Risk Management Application and Reflection Paper

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**Introduction**

 I am currently employed at a small high school in Northwest New Mexico as the Head Athletic Trainer. Athletic trainers deal with injury and illness everyday. When an athlete is injured while participating in a practice or game it is the responsibility of the athletic trainer to evaluate, treat, rehabilitate, and return the athlete to play. This can be a difficult task on many days, as I am required to cover all sports, which includes all practices and events associated with those sports. On an average day I typically will see anywhere from sixty to seventy athletes in the athletic training room alone and I deal with well over two hundred athletes on a daily basis.

The primary legal risk of my career as a Certified Athletic Trainer is negligence. One of the biggest obstacles that I have with my career is balancing time between the athletic training room duties and practices and games. Most weeks I have at least three to four days that have events scheduled on them. There are several days that I am expected to cover two or more events at the same time at different sites. This has the potential to leave myself open to negligence because each team, at some point, is left uncovered for either an event or practice. If there is an emergency situation and I am not at that particular site I am going to be held negligent because I was not providing the appropriate medical coverage for that particular site.

When looking at my risk management analysis I realize that I am only one athletic trainer, and the only athletic trainer at my school. There is no possible way that I can cover everything going on throughout the day. I must take the steps to minimize the risk of a negligence law suite by educating our athletes, parents, coaches, and administrators. I must ensure that I am following the protocols of our state athletic training practice act and also the position statements from the National Athletic Trainers Association. I need to enlist the help from our team physicians and ensure that I am providing the best appropriate medical coverage and care possible.

**Primary Legal Risk**

 My primary legal liability is negligence and the failure to provide appropriate medical coverage during practices and events for the athletes at Aztec High School. According to Cotten and Wolohan (2010) negligence is defined as “ an unintentional tort that causes injury to a person in the form of physical injury, property loss, or reputation” (p. 40). Negligence can come in one of two forms. Negligence can be an act of commission, something that was done, but should not have been done, or and act of omission, something that should have been done, but was not done (Cotten and Wolohan, 2010). For example in the athletic training setting an act of commission would be an athletic trainer reducing an elbow dislocation, when they are not trained to do so and they cause further injury. In athletic training an act of omission would have been failing to perform CPR on an athlete with sudden cardiac arrest.

 Negligence includes four elements (Cotten and Wolohan, 2010). The first element is duty, which Cotten and Wolohan (2010) refer to as “ a responsibility toward others to protect them from unreasonable risk of injury” (p. 41). In the athletic training setting this could include monitoring weather conditions and monitoring playing surfaces and environments to ensure there are no unreasonable risks present. The second element is breach of duty. Cotten and Wolohan (2010) stated breach of duty is “any violation or omission of a legal or moral duty” (p. 43).

There are three questions that are looked at by the courts to determine if a breach of duty has occurred. The first question pertains to what kind risks are associated with the injury. There are inherent risks, or those risks that are part of the sport, ordinary negligence, or acts that fall below the standard of care, gross negligence, or failure to provide duty in reckless disregard of the consequences, reckless misconduct, or where an athletic trainer does an act or fails to do an act which is his or her duty to perform, and willful and wanton misconduct, or where an athletic trainer commits an intentional act for the safety of others (Cotten and Wolohan, 2010).

The second question asked deals with reasonable care. This deals when an athletic trainers acts in a way that a reasonable and prudent person would (Cotten and Wolohan, 2010). For athletic training there is a standard of care that is to be met by all athletic trainers. All athletic trainers are expected to follow all position statements that deal with things such as emergency action planning and sudden death in athletes. The athletic trainer must adhere to these position statements and act in a way that all other athletic trainers act.

The third question asked when dealing with a breach of duty deals with whether or not the risk was foreseeable. The question asked is “was the risk foreseeable by a reasonable and prudent professional” (Cotten and Wolohan, 2010, p. 46). In an athletic training sense this question would ask if the injury or illness could have been prevented such as in proper equipment fitting or monitoring for signs of dehydration and heat illness.

The third element of negligence is proximate cause, which is defined by Cotten and Wolohan (2010) as “That particular cause which produces an event and without which the event would not have occurred” (p. 46). In dealing with appropriate medical coverage this could be an athlete being injured more seriously because no athletic trainer was present to evaluate the initial injury. The final element of negligence is damage. Cotten and Wolohan (2010) define damage as “injury, loss, or deterioration caused by the negligence, design, or accident of one person to another in respect to the latter’s person or property” (p. 47).

