Exercising medical judgement

"Exercise is good for you", the message given to patients by generations of practitioners, promulgated by The Wombles in song, Norman Tebbit in his famous "get on your bike" speech, and given authority by inclusion in The Health of the Nation and the terms of service for General Medical Practitioners.¹

A practitioner may run legal risks in giving advice to a patient about exercise.

Exercise is part of a healthy lifestyle and as such comment on the need for regular exercise, to refrain from smoking, maintain a body mass index below 25, and so forth is part of the everyday stock in trade of the practitioner.

When consulted by a National Health patient, a general practitioner principal has a duty under the terms of service to provide personal medical services of the type usually provided by general practitioners, using the knowledge, skill, and care of GPs as a class. Whether or not subject to the terms of service there is a legal duty of care to a standard reached by a responsible body of medical opinion, the Bolam test² and to provide good clinical care as set out by the General Medical Council.⁴

Exercise is advised for the apparently normal healthy patient and as part of recovery from a host of conditions. Knowledge of the general physical effects of exercise is expected by the patient, but if the exercise is to be overseen by somebody else, perhaps as part of a fitness programme at a local gymnasium, what is the doctor's duty?

If after consultation the doctor considers that a prescription for exercise is appropriate, or if the patient requests such a prescription, it is incumbent on the doctor to ensure that any prescription given directly to the patient is appropriate, just as it would be if the prescription was for a drug. The standard that a court would expect of a practitioner who professes expertise in this field would be that of the specialist, somewhat higher than general practitioners as a class. If the patient is simply referred to a fitness instructor, the doctor's duty of care extends to taking reasonable steps to ensure that referral is to a reputable and properly qualified instructor, or organisation that purports to employ properly qualified staff. The patient will be advised as to aspects of his medical condition that may have a bearing on the advice given by a fitness instructor and with the patient's consent, the doctor may provide written details of the patient's history for the instructor's use. Naturally all advice given will be properly recorded.

Is the doctor legally responsible for errors made by fitness instructors?

The doctor has a duty to counsel the patient, to answer questions, and to warn of foreseeable risks³ in making an assessment of the patient before referral. When such referral is to a person in his employ, then the employee who is working within the terms of a contract of employment can expect to be protected by his employer from claims for damages made by the patient or his estate. Part of the general duty of care includes employing staff who are competent. Complaints made about the service provided under the NHS would be dealt with via the NHS complaints procedure and in the unlikely event that the matter then went as far as a disciplinary hearing, the principal may be at risk of a breach of the terms of service if his own actions or

those of an employee did not reach the required standard. There is no such "vicarious liability" for a fitness instructor or other staff who are not employed by the doctor.

Sporting events

The doctor attending a sporting event may be there as a spectator, coincidentally being a medical practitioner. If an incident should arise whereby medical advice is given as a "Good Samaritan" there is a medicolegal risk that is more theoretical than real. The doctor can proceed safe in the knowledge that provided his actions are reasonable in the circumstances of the incident all will be well. The doctor is not entitled to ignore medical maxims but cannot be expected to provide a level of care that would only be available had specialised equipment been to hand. That is not to forget the watchword that any person giving first aid would quote, namely "improvise" and immobilisation with materials available on the spot, emergency dressings and the like that may not appear in any catalogue would not be challenged in themselves. Different criteria apply to a medical officer at sporting events. Here the doctor attends in an official capacity and would be expected to have considered the foreseeable and prepared for it in the sense of having the required professional skills, the equipment, and drugs to hand and the ability to obtain further help if necessary. It is hard to envisage a court determining that the level of care required from a medical officer should be a function of the importance of the sport, team or fixture.⁶ A claim that a medical officer was negligent in circumstances where the clinical problem developed progressively and the doctor is said to have been at fault in not providing personal care to an acceptable standard throughout may be resistible provided help was requested from someone with the skills needed at the time⁷ the doctor recognised his limitations, but not if the request was unduly delayed or the patient was not given adequate holding treatment, for example while waiting for transport.

Doctors acting in an advisory capacity to a club/organisation as to the suitability of an individual to compete should be aware of any national medical criteria for those taking part and of agreed screening procedures. The doctor must be able to implement those criteria and interpret the results of tests making it clear to the person that he is acting not in the normal doctor/patient relationship (albeit that the opinion will be in the person's medical best interests) but as agent for the club or organisation. As such the doctor has a duty to ensure that the sports person understands in what capacity he is acting and thus where his duty lies.

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1 The National Health Service (General Medical Services) Regulations 1992 (as amended) schedule 2, paragraph 12 (2) (a).

2 Bolam v Friern Hospital management Committee (1957) QBD BMLR 1, 1.

3 Hunter v Hanley (1955) SLT 213.

4 Duties of a doctor. London: The General Medical Council, 1996.

5 Sidaway v Bethlem Royal Hospital Governors (1985) HL BMLR 1, 132.

6 Palmer RN. School sports day, medico legal hazards for the school doctor. In: Payne SD, ed. *Medicine, sport and the law*. London: Blackwell Scientific, 1990.

7 Wilsher v Essex Area Health Authority (1988) HL BMLR 3, 37.