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Chapter 63
Sports Medicine

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Legal aspects of sports medicine is one of the most dynamic fields in the interphase between law and medicine. *Sports medicine* can be defined as the science or practice of diagnosis, treatment, and prevention of diseases associated with a physical activity that involves exertion, is governed by rules or customs, and is often competitive. Sports medicine is accepted as a medical discipline and a medical subspecialty. Related organizations include the American Society of Sports Medicine and the American Osteopathic Academy of Sports Medicine. Publications include the American, British, and international journals of sports medicine; *Isokinetics and Exercise Science; Journal of Athletic Training; Journal of Biomechanics; Journal of Sports Medicine and Physical Fitness; Journal of Sports Traumatology and Related Research*; and *Medicine and Science in Sports and Exercise*. Other publications, such as the *American Journal of Knee Surgery, Orthopedics, and Orthopedic Review*, routinely cover sports medicine. The *Yearbook of Sports Medicine* abstracts the leading articles in the field.

Laws provide a set of rules to govern those who practice any aspect of medicine that affects participants in a sporting event. Medical law is specific for those who practice medicine that affects sports participants.

This concept—the need for a set of rules to govern medical decisions that affect an athlete—contrasts with the ruling by Judge Cardozo in the famous amusement ride case: "One who takes part in such sport accepts the dangers so far that they are obvious and necessary just as a fencer accepts the risks of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball."[1]

The courts are now being asked, "What are obvious and necessary risks?" Is the risk of contracting human immunodeficiency virus (HIV) or being exposed to HIV by competing against an opponent who is HIV positive an "obvious and necessary risk," even if it is a small or minimal risk? Is the risk of incurring a catastrophic injury, or the risk of *any* injury, an obvious risk? Is participating in a sport while handicapped or impaired and then being injured an obvious and necessary risk? Can a participant sign away his or her right to sue in response to a catastrophic injury, or to sue for *any* injury, in exchange for the right to participate? Is the risk of a catastrophic injury caused by poor coaching, poor refereeing, or poorly maintained or substandard equipment obvious and necessary?

These questions, as yet unanswered, are the province of legal aspects of sport medicine. Abrasions, bumps, bruises, contusions, and fractures may be considered part of many sports, including contact sports (e.g., football, basketball, soccer) and noncontact sports (e.g., skiing, rollerblading, gymnastics), as well as cheerleading and golf. However, catastrophic injuries, such as death, paraplegia, quadriplegia, permanent brain damage, or HIV infection, are *not* considered part of most sports and are not expected or assumed risks by the average or reasonable participant.[2–8]

One case asked whether schools can be held negligent for substantial injuries during cheerleading practice.[9] The court held that the doctrine of primary assumption of risk, as well as the failure to breach the school's duty to supervise the cheerleader and the signed release by the cheerleader's mother, barred any action.

Medical providers now include any person who acts, appears to be acting, or is assumed to be acting in the role of a health care provider, including but not limited to physicians, chiropractors, trainers, physical therapists, and physician assistants. When a participant in a sport incurs a catastrophic injury or any other injury, a question arises as to the cause of the injury or the level of treatment provided after the injury. On occasion there are reasonable grounds for the injured party to assume that the person providing or appearing to provide health care is knowledgeable in medical care or the need for medical care. When the care is not provided and results in a catastrophic injury, a growing tendency is to hold the responsible party liable for the lack of care or the improper care.

Among those now being held responsible for these injuries are coaches, supervisors, gym teachers, physical education instructors, trainers, the on-scene or on-call physician, and even the physician who provided the preparticipation athletic physical examination and gave clearance to participate. The providers, as well as the lessors and the maintainers of equipment (including golf carts, which can be proved to be faulty), can also be held responsible as the causal agent for the catastrophic injury.[10,11]

The field of legal aspects of sports medicine is therefore a review of the trend to expand the liability for catastrophic injuries and other injuries sustained by sports participants to those who provide equipment or maintain playing fields as well as those who are practicing sports medicine directly or indirectly. This aspect of sports law—the assignment of responsibility for any of these injuries—focuses on the potential exposure to and limits of liability of the medical and paramedical staffs; the coaching staff and the umpiring, refereeing, or officiating staff; and the suppliers of equipment and playing fields. Their potential liability has now come to the forefront in sports medicine law.

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This potential liability of the coaching staff, officials, trainers, and instructors arises from their frequent role as the on-site provider of health care.[12] From a review of the cases cited, the coach is potentially liable if a catastrophic injury can be related to failure of the on-scene supervisor or health provider to do the following:

1. Provide appropriate training instruction.
2. Maintain or purchase safe equipment.
3. Hire or supervise competent and responsible personnel.
4. Give adequate warning to participants concerning dangers inherent in a sport.
5. Provide prompt and proper medical care.
6. Prevent the injured athlete from further competition that could aggravate an injury.

The coach can also be held liable if the injury can be related to the inappropriate matching of athletes with dissimilar physical capabilities and dissimilar skill levels.

Cases in which the failure to properly supervise resulted in severe injuries include the student hit by a golf club because of excessive proximity of another golf student, the wrestler injured by a teammate of much greater skill and weight, and the unpadded football player struck by a teammate's helmet.[13-16] A failure to teach proper technique to avoid injury leaves the instructor at risk. A subsequent injury (e.g., in a football game, to a cheerleader) may be related to the improper technique.[17]

Staff members also have been held responsible for improper use of or failure to insist on proper use of equipment, including golf carts, the design of paths for golf carts, and installation and maintenance of lightning warning devices. They may also be liable for subsequent injuries.[18]

Another sports medicine issue involves the responsibility for allowing an athlete to participate or the adequacy of the "release" documentation. Releases include parental "permission to participate" for minors, "clearance to participate" by physicians, "permission to allow transportation" for minors, adequacy of preparticipation medical histories and physical examinations, and allowing nonconforming athletes who have a known greater exposure to significant injuries to participate.

These aspects of liability have been tested when they conflict with (1) exculpatory agreements; (2) the concept of the sovereign immunity applied to towns, states, and governmental bodies; and (3) an individual's civil rights. Journals such as the *University of Miami Entertainment and Sports Law Review* and *Entertainment and Sports Law* cover the field of questions regarding the liability of operators or owners (e.g., indoor sports arenas, baseball parks, bowling alleys, skating rinks), proprietors (e.g., racing facilities), and promoters (e.g., boxing contests) for the safety of the patrons.[19–24]

The liability of a physician, coach, trainer, or referee who allows an athlete to participate conflicts with the other aspect of sports law—civil rights. Refusing to allow a participant to enter a sport or continue his or her participation because of the potential for a significant injury can be held as a violation of his or her civil rights or right to continue in the sport.

The legal requirement of sports medicine is to document adequately the participation or lack of participation as well as the prescribed roles of the involved parties. Any person who is a de facto provider of health care to an athlete must have a facility to document the preparticipation process, including the assumption of ordinary risks by the participant or his or her guardian; sufficient preparticipation medical clearance; adequate training in sport safety; proper equipment and playing field; and sufficient umpiring to prevent ordinary, unnecessary trauma.

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Endnotes

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20. *Neinstein v. Los Angeles Dodgers, Inc.* (2d Dist.), 185 Cal. App. 3d 176.
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