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AUTHOR	Toutant, Monique; And Others
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ABSTRACT

This paper analyzes sport and fitness malpractice suits in the United States and Canada, emphasizing the responsibility of doctors, along with some application to physiotherapists, trainers, or athletic therapists. The number of suits is felt to be limited but growing rapidly in both countries. The issues discussed include duty to patients (contractual duties and duties of independent contract), duty to third parties, the standard of skill and care, general and approved practice, expert evidence, "res ipsa loquitur," consent to treatment, and allied professions. Breach of contract, which can be a breach of the duty of care whether or not there is a contract, is discussed, followed by awarding of damages. A table presents 7 Canadian and 16 American cases which illustrate various principles of malpractice. The cases deal with such legal issues as the doctor as guarantor of care, failure in course of treatment, errors in judgment, providing reasonable medical assistance to athletes and failure to treat, application of workmen's compensation legislation to professional athletes, voluntary participants in sport assuming risks in the sport, negligence, battery, informed consent, and failure to communicate. (JDD)

COMPARING CANADIAN AND AMERICAN LEGISLATION AND LITIGATION IN THE AREA OF MEDICAL MALPRACTICE IN SPORT AND RECREATION

by Monique Toutant, Lisa Reynolds, Cynthia Hagemann, Jason Petro and Dick Moriarty
University of Windsor
Windsor, Ontario, Canada

The sources for this presentation are Jackson and Powell (1987), Picard (1984), and Barnes (1983) for Canada; and Van der Smissen (1990), Weistart and Lowell (1979) and Herbert and Herbert (1989) for the United States. The emphasis is on doctors; however, the principles enunciated can be carried over to allied fields, such as physiotherapists and even to the emerging field of trainers or athletic therapists.

As Weistart and Lowell pointed out, the major responsibility of those who sponsor sport, recreation and fitness activities is to provide medical service with reasonable skill and care within a reasonable time period. Doctors and other health care providers are not ensurers of success in all treatment. When their service is called into question, it usually is in a tort of negligence or breach of contract; however, as Herbert and Herbert (1989) point out, these are also contested for assault and battery, false imprisonment, and even defamation. As Van der Smissen (1990) indicates, there are two aspects in the treatment of injuries:

1. The duty to provide emergency care and medical service, and
2. The nature of the treatment/care given to the participant.

A search of the literature shows that there is a limited number of sport and fitness malpractice suits in the United States, and fewer in Canada; however, the number is growing rapidly in both countries.

1. General Considerations

This section will deal with the issues of duty to patients (contractual duties and duties of independent contract), duty to third parties, the standard of skill and care, general and approved practice (when acting in accordance with general and approved practice, and when

departing from general and approved practice), expert evidence, res ipsa loquitur, consent to treatment (expressed or implied), allied professions and hospitals.

1.1 Duties to Patient

The number one duty of all health professionals is to act in the best interests of the client. Medicine is a classic example of a profession in which results are not guaranteed and are not expected to be guaranteed. Practitioner owes a duty to exercise reasonable skill and care in treatment, even when no contract exists between the practitioner and the client, or when rendering service gratuitously or entirely voluntarily (as in coming out of the stands at a sporting event or assisting someone at a road accident).

1.2 Duties to Third Parties

Health professionals, when reporting or conducting treatment for the benefit of a third party, owe a duty of care to that other party. Participants who find themselves in this situation should consider having a checkup by their own doctor. The question of whether the professional involved has a contractual duty or is functioning as an independent contractor depends upon the degree of freedom and control which he or she has over the work.

1.3 Standard of Skill and Care

Every person entering a learned professions owes clients a reasonable degree of skill and care; however, lawyers and doctors do not guarantee to win every case or cure every client. Further, it is not negligent if inherent risk, or complication, or where in a matter of opinion an honest error of judgement occurs. Health professionals do not need the highest level of skill, but only ordinary skill of an ordinary, competent practitioner.

The Bolam test is the standard of the ordinary skilled man exercising and professing to have to have that special skill. A man need not have the highest expert skill; and it is well established in law that it is sufficient if he exercises the ordinary skill of an ordinary competent

man exercising that particular art. This is known as the Bolam test and comes from Bolam D. Frierin Hospital Management Committee, [1957] W.L.R. 582 et 586.

