[Primary Care]

Action in the Event Tent! Medical-Legal Issues Facing the Volunteer Event Physician

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Context: Physicians need to consider medical-legal issues when volunteering their time to assist with community mass-participation and athletic events. This article also reviews medical-legal aspects of the volunteer physician's out-of-state practice. Seven cases illustrate the importance of expertise and planning to avoid legal issues for the volunteer event physician.

Evidence Acquisition: Relevant studies, expert opinion, medical-legal legislation, and medical-legal cases were reviewed.

Results: Physicians typically make 4 common assumptions regarding these types of events: Good Samaritan legislation, event liability insurance, personal liability insurance, and waivers. We discuss the intent of these assumptions and the reality of how, or how not, they provide any protection to the volunteer event physician.

Conclusion: The intent of this article is to make physicians aware of medical-legal issues when volunteering their time for community and athletic events.

Keywords: volunteer event physician; Good Samaritan legislation; legal liability; waiver

Many communities sponsor mass-participation and athletic events, such as bicycle rallies, golf tournaments, fun runs, marathons, triathlons, and wrestling or soccer tournaments. With limited economic resources available to provide adequate medical support, event organizers often recruit medical personnel to volunteer their time and expertise for participants in these events. Community physicians often volunteer to take on these responsibilities because of a true interest in a particular sport or because of their love for the action associated with the event.¹¹

A physician who practices at sporting or similar events free of charge is often referred to as a *volunteer event physician*. A volunteer event physician donates his or her time and expertise without accepting payment or expecting any monetary gain or remuneration for providing these services. In general, volunteer event physicians do not promote their practices at an event by handing out business cards or advertising with flyers, brochures, banners, or logo-printed attire; however, they sometimes report their participation in various other ways.

Based on a review of the reported cases from all of the states, there appear to have been few lawsuits filed against volunteer event physicians. However, the possibilities of such lawsuits exist, particularly given the nature of our society and the "makeshift" environment in which most medical care is provided in these situations. Routine and emergency medical care at such events often takes place in a provisional medical facility, using limited medical equipment and supplies. Medical history for participants and even spectators is often unavailable. The participant may arrive alone or with others who have little knowledge of prior medical conditions. Outcomes may be affected by any or all of these factors. However, the volunteer event physician can prepare for issues that arise through education and preplanning.

FOUR COMMON ASSUMPTIONS

Typically, physicians make 4 assumptions when volunteering for sporting or community events: (1) Good Samaritan legislation

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will provide protection from potential legal liability, (2) the event liability coverage will include and protect health care providers as the insured, (3) the physician's personal medical liability policy will provide coverage for the physician practicing at volunteer events, and (4) executed preevent injury waivers will provide the physician with protection from liability.

Good Samaritan Legislation

Protection against liability for emergent care may be found in Good Samaritan-type legislation that has been enacted in all 50 states, some of which, in a limited number of jurisdictions, is targeted to sports medicine providers.¹¹ Written to encourage physicians to respond to emergencies by eliminating or limiting liability, Good Samaritan laws typically provide that anyone who renders emergency care without compensation or expectation of compensation at an emergency scene shall not be liable for damage from that care except in the case of gross negligence or willful or wanton misconduct.¹³ Good Samaritan laws, although similar from state to state, vary somewhat in substance and interpretation. The volunteer event physician must therefore be knowledgeable about the specific law that governs the state where the event is being held.

Good Samaritan laws are not designed to provide protection for volunteer athletic events because the legislation generally does not apply to nonemergent care. The volunteer event physician who provides nonemergent treatment, such as laceration repair, sprain and strains, or simple fractures, is often not protected by the legislation. Additionally, sports physicals, medical evaluations, or release/return-to-play examinations are not considered emergency care and do not exempt the provider from liability.¹³

Event Liability Insurance

General event liability insurance is usually available, and event organizers commonly buy this coverage. However, these general liability insurance policies do not provide coverage against medical liability. The physician must consider utilizing his or her own professional liability coverage or purchasing a separate, specific medical liability insurance policy for an event, keeping in mind that these policies are usually cost-prohibitive.

Personal Liability Coverage

A physician's personal liability or institutional policy may provide coverage for volunteer athletic events. Physicians should inquire with their liability insurance provider or institution to determine if such policy provisions include coverage for these events. If there is any question about liability coverage, the physician should contact appropriate agents or advisors to request documentation that liability coverage is provided for a specific event.

