Lake Havasu City v. Ariz. Dep’t. of Health Serv.*, 48 P.3d 499, 504-05 (Ariz. Ct. App. 2002) (*dicta*).

Occupational licensing systems are common in most states.⁷⁶ Lawyers, physicians, dentists and accountants are among the most well-known examples of professions that require licenses. But many other persons who perform services must also obtain a license from the state. In California, for example, dieticians, cosmetologists, embalmers, locksmiths and instructors in boxing, wrestling and the martial arts all require a state license to provide services to the general public.⁷⁷ Licensing is especially appropriate where the service is provided to children.⁷⁸ Nevertheless, no state requires that persons offering ballet or other dance instruction, which often involves very young children, obtain a license to do so.⁷⁹

⁷⁶ More than twenty percent of the U.S. workforce is covered by state licensing laws, as well as federal, county and city regulations. Kleiner, *supra* note 41, at A7. About fifty occupations are licensed in all states and more than 800 are regulated in some states and not in others. *Id.*

⁷⁷ California occupational requirements are contained in the California Business and Professions Code. Barber and cosmetologist licensing requirements are set forth in CAL. BUS. & PROF. §§ 7301-7426.5 (2004), dietician licensing requirements are set forth in sections 2585-2586.8 of the California Business and Professions Code, funeral director and embalmer licensing requirements are set forth in sections 7600-7746, locksmith licensing requirements are set forth in sections 6980-6980.69 and licensing requirements for instructors in boxing, wrestling and the martial arts are set forth in sections 18600-18887. *See* FindLaw, California Codes, <http://caselaw.lp.findlaw.com/cacodes/bpc.html> (last visited Mar. 1, 2006).

⁷⁸ All states impose some type of licensing requirement to operate a child care facility. *See* National Resource Center for Health and Safety in Child Care, Individual States' Child Care Licensure Regulations, <http://nrc.uchsc.edu/STATES/states.htm> (last visited Feb. 7, 2006). The licensing regulations for all the states are set forth on the website of the National Resource Center for Health and Safety in Child Care ("National Resource Center"). *See id.* The National Resource Center is located at the University of Colorado Health Sciences Center in Denver, Colorado and is funded by the Maternal and Child Health Bureau, U.S. Department of Health and Human Services. *See* National Resource Center, <http://nrc.uchsc.edu/> (last visited Feb. 7, 2006). At least five states license child care providers as professions: Idaho (IDAHO CODE ANN. §§ 39-1101—39-1119, 39-1201—39-1224 (West 2005)), Arizona (ARIZ. REV. STAT. ANN. §§ 90-3-101—9-3-508 (West 2004)), Connecticut (CONN. GEN. STAT. § 19a-87 (2005)), Florida (FLA. STAT. §§ 402.301—402.319, 409 (2005)) and Nebraska (NEB. REV. STAT. §§ 71-1908—71-1918 (2005)).

⁷⁹ This assertion is based on a search of state occupational licensing requirements found on the website of the Council on Licensing Enforcement and Regulation ("CLEAR"), at <http://www.clearhq.org/boards.htm> (last visited Feb. 7, 2006). Florida requires ballroom dancing studios to obtain a license, but the requirements to obtain the license are related to financial security and the ability to

There is, however, one example of specific ballet instruction licensing outside the United States. France, which has the oldest tradition of ballet training and history,⁸⁰ has required a government license to teach ballet in the private and public sectors since 1989.⁸¹ The impetus for this licensing system came neither from the government nor from the French system of civil justice, but from ballet instructors themselves, who were concerned about the hazards of ballet discussed in the preceding portion of this article.⁸² Before anyone can teach ballet for remuneration or even use the title “Ballet Teacher” or its equivalent in France, she or he must obtain a license delivered by the French government or show evidence of an equivalent license.⁸³ There are exemptions, however, for persons with well-recognized reputations in ballet teaching. Before the French government will issue the license, the candidate must demonstrate that she or he has acquired the technical and artistic knowledge necessary to teach ballet, including musical training, history of ballet, anatomy, physiology, and pedagogy.⁸⁴ The training required to become a licensed ballet teacher is provided by a few dance schools which are recognized and approved by the French government.⁸⁵

provide refunds, not competence in dance instruction. See FL. STAT. ANN. § 501.143 (2005), available at <http://doacs.state.fl.us/onestop/cs/dance.html> (last visited Feb. 7, 2006).

⁸⁰ See GUEST, *supra* note 56, at 11-80.

