

Medical and Legal Issues in Sports Medicine

Legal reasons/terms for lawsuits against team physicians

1. Negligence - 2 types, gross negligence, normal negligence
 - Gross negligence
 - A conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both¹⁴
 - Negligence
 - A failure to exercise reasonable care which is likely to cause foreseeable grave injury or harm to persons, property, or both¹⁴
2. Fraudulent misrepresentation
 - A statement of fact made without belief in its truth either recklessly, knowingly or without caring whether it is true or false with the intention that it should be acted on and it is in fact acted upon¹⁵
 - Where a contract has been entered into by reason of fraudulent misrepresentation, the person induced may rescind the contract, claim damages or both¹⁵
 - The Misrepresentation Act 1967 allows a claimant to base their claim on negligence or on the fraud¹⁵
 - When a misrepresentation claim is based in negligence, the Act creates a reverse onus on the defendant to disprove negligence¹⁵
3. Concealment of medical information
 - If determined to be fraudulent, then statutes of limitations can be exceeded, per a Florida case law¹⁶
4. Intentional infliction of emotional distress
5. Discrimination: Unequal treatment of persons, for a reason which has nothing to do with legal rights or ability¹³
 - Federal and state laws prohibit discrimination in employment, availability of housing, rates of pay, right to promotion, educational opportunity, civil rights, and based on race, nationality, creed, color, age, sex or sexual orientation¹³
 - The rights to protest discrimination or enforce one's rights to equal treatment are provided in various federal and state laws, which allow for private lawsuits with the right to damages¹³
 - There are also federal and state commissions to investigate and enforce equal rights¹³

Case Law and Sports Medicine specific claim types

1. Laws and treatment protocols differ from state to state
 - There is not one uniform federal law
 - Check laws in the state in which the physician is licensed
2. Some cases arose based on a lack of informed consent
 - A team physician must inform the athlete of:
 - The full extent of their injuries
 - The potential consequences of treatment vs. no treatment
 - The long-term implications of treatment vs. no treatment
3. An athlete also has the responsibility to inform the physician and/or coach of the full extent of his injuries if they were not apparent³

4. A paid state or government employee is protected by both governmental immunity and case law
 - Case law covers a criminal suit⁴
 - Case law protects in civil cases⁵
 - Case law does not offer protection if a physician is not acting within scope of job⁶
5. Good Samaritan laws may protect physicians who are not getting paid
 - There are concerns about the laws protection and stipulations⁹
 - The event must be an emergency
 - The emergency status can be challenged
 - If something is done that is non-emergent a physician is more likely to be found liable⁷
 - The physician must be present at the emergency
 - Wisconsin Good Samaritan Law is specifically worded against medical professionals who are being compensated for their time if it is in their normal scope of practice¹⁰
 - Cannot assume immunity
 - A Florida Case found this law too vague⁸
6. Volunteer Protection Act (1997) was established for broader coverage than Good Samaritan Laws⁹
 - Provides immunity from lawsuits filed against a nonprofit's volunteer where the claim is that he carelessly injured another in the course of helping the nonprofit
 - The Act does not provide immunity to the organization itself
 - To be covered, a physician must be licensed and/or certified if appropriate (medical license)
 - Must not be grossly negligent or reckless misconduct
7. Questions may arise about treating the fans and not just the team
 - No specific case laws regarding treatment of fans
 - In an emergency, a physician is likely to be covered by The Good Samaritan Law in most states
 - The Volunteer Act may also apply
8. The team physician must still abide by basic patient relationship and confidentiality laws
 - Collegiate and professional physicians and athletic trainers must remember that they owe athletes confidentiality
 - Should be careful about releasing information to the press²
 - Must follow HIPPA guidelines¹¹
9. The process of allowing injured athletes to return to play is a much debated and litigious topic
 - Have protocols established before the season and follow them:
 - All staff should be aware of return to play protocols
 - Assess problems on a case-by-case basis
 - Consider protocols for the following injuries
 - Concussions
 - Neck trauma
 - Orthopedic injuries

- To avoid the liability of negligence or fraud, the physician must show that approving athletic participation is not medically unreasonable and the athlete actually understands the risks⁹
- Waivers can establish informed consent of injury possibility
 - Establishes that the athlete has been INFORMED he/she might be injured yet still CONSENTS to playing

