Legal Issues In Athletic Training

From the Training Room To The Court Room

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Legal Disclaimer
I am NOT an Attorney and I didn’t stay in a Holiday Inn Express last night !!! But I do know what its like to be sued and I have consulted with an attorney to ensure the validity of what I am about to tell you

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Standard of care
• The minimal amount of care which can be expected to be given by a competently educated individual in a similar circumstance in order to protect an individual from harm or further injury.

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Duty of care

- "is measured by what is learned, or should have been learned, in the professional preparation of an individual charged with providing health care." (Anderson, M)

i.e.: what you should know and what you should do to ensure the safety of your athletes.

Goal of Presentation

- To use real life scenarios combined with real legal advice to help each attendee reduce their risk and the risk to their facility/institution from potential legal action.

Presentation Objectives

- Recognize areas of risk
  - Personal
  - Facility/institutional
- Identify steps to mitigate/eliminate risks
American Disabilities Act

- What risks are involved with allowing an athlete to participate in sports against your medical advice in lieu of the ADA
  - Potentially fatal asthma
  - s/p fracture C4-5 with fusion

Soccer player with Asthma

HS freshman wants to try out for soccer but requires emergency access to a nebulizer at all times due to severe asthma and pollen/grass allergies which is aggravated by running and physical exertion. Primary care physician presents note stating soccer is ok as long as athlete has epinephrine and nebulizer available at all times.

The catch

The soccer field has no electrical power, nearest EMS is 15 minutes away, you have 4 other sports to worry about including three levels of football.
Reasonable Accommodations Defined

- Portable generator to power nebulizer
- CPR and AED training for staff
- Don’t cut the grass during participation
- Require athlete/ATC to carry inhalers at all times

Non-Contact Football

1 year after undergoing fusion for C4-5 burst fracture from head to head hit in football the athlete shows up at the team physicals with a doctor’s note stating he can "return to non-contact football"

Bench warmer

- There is an inherent risk of being on the side line
  - Do you need to get a release
  - Will it hold up
    - Written letter saying that it is your professional opinion that this is a bad idea
      - Physician
      - Athlete
      - Parent/Guardian
      - School official
    - Must be signed by
      - Student
      - Parent
      - School official
Conflicting Medical Advice

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Real Life Examples

- The ER told me I am out for 2 weeks
- Bill told me it was a MCL sprain, you told me it was my medial meniscus
- They told me I can play without my ACL
- He told me that E-stim causes swelling to calcify

Out for 2 weeks

- Athlete with 1° ankle sprain is brought to ER by parents.
  - Against your advice
- ER
  - Puts athlete on crutches, NWB
  - Tells athlete they are out for 2 wks
- The State Championship is in 3 days
Can you let him play??

- Obviously NO
- But what if he feels better and has no pain??
- What if he breaks it during the game are you liable

What ACL

- Athlete struck on lateral knee, reports hearing and feeling a popping sensation as his knee collapses.
  - Pt tender MCL
  - 2+° MCL laxity
  - 3° ACL laxity
  - Ache in lateral knee area
  - Excessive swelling throughout knee

Your Fine?

- Seen by pediatric orthopedic
  - “they never touched my knee”
  - “they said I am fine and can play”
  - “they said I don’t need treatment”
Do you let him return to play

- Are you at risk if you let him RTP?
  - You know better right! ????!
  - So YES you are LIABLE
- Are you at risk of losing a referral source?
  - Do you really want referral from them after this
- What if he still wants to RTP despite your advice?
  - Did you document your concerns?
  - Did you communicate them to:
    - Doctor
    - Athlete
    - Parent
    - School Official
  - Can you prove it?

What's your exposure

- NONE, if
  - You put the wrap on correctly
  - Put the athlete NWB on crutches
  - Suggest that the PT look for the evidence supporting their assertion that stim will cause calcification
  - Send athlete back to MD for f/u
  - DOCUMENT ALL OF IT !!!!
Now what do you do?

- The doc says they can RTP with hematoma
  - You know that this is a bad idea
  - Need to write letter that you don’t agree with the physician’s recommendation and respectfully request a 3rd party to evaluate the athlete.
    - Sign it
    - Have administrator sign it

Show me the Evidence

- Evidence based tests
- Evidence based treatments
- Evidence based prognosis

REDUCE RISK

Accidental Personal Data Breach

- Personal data or information regarding an athlete is allowed to be viewed or transmitted accidentally
  - Reply all
  - Accidental forward or transmittal
  - Files/paperwork/treatment logs
    - Unlocked
    - Open on desk
  - Did your athlete’s sign a HIPAA document saying you can talk to their coach, parent, school official, NCAA compliance officer??
Malicious Data Breach

- You lost your PDA with all your athletes medical and personal information on it
- A virus just stole all of your athletes’ information
- Your student trainer is dating/stalking your athlete
- Your student trainer let it slip that your athlete has a major injury and they just lost their scholarship or didn’t get drafted and their lawyer is on the phone!!!

Stolen information

- A computer, laptop or palm pilot stolen from your training room or car.
  - It contained all of your athletes
    - Demographics
    - Medical history

What is your responsibility

- Who do you notify
- Was it secured
  - How
    - Firewall (hardware/software)
    - Physical restraints
  - Was it encrypted
    - What level
- Did you have a policy regarding securing the device and its digital contents
  - Was the policy violated?
Surfing Death and Destruction
• Student decides to view the latest JZ video on youtube, downloading a Trojan horse virus that copies all of your data files on personnel, athletes etc.
• The following day your entire server basically self destructs

My email is safe right??
• Your friend sends you an ecard or email that unlocks a virus which copies your files and then deletes all of your files

Geeks with time to kill, YOU!!
• Not all vise come from porn sites
• Numerous YouTube viruses
• Even more email based viruses
Common Sense Security

- Must have policy regarding how the device is
  - Stored
  - Secured
- Must demonstrate that the data is secured
  - Encrypted
- Surfing and downloading policy
  - Sorry no porn and NO YOUTUBE!!!!
  - Limit email access to your OWN accounts
    - Yahoo
    - google
  - When in doubt block it with your firewall

What does this mean

- Individuals are now legally accountable for violations
- Institution is accountable for violations
  - Reduced if you can prove that the individual has been trained and violated policy
    - Left it in my car
    - Left my office unlocked
    - Removed physical restraints
    - Gave out password

Loose lips sink scholarships

- The staff member/student accidentally lets it slip to a reporter that and athlete has;
  - Tested positive for a band substance
  - Sustained a significant injury
- The athlete subsequently lost a scholarship or did not get drafted
- Their lawyer is on the phone
Legal Responsibility

- If you are the head ATC you may be held responsible for the actions of your staff
  - Even if you trained them not to do what they did
  - You weren't even there when they did it
- Institution will be held liable for breach of privacy
- Must have P&P as to who is responsible for disseminating information
  - Head ATC/owner/CEO
  - Coach
  - Sports information

Additional Documents

ADA Defined

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered. [http://www.ada.gov/cguide.pdf](http://www.ada.gov/cguide.pdf)
ADA Title III: Public Accommodations

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors’ offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by title III.

http://www.ada.gov/cguide.pdf

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation’s resources. Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered. Commercial facilities, such as factories and warehouses, must comply with the ADA’s architectural standards for new construction and alterations. http://www.ada.gov/cguide.pdf

Resources by Topic

- www.ada.gov
- Camp cant discriminate against diabetics : http://www.ada.gov/tsi.htm
- Medical management form for diabetic athletes: http://www.ada.gov/raynor/raynorapp_b.htm