1.3.1 The standard of skill and care is determined by reference to the current state of knowledge and art at the time of the injury (not intervening knowledge or recently developed).

1.3.2 The standard of skill and care is determined by reference to the specialization and the status of the defendant in terms of title and post, rather than actual experience.

1.3.3 Health professionals should not undertake anything beyond their competence, but rather refer the client to a specialist.

1.3.4 - Misadventure. Mishaps such as the slip of the scalpel or breaking off of a needle will occur. The health professional should evaluate competing risk and act reasonably.

1.3.5 Failure to take precaution (for no good reason) is responsible for a number of cases.

1.3.6 The health professional has a duty to attend, to diagnose, to test, to treat, to refer.

1.3.7 Policy considerations:

> Take heed of what happened in the United States. Medical malpractice cases there are very worrying, especially as they are tried by juries who have sympathy for the patient and none for the doctor who is insured. The damages are colossal. The doctor is insured but the premiums become very high; and these have to be passed on in fees to the patients. Experienced practitioners are known to refuse to treat patients for fear of being accused of negligence. Young men are even deferred from entering the profession because of the risks involved. In the interest of all, we must avoid such consequences in England. Not only must we avoid excessive damages, we must say and say firmly that, in a professional person an error of judgement is not negligence.
>
> White v Jordan (1983) All E.R. 416 et 427 G

1.3.8 In practice the medical profession seems to fare better before the courts than most professions. The offense of non-negligent mistakes succeeds more often. Due in part to the Bolam test and the fact that in England and Canada (unlike the U.S.) claims for personal injury are assessed by judges according to established tariffs. The practitioner's potential liability is kept within reason. There is a policy to resist unmeritorious claims without regard to commercial considerations.

1.4 General and Approved Practice

1.4.1 An act cannot, in general, be held to be due to want of reasonable care if it is in accordance with the general practice of mankind.

1.4.1.1 Practitioners should act in accordance with general approved practice of the profession or some responsible part thereof.

1.4.1.2 If a practitioner departs from general and approved practice, for no good reason, he or she is likely to be held negligent.

1.4.1.3 Exceptions to the principle: despite widespread approval of the Bolam test in Canada, courts have showed a greater readiness to question the practitioner of medicine.

The Supreme Court of Canada supported the following passage:

> The duty to the patient is determined by the court and the evidence of expert witnesses, if accepted, is relevant in determining whether or not the defendant has discharged that duty.

Reibl v Hughes (1989) 9 D.L.R. (3d) 112

Laskin C.J.C. stated:

> To allow expert medical evidence to determine what risks are material and, hence, should be disclosed and correlatively, what risks are not material, is to hand over to the medical profession the entire question of the scope of the duty of disclosure, including whether there has been a breach of duty.

1.4.2 Departing from General and Approved Practice

1.4.2.1 If practitioners depart from general and approved practice, for no good cause, and damage results, he is likely to be held negligent.

1.4.2.2 Deviation is not necessarily evidence of negligence or all inducements to progress would be destroyed. Substantial deviation may be warranted in particular circumstances.

To determine deviation from normal practice you need to prove:

1. That there is a usual and normal practice

2. That the defendant did not accept it

3. It is crucial to prove the course adopted is one which no professional man of ordinary skill would have taken if acting with ordinary care.

1.5 Expert Witnesses

1.5.1 The principal function is:

1.5.1.1 Explanatory or didactic of technical treatment and association to consequences

1.5.1.2 Assist in determining if acts or omissions constitute negligence

1.5.2 Preparation of expert witness reports ought not to be drafted by lawyers, and should be, and be seen to be, an independent product of the expert.

1.6 Res Ipsa Loquitur

The thing speaks for itself (e.g., a sponge left from an operation) reverses the burden of proof to the defendant to rebut inference of negligence.

1.7 Consent to Treatment

1.7.1 Consent must be freely given:

> By going to hospital the client does not waive or give up right of absolute security of the person . . . he cannot be treated as a mere specimen, or as an inanimate object which can be used for (any purpose). . . He is a human being and he claims the right of control and disposal of his own body, right to what operation he will submit to, and unless his consent to operate is expressly obtained, any operation performed upon him without his consent is an unlawful interference with his right of security and control of his own body and is wrong, entitling him to damages if he suffers any.
>
> Schweizer v Central Hospital (1974) 53 D.L.R. (3d) 494.