If liability coverage for volunteer events is not included in a physician's personal or institutional policy, the physician must then rely on specific medical liability coverage through the event organizer or provide only emergent care when the state's Good Samaritan legislation applies to protect oneself. Sole reliance on Good Samaritan legislation may not be sufficient for providers who volunteer for athletic and similar events.

Waivers

Event sponsors, institutions, and athletic teams often use a preinjury waiver and release document as a way to provide some protection from liability. These documents explain the general risks of participation in the activity or sport and include a statement that releases the organization and its personnel from liability if the participant becomes ill or is injured as a result of the activity or if the provider is guilty of ordinary negligence. While organizations may try to construct a waiver or release that is "all inclusive," waivers sometimes do not encompass all potential issues and in any case will not release an organization from gross negligence or intentional conduct. Such documents are effective in most states to provide protection from injuries or events occurring after an untoward event. However, the waiver is not a bar against litigation but may be a bar to a successful suit. Additionally, when a child is a participant and the parent signs the form, the preinjury waiver is sometimes not valid because some courts have determined that a parent cannot sign away the applicable future rights of a child.⁸

A volunteer event physician's responsibility is to the general well-being and health of the athlete. An athlete and physician may feel that a waiver or consensual agreement is an opportunity to allocate legal responsibility to each other. However, courts generally will not validate a contract that releases a physician from liability in the care of one's patients. The courts have found that these agreements violate public policy because medical services are essential public services. The patient places himself or herself under the physician's control but remains subject to the risks of his carelessness. A waiver would give the physician bargaining power to require a release from negligence liability as a condition of providing medical treatment. Most courts that have examined this practice have found it unacceptable on the basis of public policy reasons.⁸

PRACTICING OUT OF STATE

Occasionally, the volunteer event physician may be asked to provide coverage for a sporting event in a state where he or she is not licensed to practice. Physicians must be aware of individual state laws that affect the practice of medicine in that state. In 1999, Davis et al surveyed medical boards of all 50 states to determine what regulations existed for the practice of medicine in that state by an out-of-state physician.² Forty-three of the 50 state medical boards responded to the survey. Nineteen state medical boards replied that they did not allow a

Table 1. State medical board licensure requirements^a

Type of Practice Allowed	State
Practice not allowed without state license for that state	AK, CA, HI, IA, IN, ME, MN, ND, NH, NV, NY, OH, OK, OR, SC, SD, VA, WI, WY
Practice as consultant to home team physician	AL, AR, AZ, CT, DE, KS, KY, MA, MD, MI, MO, NM, PA, RI, TX, WV
No restrictions on practice	CO, FL, LA, MT, UT, WA
Did not complete survey	ID, ^b IL, GA, NE, ^b NJ, VT, TN, NC, MS

^aData presented were collected in 1999 and may not reflect current laws regarding the practice of the out-of-state physician (ie, physician who has traveled with his or her athletic team to another state). Information provided is to give an example of the variability of existing laws regarding the practice of medicine by an out-of-state physician. The out-of-state physician should contact each state's medical board regarding current laws in the practice of medicine for those who are not licensed in a particular state.

^bReturned survey but insufficient data.

physician to treat an athlete unless the physician was licensed in that state. Six noted that their state required the physician to apply for a courtesy license before he or she was allowed to treat athletes. Sixteen medical boards would allow the visiting physician to treat athletes as a consultant to the home team physician. Only 6 medical board directors acknowledged that their boards would allow the visiting physician to treat athletes without restrictions (Table 1). However, none of the 43 state medical board directors who responded had taken legal action against out-of-state physicians.^{2,6}

A study by Wang et al in 2008 had similar findings from a survey sent to 50 state medical boards.¹⁴ From the 35 responses, 20 states had no provisions and required full state licensure for the practice of medicine in their state. Fourteen states had some form of provision (would allow practice within their licensure statute, required a temporary or emergency license, required a special event license, or required a temporary license with supervision from an in-state licensed physician). One state had no provisions dealing with the issue but as a courtesy would allow a visiting physician to treat his or her athletes.¹⁴

