Medico-Legal Ethical Issues in Sports Medicine

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Background

Ethical pressure is overwhelming from athletes and their teams, who feel prodded to expedite their return to play, for a variety of factors. In the definitions relationship that may exist between a team doctor and athlete, particular attention should be paid to the rights and responsibilities of the athlete.

Recent debate at the British Association of Sports and Exercise Medicine Spring Meeting suggested that physicians felt under pressure by the athletes to use “high-risk treatments”, which may compromise their standing as rational, safe, evidence-based clinicians worthy of specialist status. To do any less compromises the standing as a specialty.

Important Issues

“Ethical Practice and Sports Physician Protection: A Proposal”

Holm, McNamee, Pigozzi: BJSM Dec 2011

Focus initial the ethics of exercise medicine draws upon, and is focused closely related to, the ethics of public health. It should, therefore, come as no surprise that sports physicians are still, and will continue for some time to be, working in contexts where it is far from clear how they are best to proceed in ethical terms for the good of their patients. It is to be expected that
Premier League Football

2. Medico-Legal Ethical Issues
   a. Conflicts of Interest
   b. Duty of Care
   c. Informed Consent
   d. Confidentiality
   e. Medico Legal Records
   f. Rehabilitation and Return to Play Criteria

2a. Conflict of Interest

- Is the duty owed to the injured player?
- Is the duty owed to the player’s employer i.e. the club?

Potential conflicts can arise when:
- Employer/ Coach wants a player to resume duty too soon after being injured
- Player wants to return to play too soon after being injured
- Medical Team do not want the player to return to play
- Player does not want to return to play and the resultant risk of exacerbating a pre-existing injury.

Many Studies on this topic

- Writing a new code of ethics
- Anderson, BJSM 2009
- Club, Player vs. Med. Does the player have a right to treatment? Orchard, BJSM 2005

Company’s interest economic and short-term

Player’s interest also economic plus individual success and fulfilment

Player’s interest ought to be long-term and in the best interests of health

Medical team

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“Adding insult to injury: workplace injury in English professional football”
Roderick, Social Health 8(6) 2006; Ethics in Sports Medicine. Dun et al., ASM 2007

**Medical Legal Implications**

2b. Duty of Care

- Your **contractual duties** may include duties to protect **economic and business** interests of employer.
  - Be very aware of the ethical side.

**Contracts with Clubs**

- What has the **player** agreed to in his contract?

**What is written in your contract?**

- Amateur vs Professional?
- Cricket - EP
- Rugby
- SA Surf-lifesaving
- AA Games
Duty of Care

- The current duty of care owed by practitioners to player – issues of consent in the business setting.

Mary O’Rourke, Barrister; Batt and Jaques, BJSM 2011

2c. Informed Consent

a) Consent to Examination and Rx

Note: Consent required EVERY time Rx.

Therefore: NOTES

b) Test for capacity to consent e.g. Language

- Note: Player may years later deny fully understood implications and no real consent


Youth

Younger than 16 yrs old.................Consent and clinical info from the parent/guardian

16-17yrs old...................... Consent from parent / guardian, clinical info from patient.

18ys old and older..............Consent and Clinical info from patient.

All of the above - written consent required.

2d. Confidentiality

- Consent required if adult, and disclosure of confidential information to any third party.

- Information sharing between health professionals

- If you speak to another professional make notes accordingly.

“Mis of Medical confidentiality in English professional football clubs: some ethical problems and issues.” Washington and Rodgers, BJSM 2000; Bartocci et al., BJSM 2000; McNamee and Phillips, BJSM 2011; Velicer and Scott, BJSM 2015; Autobiographical research and non disclosure. Mellick and Fleming, ESSCO Electronic J Services Jan 2014.

Confidentiality

➢ Who has a right to know of the advice given to a player?
**Interaction….Ethics**

The Female Athlete Triad  
Sports Health AJSM, 2012

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**How much Information should be given?**

Psychological, social, financial problems, other health issues such as AIDS, malingered, drugs

Note the patient at risk with STD / HIV+ / AIDS or similar, that may result in the employer not renewing contract.