1.7.2 Two principal situations except from consent:

1.7.2.1 A person suffering mental illness

1.7.2.2 An accident victim who is unconscious (or a minor who requires permission from parent or guardian.

1.7.3 Informed Consent

1.7.3.1 The doctrine of informed consent as developed in the U.S.A. holds that consent to medical treatment is vitiated if the client is given inadequate information and the client can claim battery despite the fact that a parent's consent was given.

1.7.3.2 In Canada, Reible v Hughes (1980) 114 D.L.R. (3d) 1 et pp. 10-11 states:

> Action of battery . . . should be confined to cases where surgery or treatment has been performed or given to which there has been no consent at all, or where, emergency situations aside, surgery or treatment has been performed or given beyond that to which consent is given . . . If there are allegations risks were not communicated, unless there has been misrepresentation of fraud to secure consent, a failure to disclose should go to negligence rather than battery.

1.7.3.3

> England rejects the American doctrine of informed consent. Once the patient is informed in broadest terms . . . and gives consent, that consent is real, and the cause is negligence, not trespass.
>
> Chatterton v Gerson (1981) Q.B. 432.

1.8 Allied Professions

Health professionals, and additions to include nurses and all of those who fall under the Health Act. Physiotherapists and massage therapists fall under the Drugless Practitioners Act.

2. Breach of Contract

Breach of contract implies a duty to exercise reasonable skill and care. There can be a breach of the duty of care whether or not there is a contract. In the rare instances where treatment is administered without consent, there may be action for assault and battery.

2.1 Failure to Prevent Illness - Reasonable care should be taken to avoid the spread of infectious diseases (such as AIDS).

2.2 Failure to attend or examine a patient consists of unwarranted assumptions about the condition without examining the client.

2.3 Wrongful Diagnosis - In these cases there is no question of the incorrectness but rather a question of whether the mistake was negligence. This is seldom a question of general and

approved practice, but rather whether on the symptoms presented a careful and skilful practitioner might have made the same mistake.

Factors taken into consideration are the symptoms, age, rarity (meningitis), whether the health practitioner listened to the health history, took various tests to verify or assess the initial diagnosis or sought consultation.

Burgen v Sturgeon General Hospital (1984) 28 C.C.L.T. 155.

The physician should always reassess the diagnosis. In this case, it is my view that the three medical doctors fell into the trap of "tunnel vision" and either refused or neglected to recognize the seriousness of the original diagnosis.

2.4 Error in the Course of Treatment - This usually takes the form of either physical (surgeon's hand slips or needle breaks) or intellectual (wrong treatment or error in judgement), or some combination of the above.

2.4.1 Error in Type of Treatment - The question of whether it was the right treatment (or did it work) "The operation was a success but the patient died" leads to the question of whether the practice is acceptable as proper by a respectable part of the profession, or was an emergency error in judgement.

2.4.2 Adverse Reaction to Drugs

2.5 Failure to communicate among client, practitioner or agency, i.e., "curbstone consultation."

2.6 Failure to Warn - or indicate probability of failure as well as success, list side effects as well as main effects and/or indicate risk.

2.6.1 Was the client informed of proposed treatment?

2.6.2 Warned of any inherent risk?

2.6.3 Canada is the leading commonwealth country

Hopp v Lepp (1988) 112 D.L.R. (3d) 67 et 81 points out:

In obtaining consent (the practitioner) should answer any specific questions as to the risk involved and should, without being questioned, disclose the nature of the proposed treatment, its gravity, any material risk and special or unusual risks. . . added to that the scope of duty of disclosure and whether it is reached or not must be decided in relation to the circumstances of the case.

Reible v Hughes (1979) 89 D.L.R. (3d) 112 Ont. C.A.; 1977-78 D.L.R. 35; (1981) 114 D.L.R. (3d) 1 maintains:

A health professional should disclose any material risk, unusual risk attendant if it occurs which might result in serious consequences, such as paralysis or death.

He is certainly under no obligation to say that if he operates incompetently, he will do damage. If he knows his job, he will do it properly. But he ought to warn of what may happen by misfortune.

