Professional Liability Risks with Team Physicians

Physicians want to support local athletic organizations, but many physicians are concerned about getting sued. Good Samaritan laws cover physicians only if they’re by-standing fans (where there is no “duty to treat”). But if you are asked in advance to be the “tournament/team physician” you are then acting as an agent of the event/team organizers and as such might meet the definition of “duty to treat.” Here is a list of Risk Management Considerations and Recommendations:

1. Be aware of and comply with local, state, and/or federal rules, regulations and laws; and school and governing body guidelines, standards, policies, regulations and rules.
2. Review the Team Physician Consensus Statement (resource below).
3. A comprehensive patient/family history, and pre-participation examination (PPE). Allegations of medical negligence also occur when medical clearance to participate is withheld, so decisions made regarding PPE, clearance to play, waivers and return to play (RTP) should be well documented.
4. Understand high-risk sports injuries such as concussion, cervical spine trauma, cardiac conditions, and heat illness.
5. Use current recommendations and protocols. These include the Bethesda Cardiac Guidelines, the American Academy of Neurology (AAN) Position Statement on Sports Concussion, etc.
6. Abnormal findings should be referred to a specialist physician, to show the physician acted in the athlete’s best interest, and to support difficult decisions with coaches, athlete, and family.
7. Be familiar with the organization’s emergency action plan as a delay in treatment or diagnosis can lead to litigation. It can also show proactive planning and concern for the athlete and provide a roadmap to coordinate emergency care.
8. Regular meetings with coaches, trainers, emergency personnel, and athletes and their parents to discuss safety and related issues could decrease liability exposure.
9. Document all medical care rendered to an athlete regardless of the setting. Use a handheld recorder to document during and after a game where time constraints and lack of facilities may result in missed documentation.
10. Avoid making guarantees about the outcome of an injury or treatment. Surgical interventions should be discussed thoroughly because the outcomes can change the athlete’s future career.
11. Physicians and athletic staff should ensure proper consent documentation is obtained from all athletes/parents. You can have the patient/family sign a waiver and/or release of liability form before providing treatment. The information in the waiver may discourage a lawsuit.
12. Understand the privacy rules and release of medical information - athletes can have many caretakers - trainers, coaches, counselors, team doctors, etc. All athletes should execute a consent form to allow release of medical information to these parties and, when necessary, to the media.

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Resources:
- Medical Malpractice and the Sports Medicine Clinician (Full Text) http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628504/
- Bethesda Cardiac Guidelines: http://www.cardiosource.org/~/media/Files/Science and Quality/Guidelines/Clinical_Documents/BethesdaConference36.ashx
Social Media Risks to the Organization from Employees
Social media risks are greater than your employees’ postings on Facebook, as you can see from the comprehensive list below. Most social media issues arise from lack of education and training, due diligence, lack of oversight and lack of control. This can lead to harm to consumers, compliance and legal risks, operational risks and reputational risks that diminish the trusting relationship you have with your consumers. Management of social media requires procedural and technical controls, i.e. policy and technology. The first two items are the top social media risk concerns at most organizations.

1. **Organizational reputation**, brand, and goodwill
2. **Information leakage** (Data Loss, Piracy and Infringement, Corporate Espionage, Reconnaissance, Organizational Financials)
3. **Content Management** (Control, Censorship, Social Media Police (Moderation), Permanence, Representation, Forensics, Archiving, eDiscovery, Stale or Outdated Information)
4. **Privacy** (Lack of Awareness, Trust, Harassment, Location Awareness, Social Media as an Investigative Tool, Applications (e.g. games), Regulatory Compliance)
5. **Lack of Policy** – A policy requires a program with policy documents, technical controls, awareness training, metrics and monitoring.
6. **Operational** – excessive employee use of social media in the workplace can tie up operational resources and decrease employee productivity.

And also
7. **Legal** (Cybercrime and Hactivism)
8. **Attack Vectors** (Viruses and Malware, Scams, Phishing, Hijacking)
9. **Shortened URL** – e.g. tinyurl.com the URL could be pointing to any website and cannot be determined by visually looking at the shorten string itself.

Recommendations:

- Create **policies** that are general and flexible enough to adapt to emerging social media without requiring constant updating. Include policies addressing social media access in the workplace on personal devices. Describe and offer examples of **posts that are prohibited** by employees in their personal time such as posts that negatively portray the organization or its services.
- Ensure that policies regarding employees’ personal use of social media do not attempt to regulate speech that could be considered concerted organizing activity by National Labor Relations Board (NLRB).
- Create **content filtering** or limit access to social media sites in the workplace, and create the capability to capture and log all communications.
- Include **social media in HIPAA training**, and information on HIPAA in social media training.
- At the conclusion of the privacy/social media training (upon new hire and annually), have staff **sign a form** indicating completion and an understanding of the consequences for failing to protect patients’ privacy. Remind users of social media that they must in all circumstances be honest and respectful toward other users.

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**Webinar Playback Links**

**(non-CME):**
http://www.westernlitigation.com/events/ofic
- Risk Trends from OFIC Risk Assessments, and Recommendations
- Top 10 Claims Lessons for Orthopedic Surgeons and Risk Mitigation Strategies
- Patient Termination in the Orthopedic Practice

**CME Webinar Playback Link:** http://www.mrmportal.com
(OFIC Insured Physicians only – requires registration)
- **Patient Termination in the Orthopedic Practice**, Feb. 12, 2014