

Obligations of Team Physicians

Physicians for sports teams may not allow team management and coaches to dictate medical treatment or diagnosis of an athlete-patient.

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Joe Winston was a defensive lineman on a pro football team for about 15 years. During his career-long series of tackles, pursuits, and assorted pile-ups, he sustained a catalog of injuries ranging from a broken arm and fingers to a cracked nose. But the most serious injuries, and those that became a chronic and painful problem for him, were knee injuries.

The trouble started in college when Winston tore the meniscus in his left knee. It was surgically repaired, but then, in his rookie season with the pros, he damaged the knee again, this time tearing a ligament. Dr. Mailer, one of the team physicians for Winston's NFL pro football club, operated on his knee and told Winston the repair was good. Winston went into rehab and received a knee brace that he wore during every game for the following three seasons. Throughout the remainder of his career, Winston had regular flare-ups with the knee. During each episode, the knee would be examined, drained, and injected with a steroid and pain killer. Winston was also put on systemic steroids and analgesics, which he took over the long term under the team doctor's supervision. He had one more surgery during his years with the team to remove broken bits of cartilage from around and under the knee cap.

Winston continued playing with pain and medical treatment until he retired. At that point, he began to have chronic trouble with the knee and eventually became disabled by the injury. He could not run, climb stairs, or stand for long periods of time without pain or discomfort.

Winston went back to the team physicians for help. It was then he discovered the full extent of his former injuries and the predictable consequences of having continued to play with knee pain. Two team physicians, Dr. Mailer and Dr. Dole, looked at his knee, x-rayed it, and extracted fluid. At a follow-up visit, they told Winston that his knee was permanently damaged, and, though they could do some surgery, it would probably never be fully functional again.

Winston asked to see his medical records and realized that his physicians had known for many years that playing football would make his knee worse or permanently damage it. He also suspected that some of the many treatments he received on his knee were not recorded in his medical chart. Certainly, he had never been told that he should stop playing or even that playing would aggravate the condition. Winston sued the team and team physicians, charging them with concealing important medical information from the patient.

Legal Analysis

The facts stated above are adapted from *Krueger v San Francisco Forty Niners* [1]. Charlie Krueger filed a complaint against his former employer, the San Francisco 49ers, for fraudulent concealment of medical information. In order to be successful in his claim, Krueger needed to prove: (1) that the team physicians misrepresented or suppressed the full extent of his injuries and the potential adverse effects of treatment; (2) that the physicians were consciously aware of their concealment; (3) that the physicians had an intent to induce Krueger to rely on their information and continue playing; and (4) that Krueger did in fact rely on that advice which caused the degeneration of his knee.

Krueger asserted in his claim that neither the adverse effects of steroid injections or the true nature and extent of the damage to his knee were disclosed to him. The team physicians' responses to these assertions were not contradictory, but arguably incomplete. One physician testified that he "could not recall administering... treatments with such frequency" and furthermore that he "could not recall discussing Krueger's x-rays with him or advising him about the chronic condition from which he was suffering" [2]. On the other hand, the physician testified generally that it "was his custom, and that of [the other physician] to be honest and thorough with athletes" [3].

The trial court found that Krueger failed to prove all of the elements of fraudulent concealment. Most notably, the court found that Krueger would have continued to play football even if he had been advised of the nature and extent of his injury. This finding negated Krueger's reliance on the team physicians' advice leading to greater injury. Without this reliance, Krueger's claim was defeated at the trial court level.

The California Court of Appeals, however, disagreed with the trial court's finding. The Court of Appeals indicated that the critical question was not whether the team physicians withheld information from Krueger, but instead whether full disclosure of his medical condition was ever made to Krueger. The court stated that a "physician cannot avoid responsibility for failure to make full disclosure by simply claiming that information was not withheld" [4]. While the defendants produced testimony that the physicians treating Krueger told him of the general nature of his injury and did not conceal certain information from him, there was no evidence that Krueger was informed of the continuing risks associated with his injuries.

The team physician also testified that he did not minimize or conceal Krueger's medical condition for the purpose of prolonging his career. Nevertheless, the Court held that the record unequivocally demonstrated that, in its desire to keep Krueger on the playing field, the physician consciously failed to make full, meaningful disclosure to him respecting the magnitude of the risk he took in continuing to play a violent contact sport with a seriously damaged knee. The Court found that the physician's claim of no concealment could not be substituted for the professional warnings to which Krueger was so clearly entitled. It was in the blatant failure to disclose, viewed in the light of the 49ers' compelling and obvious interest in prolonging Krueger's career, that the court found the requisite intent for a finding of fraudulent concealment.