The results of these studies illustrate that physicians who volunteer their time for an out-of-state event must know the legal licensing provisions applicable to practicing medicine in that state. Policies, laws, and regulatory requirements vary widely and are subject to change at any time. In states that do

not allow the out-of-state volunteer event physician to practice medicine in any capacity, only emergent treatment should be given in accordance with the Good Samaritan legislation applicable to that state. The visiting physician must remember that not all states allow the provision of medical service under the Good Samaritan legislation for visiting physicians who volunteer their time for an athletic event. If the practice is not permitted, providers could be subject to a variety of regulatory, civil, and even criminal penalties.^{5,10}

Limiting Liability of the Volunteer Event Physician

Simple measures may be taken to limit the liability of the volunteer event physician. First, physicians should know and follow the laws in the state or states where services are to be provided. Understanding the specifics of Good Samaritan legislation in a physician's own state and knowing the licensing laws of any state that a physician plans to visit as an event physician may prevent problems or limit liability in case of legal action; when in doubt, physicians should consult their legal advisors.

Second, physicians should volunteer for activities within their field of expertise to reduce the risk of allegations of gross negligence. For example, a bicycle rally would be best covered by a primary care sports medicine physician, primary care physician, or orthopaedist rather than a psychiatrist or obstetrician.

Third, the volunteer event physician should participate in planning the event to ensure that steps are taken to prevent injuries and to make sure that proper facilities, equipment, and supplies are available for use at the event. Staffing is an important part of planning that may help limit potential liability. The use of a health care team to plan and rehearse for emergencies may limit mistakes in stressful situations. As a part of planning, the physician should also ask if the event organizers have purchased liability insurance that would specifically cover health care providers. If a specific liability policy is not available through the event organizer, the physician should check with his or her institution or private liability insurance provider to see if provisions have been made for coverage of such events. In addition, physicians cannot rely on participant waivers to provide any protection from liability regardless of the terminology in the document. The physician should consider contacting an attorney when questions arise about liability during the planning stages of an event.

Finally, the physician should have adequate facilities for treatment and procedures planned. Physicians should take brief notes on all assessments and treatment plans, and probably most important, he or she should never hesitate to activate the emergency medical system when indicated.

Legal Cases Related to the Event Tent

Case 1: *Weiss v Pratt*, Florida, 2011

An athlete was injured while playing in a varsity football game. After a tackle, he suffered transient quadriplegia; however, within a few seconds, he was able to move his legs and roll

over onto his back. The athlete experienced extreme neck and right shoulder pain. The volunteer team physician at the game, an orthopaedic physician, attended to the athlete immediately on the field and evaluated him for approximately 15 minutes, questioning him about certain areas of pain or altered sensation and conducting a brief medical examination. He recalled the plaintiff (athlete) telling him that he saw a flash of light, but he did not recall having been told of momentary unconsciousness or paralysis. The physician did not believe that the plaintiff had suffered a spinal cord injury, and with the assistance of the athletic trainer, he removed his helmet. The athlete was placed in a seated position and then escorted off the field. On the sideline, the physician removed his shoulder pads. The athlete complained of nausea, and therefore, the physician decided to send him to the emergency room for further evaluation. Paramedics were notified, and the athlete was placed on a backboard and transported. The volunteer team physician followed the ambulance to the local emergency room and assisted in the care of the athlete. Plain radiographs were ordered of the neck and right shoulder. The team physician reviewed the films with the on-duty physician and interpreted them as unremarkable; however, he did order a computed tomography scan of the C1-C2 level. This study also was reported as unremarkable. On the basis of the clinical examination, radiographs, and computed tomography scan, the team physician found no evidence of hematoma, swelling, or spinal cord compromise and diagnosed the athlete with neck strain and shoulder contusion. The athlete was given pain medication, a cervical soft collar, and an arm sling. He was directed to follow up in the office 3 to 4 days later. The physician billed the athlete for services rendered at the hospital.

Three days later, the plaintiff went to the physician's office but was seen by another provider. By then, the plaintiff could not elevate his arm or flex his elbow. He had also lost significant strength in his arm and had diffused tenderness to touch throughout his elbow, forearm, wrist, and hand. The athlete was referred for magnetic resonance imaging, which revealed an epidural hematoma on the right side of the spinal cord at the C1-C4 levels and a nonhemorrhagic cord contusion behind the C5 level. The team physician admitted in retrospect that he "would have put [the plaintiff] in a backboard on the field."