Hills v Potter [1984] W.L.R. 641

2.6.4 Explanation or warning may be curtailed by the client's state of mind.

2.6.5 The duty to answer client's questions.

2.6.6 Evidential problems. What did the practitioner say? The practitioner must recollect interaction with a specific client among many, whereas the client is recollecting a significant event in his or her life. The health practitioner should identify their general procedure in view of facts.

3.0 Damages

Awarding of damages is the normal remedy for breach of duty.

3.1 Remoteness is seldom a factor in view of modern communication, but the issues below are relevant.

3.1.1 Causation

3.1.2 Where Injury Would Have Occurred Anyway

3.1.3 Burden of Proof is usually on the plaintiff

3.1.4 Inadequate Warning

Canada uses the objective approach, i.e., what any reasonable person in the position

of the plaintiff would have required, whereas England uses the subjective approach, i.e., this particular plaintiff if warned.

3.1.5 Novus Actus Interveniens - In intervening occurrences causal connection may be negative.

3.1.6 Intervening conduct of the plaintiff may also be taken into consideration.

3.1.7 Forseeability

To succeed the plaintiff must prove damage was caused by the breach of duty and that it was foreseeable.

In contract, this means that at the time of the contract the injury was reasonably foreseeable as likely to result from the breach.

In tort, it means that at the time the breach of duty was committed the injury (or at least the type of injury) was reasonably foreseeable as a consequence.

3.2 Measure of Damage

In the vast majority of medical negligence actions the principal matter of complaint is that the defendant has caused, aggravated, or failed to cure some form of personal injury. The plaintiff ordinarily claims:

3.2.1 General damages for pain, suffering or loss of amenities

3.2.2 Special damages for financial loss and future earnings

3.2.3 Exemplary or aggravated damages for suffering.

4. Cases of Note

The four cases listed in the table below represent Canadian and American cases which illustrate the various principles of malpractice.

CANADIAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Crits v. Sylvester [1956] O.R. 132 at 143 (C.A.) per Schroeder J.A., aff'd [1956] S.C.R. 991. Specialist duty of care	Spark & explosion regarding anaesthetist. Reasonable degree of skill, knowledge and care. Care and skill of prudent professional of some experience and standing. Specialist a higher standing commensurate with special training and ability.	Doctor isn't an guarantor of care and isn't liable for reasonable errors of judgement but is required to exercise skill of "a normal, prudent practitioner of the same experience and standing".	
Johnston v. Wellesley Hospital [1971], 2 O.R. 103, 17 D.L.R. (3d) 139 (H.C.). Failure in course of treatment. Statute of limitations - 2 yr. in tort - 6 yr. in contract	20 year old with acne was given slush treatment as out-patient by dermatologist. He suffered severe pain during treatment but told defendant to continue. He was more severely scarred after treatment.	- no 6 month limitation since out-patient - 20 yr. old capable of giving consent and no *res ipsa loquitur* since cause of damage is known. Battery if treatment given without consent. Informed consent is full disclosure of nature of treatment including contemplated procedures, risks, and chance of success. Expressed consent not required in emergency (or if client unconscious) Physician can't guarantee success. Hospital not vicariously liable for negligence since physical received no salary from hospital.	
Wilson v. Swanson [1956] S.C.R. 804, at 811 per Rand, J. Error in judgement.	Surgeon relying on a biopsy performed radical surgery to remove spleen, pancreas and most of stomach only to find subsequently condition was benign.	Doctor can make immediate decision without all information and tests as long as he exercises his judgement honestly and intelligently. Doctor "possesses skill, knowledge and judgement of a special group or class to which he belongs and will faithfully exercise them".	

CANADIAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Poulton et al. v. Notre Dame College (1976), 60 D.L.R. (3d) 501 (Sask. Q.B.). "Hockey player injured - no miraculous recovery!" Duty to attend and examine. Duty to treat.	- a 17 year old hockey player cut his toe on skates and received antiseptic for the cut. Later he was hit on hip by a puck and after several days infection developed. He played in a residential school (which sought to develop resistance and self reliance) and he was refused permission to see a doctor by his coach, who was also director of residence. Condition worsened and students took him to hospital.	- Pupil at school - Special relationship provide first aid and call for additional medical treatment Provide reasonable medical assistance to player in a reasonable period of time.	Provide reasonable medical assistance to player in a reasonable period of time. School liable in breach of duty in failing to secure medical attention to boy under its continuous care. Damages: general $350 and special $150 (for clothes stolen while in hospital). - No liability in original injury which is a common risk.

CANADIAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Price v. Drs. Murray, Milawski and Corbin (1978), (Ont. C.A.) 82 D.L.R. 3d 130 18 O.R. (2d) 113 (C.A.). "Soccer mis x-ray" Wrong diagnosis, error in course of treatment.	Negligent treatment of ankle broken while playing soccer. Dr. Murray in emergency room at hospital sent him for foot x-ray (vs ankle) and treated as a sprain. Dr. Milawski, family doctor, used same x-ray and diagnosed as torn ligament of right ankle. Physiotherapist referred him to Dr. Corbin, orthopaedic surgeon who took no x-ray and diagnosed as a strained ligament and applied a cast. One week later when suffering from severe swelling he called Corbin. He said he couldn't help him; however family Dr. Milawski referred him to Dr. Hopmans (another orthopaedic) who after reviewing original x-rays ordered a new one which revealed a fracture which had commenced healing. Hopmans ordered more physio which failed. Finally, Dr. Dewar another orthopaedic surgeon operated. However, a skin infection developed which prevented him from working. Price sued Murray, Milawski and Corbin for negligence and failure to treat.		- Dr. Murray negligent in x-ray of foot vs ankle, failure to set fracture visible on edge of x-ray. - Dr. Milawski was dismissed as general practitioner not expected to read x-rays and report as a specialist. - Dr. Corbin was negligent since he didn't act at level of a specialist and failing to detect error in x-ray. Plaintiff was permanently disabled unable to walk on hard surface without pain or stand for a long period. Awarded $50,000. Appeal for increase failed.

CANADIAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Robitaille v. Vancouver Hockey Club Ltd. (1980), 19 B.C.L.R. 158 (S.C.), aff'd. 16 C.C.L.T. 225, 30 B.C.L.R. 286 (C.A.). "A malingerer in eyes of management and doctors is permanently disabled!" Failure to attend & examine - Wrong diagnosis - Explain treatment and warn - Drug use Damages - general - special - exemplary	Hockey player complained of neck and shoulder pain, symptoms of spinal disorder were given cursory attention by team doctors and management who felt it was all "in his head". In subsequent games a heavy check resulted in spinal damage and permanent disability. Plaintiff failed to consult his own doctor or report progressive worsenment since he knew he would be ignored and feared being considered a malingerer.	- Professional athlete - Team doctor bound to professional standard of care. - failure to diagnose a condition which reasonably could be discovered and permitting continued competition with resultant aggravated injury.	Judgement for plaintiff $435,000 in general, exemplary and aggravated damages for failure to exercise reasonable care for safety, fitness and health of player.
Wilson et al. v. Vancouver Hockey Club et al. (1984), B.C.D. Civ. 2632-01. "Mole becomes mountain in hockey ending operation" Duty to 3rd party independent contractor. Error in course treatment.	Player with mole on upper arm which changed colour and began to itch, consulted with the team doctor who was an independent contractor. 3 other doctors examined and treatment was started in May 1975. Infection started and career ended.	Breach of standard of care.	Doctor negligent and he should not have insisted on the operation even if mole was cutting into players hockey time. No vicarious liability for the hockey club since doctors were independent contractors. No damages since Wilson's career was over anyway.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Bayless v. Philadelphia National League Club, 472 F. Supp. 625 (1979). "Pain in the back for drugged Philley's Pitcher" - breach of contract - administration of drug - standard of care - informed Consent - Workmen's Compensation Board (WCB).	Patrick Bayless, a professional baseball pitcher in Philadelphia minor league farm system, sued the team, seeking damages for mental illness which he claims resulted from pain killing drugs administered to him by the team physician following his complaints of severe back pain.	Plaintiff claimed: 1. mental illness due to the fact "defendant had a contractual duty to provide him with sound medical care in the event plaintiff's skills were being impaired by injury, illness or disease and defendant failed to provide such care". 2. The defendant failed in proper medical administration of the drug. 3. Failed to obtain the plaintiff's informed consent to medical treatment. The club claimed that the statute of limitations had expired and that the pitcher's only remedy was the Pennsylvania Workmen's Compensation Act (WCA).	Court granted the club's motion for summary judgement based on statute of limitations. Plaintiff appealed and judgement was reversed and remanded. Club then renewed its motion stating the pitcher's only remedy was the Pennsylvania Workmen's Compensation Act. Judgement was for the defendant. Judgement was based upon the fact that the Act covers injuries and death resulting from accidents during employment for all employers and employees who have agreed to accept this Act. Court concluded that plaintiff had agreed to accept the Act because he failed to plead anything contrary during the course of the trial. The Act applies to professional athletes who are major or minor league players.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Clark v. State, 195 Misc. 581, 89 N.Y.S. 2d 132 (Ct. Cl. 1949) aff'd 276 App. Div. 10; 93 N.Y.S. 2d 28 (1949), aff'd 302 N.Y.S. 795, 99 N.E. 2d 300 (1951). "Bobsledder fails in worsenment claim over amputated leg." "Unfortunate loss for bobsled navigator" - Standard of care in first aid treatment and transfer for diagnosis and treatment - Course of treatment Failure to prevent illness	Bobsledder in N.A. Championship failed to navigate reverse curve and hurled over almost perpendicular banked curve into snow covered on wooded mountain side. Clark sustained fractured leg, collapsed lung, shock, cuts and bruises. Carried on stretcher to truck and transported to hospital in 43 minutes where cast was placed on leg. Circulation cut off, gangrene set in and leg amputated.	Sued state owner of bobsled run but not the sponsor of the event. Claimed state failed to provide prompt treatment, and he suffered undue exposure to cold through an unreasonable delay in removing him from the snow, lack of sufficient covering and transportation in unheated open vehicles and that such exposure greatly aggravated his shock condition, caused the failure of circulation, the ensuing gangrene and the resulting amputation.	Application of the general rule that voluntary, *sui juris*, participants in lawful sport activity assume, as a matter of law, all the ordinary and inherent risks in the sport, so long as the activity is presented in good faith and the injury is not the result of intentional or wilful action. Clark could not prevail since: 1. Lack of proof state's actions caused complication. 2. Clark assumed risk of not only his injury but also resultant complication. 3. State adequately discharged duties after accident providing blanket, stretcher, doctor and transportation to hospital. State similar to volunteer who, though not responsible for accident, provides duty of common ordinary humanity so that at least the injury is made no worse.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Clayton v. New Dreamland Roller Skating Rink (1951), 82 A, 2d 458. "Boxing manager ≠ M.D." - Failure to explain treatment and consequence - Error in course of treatment - Consent to treatment. - Assault & battery.	Alice Clayton, while roller skating at the rink, tripped on chewing gum and fell. She fractured her arm and was taken to first aid room where an attendant, who had been a manager of a fighter, set her arm. He manipulated her arm and applied traction to it. Later, she went to hospital to have arm reset with aid of plates and screws due to negligent act of defendant.	Plaintiff charged defendant with negligence in operation and conduct and for committing battery on Clayton because he did not make clear all information regarding treatment. Battery results when negligent well intentioned care is provided by an unqualified person over injured party protest. Refusal of unqualified treatment battery regarding standard of care for coach or trainer = competent person of equal experience i.e. higher than ordinary citizen but lower than qualified physician.	The court ruled in favour of the defendant but then the judgement was reversed in some areas. The appeal court ruled in favour of the Trial court because they felt that there was not sufficient evidence of negligence. However, the appeal court felt that the Trial court was wrong in dismissing their action of assault and battery. So the dismissal was reversed for a new trial on that issue.
Ellis v. Rocky Mountain Empire Sports and John Leidholt and Denver Orthopaedic Clinic, 602 P. 2d 895 (Colorado App., 1979). "Football player fails to comply...therefore, Pays the Price" - worsenment - breach of contract.	Ellis was a first round draft pick and was traded to the Denver Broncos three years later. One month prior to the trade, he injured his knee which required surgical repair. He reported to training camp and continued rehabilitation program. He did not play that season. The following season, he alleged, the team physician forced him to do contact football drills before he was completely rehabilitated resulting in further injury.	Ellis was filing a negligence suit against the physician for causing him further injury. As well, he stated that the Bronco's breached their agreement to provide him with the necessary medical care.	The court ruled in favour of the defendant because the player's contract contained an arbitration clause with which he did not comply.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Fischer v. U.S., 451 F. Supp. 918 (1978). "Playing hurt = not playing" - drug use - duty to 3rd party - consent to treatment. - informed consent.	Football player received anti-inflammatory drug prescribed by team doctor so he could "play hurt". - Player played and caused damages to his bone marrow, heart beat, and developed mononucleosis and anaemia requiring disability retirement 5 years later.	Informed consent	Government found not liable under the Federal Tort Claims Act since the injury occurred outside of the line of duty (military service). Therefore he didn't have to take orders.
Gillespie v. Southern State Utah College and Scott Brown, 669 P. 2d 861 (1983). "Doctor knows best" or "A basketball player who acts as his own doctor, has a fool as a client" - error in course of treatment (by plaintiff).	- Plaintiff, Gillespie, hurt his ankle playing basketball and the athletic trainer taped it and applied ice. - The trainer requested that he ice it for ten minutes, walk on it and repeat. - The plaintiff saw Dr. Brown who stated that there was no fracture to the foot and told him to continue icing for no longer than 72 hours. - The plaintiff was then to switched to warm baths which he found too painful. - Against the doctor's orders he resumed icing foot. Because of this, he saw another physician who found the need to amputate his toe because gangrene had set in.	- The plaintiff was filing suit against the coach and the athletic trainer in order to try to get compensation for his injuries - As well, he filed suit against the college for the emotional strain that he had been through. - His wife tried but failed in bid for emotional compensation.	- The court ruled in favour of the defendant. - Court found that the plaintiff was 100% at fault because he made his injuries worse by going against the prescribed treatment.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Gordon v. Neviaser, 478 A22 292 (D.C. App. 1984). "Skier Rotation Cup" % improvement ≠ % worse off - failure of informed consent, explains treatment and warn of possible benefits and risks	Skier suffered shoulder injury in the form of a rotator cuff tear as revealed by anthrogram. - Recommended 1st operation with 90-100% chance of success (2 opinions) was unsuccessful, and so was a second operation with a 70-80% success rate quoted. No mention of being worse off. Plaintiff had signed informed consent form	Does informed consent form bar medical malpractice suit.	Malpractice suit not barred because informed consent form was signed by plaintiff.
Krueger v. San Francisco Forty Niners, 189 Cal. App. 3d 875, 234 Cal. Rptr. 579 (1987). "Football player in dark re knee and steroid injection effect". Informed consent.	Football player claimed team doctor didn't inform him of possible effect of playing with damaged knee or of the effect of steroid injection.	Drug - Failure to communicate - Failure to explain treatment or warn regarding risks.	2.36 million awarded. Team and team doctor held liable.
Mogabgab v. Orleans Parish School Board, 239 So. 2d 456 (1970). Failure to attend, examine, treat, refer.	Football player collapsed from heat stroke after running wind sprints.	- Breach of duty to provide reasonable medical case. - Worsenment - Failure to communicate.	Failure of coach to summon team physician to render proper medical attention.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Montgomery v. City of Detroit, 448 N.W. 2d 822 (Michigan App., 1989). "Motown track fatality" - wrongful death.	Plaintiff's son was running on the track during his physical education class when he collapsed. The coach brought him into the gym and obtained mother's permission to call the Emergency Medical System (EMS). His phone did not work so he called the office to make the call for him. This was done but an ambulance was not dispatched until a half hour later because they were all tied up. The boy was brought to the hospital were he died of a previously known heart condition.	The mother brought charges of instant wrongful death against the principal, the teacher and the EMS operator for damages resulting in the boy's death.	The court ruled in favour of the defendants. The breakdown of the ruling is: the principal was entitled to immunity from liability, the teacher's improper knowledge of the use of the phone was immune and EMS operator was not negligent. As well, the court found that the civil rights of the student were not violated.
Niles v. City of San Rafael, 42 Cal. App. 3d 230, 166 Cal. Rptr. 733 (1974). "Brawling baseball" "Battered Ball Player" Duty to attend and examine. Approved practice. - wrong diagnosis - error in course of treatment - standard of skill & care	- Kelly Niles, a 13 year old boy, suffered permanent paralysis as a result of a fight over who was at bat during a supervised school baseball game. Examined by the emergency room crew of a hospital and by paediatrician and was sent home. Condition worsened and he returned to the hospital. Extradural haematoma, bleeding inside the skull, led to surgery revealing a fractured skull and a severed artery resulting in blood clot. Became paralysed from neck down and permanently mute but mentally was not affected. Suit against hospital and paediatrician.		Plaintiff recovered 4 million dollars.