The Court found that Krueger had proven the first 3 elements needed for his claim; however, in order to reverse the trial court decision, the Court needed to conclude that Krueger's decision to continue playing was because of his reliance on the physicians' advice. Krueger testified that he acted upon the medical advice of the physicians and that had he been advised not to play, he would have followed that advice. The Court found that patients are entitled to rely upon physicians for full disclosure of material medical information. The team physician contended that Krueger was or should have been cognizant of the seriousness and permanent nature of the injury to his knee, and therefore Krueger made his own decision to keep playing. However, the court held that Krueger was entitled to rely upon the physicians for medical treatment and advice regarding his decision to play without consulting outside sources or undertaking independent investigation.

What does this mean for team physicians?

A cause of action for fraudulent concealment of medical information is based on the legal theory of fraud and deceit, not on negligence or medical malpractice. This is an important distinction to note because basic physician malpractice insurance does not cover fraud; therefore, a judgment of this nature will come out of the physician's personal assets [5]. In a medical construct, concealment of medical information centers on informed consent and a physician's duty to disclose. The Krueger case depicts a situation in which the concepts of informed consent and a physician's duty to disclose are complicated by conflicts of interests that arise from the relationship between team physicians, players, and team management.

Informed consent and the duty to disclose are closely related. The American Medical Association's *Code of Medical Ethics*, Opinion 8.08 on Informed Consent, states "[t]he patient's right of self-decision can be effectively exercised only if the patient possesses enough information to enable an intelligent choice" [6]. Furthermore, a physician is generally held to a duty to disclose a patient's choices and the risks and benefits associated with those choices. The need for informed consent and the requisite duty to disclose is commonly known and understood by physicians.

Unfortunately, this ideal conception of informed consent and full disclosure becomes challenging when there are competing interests and dual obligations to the player and the team.

The physician is typically employed by the team or franchise, which places him or her in a position to receive a great deal of pressure from team management, ownership, and coaches. Because of this, the physician is often faced with an ethical, as well as legal, dilemma when the medical interest of his or her athlete-patient does not coincide with the interests of the team [7]. The primary responsibility of the team physician is to protect the athlete's health and well-being; however, due to the pressure of competition, the temptation is to focus only on the individual athlete's capacity to perform, while ignoring the broader implications of the physician-patient relationship [8].

The *Code of Medical Ethics* Opinion 10.03 on the Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations addresses the patient-physician relationship under a similar conflict-of-interest situation in which a physician is employed by the company that requires a medical examination of a person [9]. The situation is analogous to that of the team physician; in both, the patient-physician relationship is atypical because the person receiving the treatment is distinct from the person or entity who requests and pays for the services— ie, the person's employer or prospective employer. Opinion 10.03 states that the physician employed by the company "has a responsibility to inform the patient about important health information or abnormalities that he or she discovers during the course of the examination" [10]. Additionally, "the physician should ensure to the extent possible that the patient understands the problem or diagnosis" [11]. This Opinion affirms that, when faced with a conflict of interest such as this, the physician must satisfy the obligations of the patient-physician relationship, including being an advocate for the patient.

The Krueger case and the *Code of Medical Ethics* illustrate that the team doctor should inform the athlete honestly as to his or her true medical condition and take affirmative steps to ensure that the athlete understands the potential consequences of playing with a particular medical condition [12]. A sports player is entitled to rely on the physician's advice without concern that the physician is placing the team's interest above patient care [13]. Often, the team doctor is the only doctor a player sees about an injury; therefore, the player puts his trust in the physician to properly treat the injury and be provided with honest and complete information [14]. Although the team physician is placed in a position fraught with competing interests, his or her paramount duty is to protect the short-term and long-term health of his or her patient, the athlete.

Questions for Discussion

1. Do you agree with the court's conclusion in the *Krueger* case?
2. Do you believe that the requirement of full disclosure by a team physician is realistic given the sports-business environment?
3. Are there solutions to this dual obligation/conflict of interest situation?

References

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2. *Ibid.* at 581.
3. *Ibid.*
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8. Ibid.
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11. Ibid.
12. Caldarone, JP. Professional team doctors: money, prestige, and ethical dilemmas. *Sports Law J*. 2002;9:131-151. [Google Scholar](#)
13. Hanson, LR. Informed consent and the scope of a physician's duty of disclosure. *N Dak L Rev* 2001;77:71-95. [Google Scholar](#)
14. Caldarone, 142.

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