⁸¹ Law of 10 July 1989 Law No. 89-468 of July 10, 1989, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France]. The Journal Officiel does not have full text on-line prior to 1996. The text of the law is available at <http://www.admi.net/jo/MCCX8800035L.html> (last visited Mar. 7, 2006). The law has been implemented by Décret no. 92-193 du 27 février 1992, available at <http://admi.net/jo/19920229/MCCB9200041D.html> (last visited Mar. 7, 2006) issued pursuant to the authority granted by Tit. 1, Art. 2 of the Law of 10 July 1989.

⁸² Personal recollection of author Vanina Wilson.

⁸³ The law does not specify the non-French licenses that the French government will recognize, although under more general law of the European Union (EU), it is likely that France would recognize a similar license granted by a member state of the EU.

⁸⁴ The examination that candidates must pass is described on the website of the L’Universelle Européenne de Dance—Centre Goubé at <http://www.dansegoubé.com/formation.htm> (last visited Feb. 16, 2006). There is also a videotape and recorded music that are on file with the authors and made available by the Minister of Culture, Delegation of Dance, exhibiting the type of demonstration that an applicant must make to show an understanding of dance.

⁸⁵ L’Universelle Européenne de Dance—Centre Goubé, *supra* note 84,

Even prima dancers at the Paris Opera, by far the most prestigious ballet company in France,⁸⁶ must obtain the license in order to teach; a good dancer is not necessarily a good dance teacher. The licensing requirements aim to assure that ballet students are taught by instructors with at least a minimum competence to teach ballet.⁸⁷ French parents may send their children to a licensed ballet school secure in the knowledge that the physical risks will be minimized and that they will not waste their money on ballet instruction that may later prove to be more hindrance than help.

B. Proposals for the Regulation of American Ballet Schools

1. Licensing Ballet Instructors

A state-administered licensing system would require that any individual wishing to teach ballet obtain a license to do so. Obtaining the license would require both competence as a ballet dancer and competence in ballet instruction. The first requirement could be met by performance in a professional ballet company for a minimum number of years.⁸⁸ If the applicant does not have that experience, he or she must be able to demonstrate a certain level of technical aptitude of ballet steps and positions. The second requirement—competence in ballet instruction—would be met by an examination that involved both responses to written and oral questions, and a demonstration with a student before a licensing examination board. Exemptions might be granted in exceptional circumstances. States might recognize licenses acquired in different states or even in countries other than the United States. Finally, a time period would be granted for ballet instructors to qualify and acquire their licenses

represents one such establishment.

⁸⁶ See GUEST, *supra* note 56, at 233-64.

⁸⁷ One of the schools that prepares prospective instructors for the exam has a program of one year's study, including one hundred hours of study of musical formation, fifty hours of dance history study, fifty hours of anatomy and physiology, and four hundred hours of pedagogical study, including eighty hours of analysis of movement, one hundred twenty hours of the theory of teaching and two hundred hours of practical instruction. L'Universelle Européenne de Dance—Centre Goubé, *supra* note 84.

⁸⁸ France requires at least three years of experience. TIT. 1, ART. 1 of the Law of 10 July 1989, *supra* note 81.

in order to continue teaching.⁸⁹

2. Regulating Dance Schools Offering Ballet Instruction

Another important aspect of the licensing system for ballet instruction would cover the business of teaching dance. The system would assure that dance schools offering ballet instruction use adequate facilities that meet safety and sanitation requirements to protect the students and the public. Requirements for such licenses would include at least the following:

- Liability insurance in a minimum amount;
- Requirements for physical examinations by doctors before accepting students;
- A minimum age for accepting students for any dance instruction (e.g., four years old);
- A minimum age for introducing students to ballet technique itself (e.g., eight years old);
- Spring floors in the studios;
- Adequate ventilation, toilets and locker room facilities;
- Posting of emergency telephone numbers and an emergency kit;
- Reporting any accident requiring medical attention to the state licensing authority; and
- Regular state inspections of ballet instruction facilities.

A licensing system, while not a perfect guarantee of student safety or that parents are getting their money's worth, would at least eliminate those ballet teachers who cannot or do not want to provide minimally-adequate ballet training. The system would assure the parents that they are receiving a service rendered according to some set standards and qualifications. This feature is especially important for children who are interested in and have the potential to pursue a professional career. Time is a crucial and irrecoverable factor in ballet training, and the quality of the training from its inception is a strong determinant of whether or not these children can realize their dream of becoming professional dancers. Ballet is hard work, and students and parents alike should expect certain results from the time, money, and effort they put toward ballet classes. If their instructor does not teach ballet properly and safely, who will?

⁸⁹ The French law became effective three years after passage. TIT. 1, ART. 11 of the Law of 10 July 1989, *supra* note 81.