Mary O. Rourke, Barrister  
Patricia and Colleen Pre Participation Screening. Screening and Debate 2010

Epidemiology of hepatitis B among professional male athletes in Qatar. Haroon T et al., Saudi Med 2010

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**How much Information should be given?**

- Sufficient information to consider both the Benefits and the Risks of Rx.
- Record that information has been provided.

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**Exceptions to the Rule against disclosure.**

- Disclosure to police etc - prevent Harm / Crime.

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**The Press**

Ribbans et al., Sports medicine- Confidentiality and the press. BJSM 2013  
Athletes’ education as to their rights as patients and to sports medicine professionals as to their obligations are urgently required.
In civil proceedings / in the event of a claim these will be the main plank of the defence

NOTES NOTES NOTES!!!!!

THE IMPORTANCE OF MEDICAL RECORDS

- In civil proceedings / in the event of a claim these will be the main plank of the defence

GOOD NOTES: GOOD DEFENCE

POOR NOTES: POOR DEFENCE

NO NOTES: NO DEFENCE

Barbara Anthony - Solicitor

24. Rehabilitation and Return to Play Criteria

Employer / Manager / Medical team / Player:

Different time frames.

Sooooooonnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnnn
Hamed, who was 17 suffered a cardiac arrest playing a match just three days after signing with Tottenham Hotspurs FC in 2006. Sustained catastrophic brain damage. Tottenham = 70 per cent liable Cardiologist = 30 per cent liable

Had an MRI: obvious features of hypertrophic cardiomyopathy (HCM) - the condition that ultimately led to his collapse...But Dr Mills wrote to Spurs saying HCM could not be excluded on these findings alone.

**Cardiac:**

- Adequate facilities for treatment and procedures
- Physician must activate the emergency medical system when indicated.
- Physician / Clinician should participate in planning the event – proper facilities, equipment and supplies and accessibility for ambulances

**Ethics of pre-participation cardiovascular screening for athletes** Maron et al. Nat. Rev. Cardiol. February 2015

An ethical dilemma:

Seas the important public-health issue of whether young individuals should be arbitrarily excluded from potentially lifesaving clinical screening evaluations because they do not engage in competitive sports programmes

**Medico-Legal Ethical Issues RTP**

- **Pressure** of touchline decision.
- **Medical decision** whether to return player to field of play.
- Courts and professional bodies will be unforgiving of any interference from non-medical person (e.g. manager).
- **Player not best placed to make own decision** because of condition so duty to advise management he must be removed.

**Tottenham vs Everton** Lloris Concussion - Nov 2013

**Villas-Boas said:**

“The medical department was giving me signs that the player couldn’t carry on because he couldn’t remember where he was.

Hugo still doesn’t remember the impact but he was quite focused and quite determined to continue. When you see this kind of assertiveness from the player it means that he is able to carry on. It was my call to delay the substitution. From my knowledge of football he seemed OK to continue.”

**USA:** The National Football League has agreed to pay up to $914m to settle litigation brought by former players over **HEAD INJURIES** suffered during their time in the league.
Whose decision is it?

Legal responsibilities of physicians when making participation decisions in athletes with cardiac disorders: Do guidelines provide a solid legal footing? Nicole M Panhuysen-Goedkoop. BJSM 2013

3. Legal implications

“Limits of Competence”

Points to consider:

- Always, always Refer if needed. (especially if there is a Red Flag, unknown diagnosis etc)
- Do not Rx ongoing if you are:
  a) not sure of the diagnosis (a provisional diagnosis is good to a point.)
  b) the player is not improving after ? treatments.
  “If treat beyond competence and cause injury can be liable to player at common law (tort)”

Sports medicine in the Netherlands Bruin et al., J of Sp-Med 2013

- Duty not to harm player
- Need to be able to justify (in civil proceedings and professionally) that responsible body of similar discipline practitioners would have done the same (“peer judgment”)
- Professional duty will condemn if proactive treatment which is not in best (long-term) interests of patient regardless of consent

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5) Medico Legal Ethics: Important Issues

1. Volunteers
2. Field side Care
3. Anti-doping
4. Medication
5. Alternative medicine
6. Innovative technology
7. Club Transfer
8. Caster Semenya
9. Bloodgate scandal

Conclusion

- Your ethical duty is ALWAYS to the patient.

Breaches can lead to charges of professional misconduct.

Medical-Legal Issues

Do not abdicate your responsibility to the individual player!