The athlete sued the doctor, the emergency room physician, and the hospital. The verdict form separated the allegations of negligence against the doctor by location of medical services. The jury found that the doctor had been negligent in his treatment of the plaintiff on the football field but not in his service at the hospital. The jury awarded the plaintiff \$500,000 for past intangible losses and \$250,000 for future damages. The jury found in favor of the other defendants.

On appeal, the physician contended, among other things, that as a volunteer team physician, he was entitled to immunity under the applicable Florida statute. However, he was entitled to such protection only if the services that he provided were rendered as those that a reasonably prudent person, similarly licensed to practice medicine, would have enacted under

the same or similar circumstances. Although the expert who testified for the plaintiff was an emergency room expert, the appeals court determined that his testimony was appropriately provided since all that the statute really required was that he be a medical doctor. The court also noted that the expert, while not experienced in football field care, "had the expertise of what to do in . . . a circumstance [like that presented in this case]." The court concluded that the Florida statute, if intended to provide a layer of protection for volunteer sports medicine physicians, needed to be amended to provide protection that was not merely "illusory" and therefore upheld the jury's verdict.¹⁵

The case illustrates the potential outcome that may arise under the nuances of a particular state law. It also indicates the potential exposure that sports medicine physicians may face depending on specific state laws. In this case, the court evaluated the statutory protection then provided to Florida volunteer team physicians and concluded that this law provided "little more protection than general tort law." The Florida volunteer team physician immunity law was subsequently amended and now provides broader protection, unless the medical care was provided in bad faith, with reckless purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property (section 768.135 of the Florida statute).

Case 2: Pablo Paz, A/N/F of Jane Doe, Ruth Paz v Life Time Fitness, Inc, December 16, 2010

In 2008, a minor girl was injured while participating in a summer day camp at a fitness center. The day camp was not operated by a nonprofit community or school program. When the mother enrolled the child in the camp, she signed a "participation agreement" that contained elements required by Texas law. The defendants asked for a summary judgment based on the execution of this agreement, indicating that the agreement was an enforceable preinjury waiver. The plaintiffs argued that the document was unenforceable on the basis of public policy that has been established in Texas and other states. This policy indicated that a parent could not sign away all of the liability rights of a child. The judge agreed with the plaintiff's argument and ruled that the release was unenforceable.⁹

Case 3: Milne and Sorrow v USA Cycling Inc, August 10, 2009

In 2004, the decedent was participating in an open-course race in Utah when he collided with a vehicle pulling a trailer traveling in the opposite direction. The decedent signed a liability release before participation. A lawsuit was filed against the organization that set up the race for negligence, gross negligence, and wrongful death. The district court granted a summary judgment for the defense stating that the liability release signed by the decedent precluded the plaintiffs from claiming ordinary negligence, and the gross negligence claims failed because the organization took measures to enhance the safety of the course, which was undisputed by the plaintiffs. This judgment was upheld by an appellate court.⁷

Case 4: Scroggs v Coast Community College District et al, July 31, 1987

The plaintiff's surviving spouse filed a wrongful death lawsuit against the community college and instructor when her husband died in 1982 during a diving class offered by the college. The plaintiff signed an accident release form before participating in the class that waived any claims related to accident, illnesses, injury, or death. In the original action, the defendants asserted that the release form was an affirmative defense and were given a summary judgment. On appeal, the ruling was overturned. The appeals court found that in California, the wrongful death statute created a new right of action that could not be waived by the decedent. The release was a defense but not a complete bar against action.¹²

Cases 2, 3, and 4 illustrate how outcomes may vary even when the preinjury waiver and release documents are used as an affirmative defense. While these cases describe actions brought against the organizers of events, this information is helpful to the physician who may lend expertise to event planning. Additionally, these cases reinforce the prospect that waivers may provide only a liability-limiting notice to participants but will generally almost always not provide liability protection for physicians. Laws regarding preinjury waivers vary from state to state, and event planners should consult legal counsel when preparing waivers for use in their programs in particular states. Furthermore, regardless of the outcome, in many of these cases, significant time and financial resources were spent in these litigations.

Case 5: Gilley v Hudson, hip injury in a Georgia middle school football player, 2001

A family medicine physician was completing a workout on an athletic field when he was alerted by a bystander that a football player was injured. The physician examined the athlete and diagnosed a dislocated hip. He accompanied the player in the ambulance to a local hospital, where he performed closed reduction of the hip. The athlete suffered complications and was transferred to another hospital under the care of an orthopaedic physician. Open reduction with screw fixation was performed.