What to do when a physician is involved in a law suit

1. Know what the insurer expects and what is covered
2. Call the risk manager, lawyer and/or malpractice insurance carrier for advice
3. Most claims are dropped or settle well before a public trial
4. Prepare for a possible deposition
 - Other than a jury trial, a deposition is probably the most stressful litigation event a physician will experience
 - Also important because the deposition offers physicians formal opportunities to rebut erroneous claims while demonstrating the merits of his/her care¹⁷
 - A deposition occurs during the discovery phase of litigation
 - It follows a question-and-answer format, is given under oath and is recorded by a stenographer¹⁷
 - Though most depositions are not videotaped, many states allow for this
 - Attorneys may resort to this tactic to "turn up the heat."¹⁷
5. Some strategies and guidelines to follow for a deposition include:
 - Choosing a neutral location is the ideal location
 - If an opposing attorney comes to the physician's office anything they see can be used against the physician
 - Preferably travel to the opposing attorney's office if a neutral site is not agreed upon
 - Hold a mock deposition, having someone other than the attorney representing the physician
 - Ask tough questions to help prepare¹⁷
 - Review the medical records
 - It is essential to know the details contained in the records during questioning¹⁷
 - The physician should remember he/she has a limited role
 - Not an expert witness
 - Physician should not argue his/her own defense¹⁷
 - Answer in a clear, concise manner
 - Only answer the questions asked
 - If unsure about a questions, do not answer but instead ask the question to be rephrased for clarification¹⁷
 - Explain the circumstances
 - Offer an explanation of why the case did not turn out better
 - Sincerity and reasonableness are keys to defending the case¹⁷
 - Keep cool
 - Most depositions last less than two hours, so do not reveal any personality flaws that the opposing lawyer can take advantage of in court¹⁷
 - If there is a long pause between questions, ask if the deposition is finished, or "are there any further questions."

- Sometimes a stall tactic can be used to throw a physician off guard if he/she believes the deposition is complete
- If it is stated that the deposition is over, no further questions should be asked
- "If it wasn't written, it didn't happen," is not entirely correct¹⁷
 - Best practice-document as thoroughly as possible
 - A physician may plausibly rely and expound upon his/her "custom of care" to explain an apparent deficiency¹⁷
- If the case goes to trial, follow the same strategies as in preparing for a deposition

Preventing a Lawsuit

1. The most important step in preventing a lawsuit is knowing the standard of care and following it
2. In the pre-season, evaluate all the injuries which occurred during season
 - Know what injuries are likely and what needs to be done
 - Set treatment protocols for specific injuries
 - Review all Pre-participation physicals
3. Update treatment plans in preseason and again in the post-season
 - There is a shared risk % for liability in a law suit, so the more a physician follows treatment protocols the less likely he/she is to be found 100% liable as the athlete will share liability¹²
4. Set up chain of command
 - Know how other health care providers can help
 - Know what only a physician can do
 - Different scope of practice laws in each state
5. Plan ahead-both home and away games
 - Review facilities
 - Emergency action plan
 - Know what can be treated at the playing site and what needs further evaluation and treatment
6. Ethical dilemmas to avoid
 - Do not root for the team the physician works for¹⁸
 - Do not cheer during the game
 - Do not wear team colors
 - Physician should introduce himself/herself to the other team's coaches
 - Inform everyone the physician is there to protect the players
 - Manage the conflict of team's versus players' interest¹⁹
 - Pressure will be applied from the team to have the player return to playing quickly, sometimes against the best interest of the player
 - First responsibility should always be patient (player) safety and well-being
 - Advertise cautiously²⁰
 - Ensure that new patients aren't seeing a physician just because of his/her exposure as a team physician
 - Do not pay to be a team's physician
7. Know what a physician can do if crossing state lines
 - Know other state laws (scope of practice)
 - Consider becoming licensed in other states if frequently travel there

- Establish connections with team physicians from other states for assistance
8. Post-season: review the data of what injuries occurred
- Know which are the most common
 - Change treatment plans as needed based on yearly outcomes

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