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Rivers v. New York Jets, 460 F. Supp. 1223 (1978)."Football player in the dark" re injuries, informed consent.	Football player claimed his physical condition and injury were wrongfully concealed from him.		
Rosenweig v. State, (1955) 146 N.Y.S. 2d 589, rev'd 171 N.Y.S. 2d 912, aff'd 158 N.E. 2d 229 5 App. Div. 2d 293, 171 N.Y.S. 2d 912 (1958) aff'd 5 N.Y. 2d 404, 158 N.E. 2d 228 (1959). "Four (4) doctors worse than one (1)" in fatal prize fight. - Tunnel vision and curbstone consultation - Duty to 3rd party - General and approved practice - Failure to attend and examine - Error in course of treatment.	Claim dismissed on behalf of a prize fighter who died after being knocked out for the third time within 3 weeks. Four doctors examined him during this period including (EKG exam) and declared him OK. Initially, all four found negligent: 1. Reasonable medical exam should have identified brain haemorrhage. 2. Good medical practice to remain inactive two months after severe beating. 3. Fourth doctor who deferred to examination after the fight, disregarded his own medical knowledge and experience.	- Failed diagnosis which reasonably demanded cessation of competition resulting in death of a boxer.	Doctor relieved of responsibility since it is clear the proximate cause of the injury which resulted in death was the severe blow to the head...suffered in the final fight. [The representation of athletes] have failed to establish that this blow alone, irrespective of previous condition, would have produced the fatal results. (171 N.Y.S. 2d at 914).