The physician and the hospital where he attempted hip reduction were sued for malpractice; however, they sought protection under Georgia's Good Samaritan legislation. The trial court granted summary judgment for both defendants.

The parents of the athlete appealed to the Court of Appeals of Georgia. The parents argued that Good Samaritan immunity did not apply because the physician treated the athlete at the hospital; furthermore, the athlete's injury was not so serious that there was not time to consult an orthopaedic surgeon. The physician was found liable. The hospital was also found liable for the physician's actions. The decision made by the trial court was reversed.⁴

The fifth case illustrates the importance of understanding and following Good Samaritan legislation. The courts in this case ruled against the physician for overstepping the intent of the legislation, which permits emergency care only. This case also illustrates the importance of expertise. The physician was

acting outside his field of expertise when he attempted hip reduction, with a bad outcome.

Case 6: Boccasile v Cajun Music Limited, Cajun Music Festival, Escoheag, Rhode Island, 1989

A visitor to the Cajun Music Festival in Escoheag, Rhode Island, experienced an allergic reaction to seafood gumbo. A volunteer event physician and other health care members responded to the scene. They activated emergency medical services, and the patient was given an epinephrine injection. His condition deteriorated, and cardiopulmonary resuscitation was initiated. The patient was then transferred to a local hospital, where he died 2 days later.

The descendant's widow filed a lawsuit against the physician and another health care provider for not bringing medical equipment to the scene. In addition, the plaintiff noted that the defendants were not protected by the state's Good Samaritan legislation because they volunteered to administer their services at the event. This action established a preexisting duty to treat, setting the defendants outside the statute's protection.

The defendants argued that because they were volunteers and did not receive remuneration for their services, they were covered by the Good Samaritan statute in Rhode Island. Consequently, they were immune from liability for all reasonable actions with the exception of gross negligence.

The court sided with the defendants, stating that there was insufficient evidence to demonstrate a deviation from the standard of care on the part of the defendants and agreeing that they were covered by Good Samaritan legislation. The case was appealed to the Rhode Island Supreme Court; however, it affirmed the lower court's decision: "Plaintiff failed to provide sufficient evidence to demonstrate a deviation from the standard of care on the part of the defendants."¹

This case illustrates the importance of familiarity with the law and illustrates the use of the Good Samaritan law as a defense for the provider who chooses to volunteer his or her services and who renders them in good faith. Additionally, this case illustrates the importance of event planning for the volunteer physician. Planning the equipment and supplies to have available at the event is an important part of the job as a volunteer event physician and may limit tragedy during an emergent situation.

Case 7: Gehling v St George's School of Medicine, EDNY, 1989.

A medical student who suffered from a known heart ailment died while running in a school-sponsored fun run. The descendant's estate claimed that the school was negligent by not requiring runners to have a prerace physical examination and by not providing proper supervision or medical care.

The court in this case sided with the defendant citing that the "decedent's voluntary race entry, with a known heart ailment, in tropical conditions was relevant in determining legal responsibility for his death." In addition, the school provided adequate medical support for the event. An ambulance was at the scene. Volunteer health care providers were stationed

along the course. In addition, several health care providers participated in the event. Appropriate assistance was rendered to the decedent. The school provided standard of care for similar types of events.³

Case 7 illustrates the importance of planning as well as staffing for an event. While the outcome was tragic, the providers were determined not to be negligent.

CONCLUSION

Good Samaritan-type legislation generally covers emergent care in unexpected situations except where that care was rendered in an imprudent or grossly negligent or wanton manner. Event liability insurance may or may not cover the health care personnel providing services in the medical tent for an event, and a physician's personal or professional liability should be reviewed before one volunteers to determine the applicability and limits of coverage. Although waivers and preparticipation releases are routinely used for mass-participation or community athletic events, the documents are not very useful against medical malpractice suits. Physicians who volunteer should take time to review all of these options to determine the best coverage option and seek independent and individualized legal advice.

The volunteer or paid physician who travels with an athletic team must review the laws of the state where travel is to take place to determine the limits of practicing in that state. Because laws vary from state to state and may change over time, the traveling team physician should periodically review the laws for any state to be visited.

These cases should not discourage interested physicians from volunteering their time to assist with community athletic events. Volunteering for athletic events is a rewarding and

enjoyable experience for physicians as long as they are aware of the potential legal liabilities and work to minimize risk.

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