

Chapter 3

THE LAW OF SPORTS INJURY

The coach is typically the first one on the scene of an injury. Coach's decisions and actions are critical to the welfare of the athlete. Inappropriate actions by the coach may jeopardize the injured athlete and result in legal action. A 1996 study of 104 high school coaches found that a significant percentage lacked adequate first aid knowledge. When a close game was at stake, a conflict of interest arose when a "starting player" was injured.

Number of lawsuits has increased because of the increased number of participants, greater visibility of sports through the media, rising expectations regarding legal negligence, improved access to legal services, more acceptance by courts of comparative negligence settlements, and greater consumer awareness about sports services and products.

I. The Concept of Tort. **Tort** is defined as "harm, other than a breach of contract, done to another for which the law holds the wrongdoer responsible."

A. In the context of sports, injury may result from someone else's behavior, e.g., behavior of an opponent, an official, or a coach. Tort cases involving sports injuries generally seek monetary compensation.

B. To prove a tort, it must be established that someone (other than the athlete) acted in a negligent manner and injury resulted.

1. **Negligence** is a type of tort. It is defined as the failure to do what a reasonably careful and prudent person would have done under the same or like circumstances, or as doing something that a reasonably careful and prudent person would not have done under the same or like circumstances." Negligence involves the act of **commission**, acting in an improper way, or the act of **omission**, the failure to act.

a. An example of negligence by act of commission is the high school football player who claims that permanent **quadriplegia** resulted from the coach's improper first aid when a neck injury occurred during a game.

2. The four elements that must be present in order to prove negligence are duty, breach of duty, proximate or legal cause, and damage. See Time Out 3.1 on page 33 for definitions.

3. Other terms relating to tort cases include **contributory negligence**, **comparative negligence**, **assumption of risk**, and **act of God (act of nature)**. See page 33 for definitions of these terms.

II. What is Your Liability?

A. Historically a coach employed by government institutions such as school districts or universities had some immunity for tort litigation under the doctrine of sovereign immunity that protected governmental institutions from liability claims. In recent times "sovereign immunity" has not guaranteed immunity from suit.

B. Coach must always use reasonable care to avoid creating a foreseeable risk of harm to others and have a legal contract that outlines specific coaching duties.

C. Time Out 3.2 on page 34 describes seven potentially negligent actions by coaches, including failure to provide competent personnel, instruction, and proper equipment; failure to warn or supervise; failure to treat an injured athlete properly; and failure to ensure that an athlete is ready to play.

III. Are You Protected? The best protection against the risk of liability is to avoid the situations listed in Time Out 3.2. Coaches need to be vigilant regarding risks to athletes.

A. Good Samaritan Law. Most states have Good Samaritan laws that provide legal immunity to citizens who voluntarily provide first aid to an injured person. Although citizens do not have a duty to provide such aid, school personnel and coaches have a duty to provide the care and therefore, are not protected by Good Samaritan laws.

B. To protect their assets, coaches should acquire liability insurance. Contact employer to determine if protection is provided. It's wise to assume that you are not covered and then determine if you are.

IV. How to Reduce Your Chances of Going to Court. The following nine preventive steps can reduce the chances of being sued:

A. Have a written contract.

B. Be certified in basic or advanced first aid and CPR.

C. Develop a formal written emergency plan and have the plan examined by an attorney to make sure it meets all legal requirements.

D. Have a parental consent form for athletes under 18 years of age.

E. Have participants undergo a comprehensive pre-participation physical examination.

F. Document all injuries, regardless of severity and include initial treatment measures.

G. Attend "in-service" seminars and/or postgraduate classes concerning the care and prevention of sports injuries and keep documentation of attendance.

H. Have periodic inspections of facilities and/or equipment and notify administrators, in writing, of uncorrected hazards.

I. Develop and maintain effective lines of communication among staff.

V. What to Do If You Get Sued

A. First step is to call your insurance company and contact your lawyer.

B. Write a detailed description of all related events; if possible, obtain signed statements from witnesses.

C. Make no statement to media or other parties without first getting legal counsel.

VI. Ethics of Sports-Injury Care. Coach must resist the temptation to circumvent recommendations of

medical personnel when returning an injured athlete to play. Under no circumstance should an athlete be allowed to resume sports without the consent of a medical doctor.

VII. State Regulation of Athletic Training. Many states regulate athletic trainers. Regulation generally defines the scope and practice of athletic training in a particular state. Licensure is the “gold standard for professional regulation, and 29 states now require athletic trainers to be licensed to practice. Other forms of state regulation include registration, certification, and exemption. See Time Out 3.3 on page 37 for a list of states that regulate athletic trainers.