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Speed v. State, 240 N.W. 2d 901 (Iowa, 1976). "Basketball meningitis" - Wrong diagnosis - Failure in course of treatment to refer. - Failure to apply appropriate test. - Failure to examine properly.	Varsity basketball player with respiratory illness given cold tablets by team trainer. Toothache and headache resulted in extraction of two seriously decayed teeth. Headache persisted and nausea developed so oral surgeon prescribed placebo (vitamins) which the trainer gave. Another trainer took plaintiff to student health infirmary where he was given Bufferin and fluids but no laboratory test were ordered. Condition deteriorated and by early morning experienced stiffness and pain so he couldn't carry out chest to chin test, suggesting meningitis. Neurologist examined and operated . Life saved but player permanently blind.		Test would have uncovered intracranial infection and prompt treatment of large dosage of antibiotics might have prevented blindness.
Welch v. Dunsmier Joint Union School District of California, 326 P. 2d 633 (Cal. Appl.) (1958). "A stitch in time saves nine". - Failure to treat and transfer properly. - worsenment.	Quarterback injured his neck and was further injured when eight players under the direction of the coach moved him to sidelines without waiting for medical authority. Player could grip coach's hand on field, but was worsened to paraplegia when he was moved in an improper manner. Coach liable for ordering him moved rather than waiting for arrival of medical authorities. The plaintiff sued school, coach and doctor.		$325,000 awarded to plaintiff. Spinal cord was not severed at time of accident since he could grasp coach's hand so plaintiff prevailed against school, coach and doctor. Doctor negligent in not treating injured player immediately and allowing removal without a stretcher. A coach or doctor of reasonable skill and knowledge would have acted differently.

AMERICAN CASES	SPORT AND FACTS	LEGAL ISSUES	JUDGEMENT
Wozny v. Godsil, 474 So. 2d 1078 (Ala. 1985). "Racquet ball Achilles tendon" - Wrong diagnosis - *Res ipsa loquitur* - Error in course of treatment.	Racquet ball players injury diagnosed after x-rayed as sprained ankle <u>despite her protestations and fear of ruptured achilles tendon.</u> Wrapped in ace bandage and referred to orthopaedic surgeon. 2 months later achilles tendon repaired by orthopaedic. Pain subsequently led to new cast but no examination of operative site. Infection developed which antibiotics failed to clear up so further surgery was required.	Plaintiff sued for disfiguration and disability which resulted in her discontinuing veterinary practice with large animals.	Damages - general - special Medical Centre liable, doctor remanded.