Negligence has been at the forefront when dealing with issues in athletic training in recent years (Osborne, 2001). Negligence and the failure to provide appropriate medical coverage and care impacts my career because if I do not provide the appropriate medical coverage and care for my athletes I am failing as an athletic trainer and I am running the risk of being held liable for a negligence law suite. Working in a high school there is an increased liability risk when it comes to negligence because of the fact that many high school only employ one athletic trainer to cover fifteen to twenty sports each school year. This is an impossible task simply because there are multiple events and practices going on each day at the same time and because there is only one athletic trainer there are many times that events are going to go uncovered.

According to Osborne (2001) “providing medical clearance for sports participation and treatment of athletic injuries involves legal as well as medical issues” (p. 316). By not providing appropriate medical coverage for athletic teams there is no way possible to determine if an athlete is medically able to participate because of injury and illness. If appropriate medical coverage is not adhered by athletes are at an increased risk of suffering from injury, re-injury, or illness. If the risks are increased because of the athletic trainers inability to provide appropriate medical coverage the athletic trainer is going to be held liable when it comes to negligence of that particular athletes injury or illness.

If athletes are not properly taken care of when it comes to appropriate medical coverage the athlete is then taking an increased risk when participating in events and practices. The athletic trainer must provide constant supervision when it comes to the athlete’s health and safety. If the athletic trainer does not provide supervision then they are not providing appropriate medical coverage. Osborne stated, “ negligence law was founded on the principle that those who are harmed as the result of others’ carelessness or failure to carry out responsibilities properly must be compensated” (p. 316). If the athletic trainer is not present they must properly educated coaching staffs within sports that are being left uncovered so the athlete is properly supervised. The athletic trainer must work with all responsible parties in dealing with the athlete’s safety and well being to decrease the risk of participating in athletic practices and events.

Negligence is constantly going to a huge part of an athletic trainers career. The athletic trainer is the person who is responsible for keeping them safe and healthy when the athlete participates in athletic practice and events. Every time an athlete steps onto the field or court there is an inherent risk of injury, but it is the job of the athletic trainer to limit these risks and promote a safe and healthy environment for all participating parties. If the athletic trainer cannot provide the appropriate medical coverage they must take the proper steps necessary to ensure that the athlete is always kept as safe and healthy as possible not matter the sport.

**Risk Management Analysis**

 According to Cotten and Wolohan (2010) risk management is defined as “ controlling the financial and personal injury losses from sudden, unforeseen, unusual accident and intentional torts” (p. 282). The D.I.M. process is in place as a tool to help an institution develop a sound risk management program. There are three basic processes of a risk management program, developing a risk management plan, implementing the risk management plan, and managing the risk management plan (Cotten and Wolohan, 2010).

 When a sports medicine professional develops a comprehensive risk management program there are several steps that must be taken. These actions include, identify the risks present, estimate the extent of the risks, taking into consideration the seriousness of the injuries that may occur and the likelihood that the injury will occur, evaluate the options that could be taken to reduce risk, and implement the risk reduction policies and procedures (Osborne, 2001). The athletic trainer must know what risks are present in each and every sport and the implications that each of the injuries can have if not handled in the proper manner. The athletic trainer must also look on ways to reduce the risk of injury or illness to the athlete. Finally according to Osborne (2001), “as risk management procedures are established it is important that whatever is done is measured against the standard of care that a reasonably prudent professional would give in the same or similar circumstance” (p. 321).

 When an athletic trainer determines the risk for a risk management plan it needs to consist of three different stages. The first stage is identifying the risks, classifying the risks, and selecting the methods of treatment for the risks (Cotten and Wolohan, 2010). Each sport that an athlete participates in is going to have inherent risks. The athletic trainers job needs to be to determine which risks are present for a given sport. These risks are going to be different depending on the sport and these risks should be looked at continuously to attempt to the limit the amount of risk an athlete has while participating in sport. Secondly, the athletic trainer must classify the risks associated with each sport. According to Cotten and Wolohan (2010) “the purpose of the classification stage is to determine how often (frequency) the risk may occur and the degree (severity) of the potential loss arising from the risk” (p. 285). Finally the athletic trainer must treat the risk. According to Cotten and Wolohan (2010) “ a treatment is a method used to reduce, control, manage, or eliminate financial risks and bodily injuries” (p. 286).

 After the risks have been determined the athletic trainer then must implement the risk management plan. Each member of the institution must know the risk management plan and know his or her own role in the plan (Cotten and Wolohan, 2010). According to Almquist et al. (2008) “ to provide appropriate medical care, organizations must create an AHCT that must function in a coherent coordinated, and efficient manner with coaches and administrators of sponsoring organizations and that must adhere to commonly accepted standards of good clinical practice” (p. 417). The athletic trainer must work with the Athletic Health Care Team (AHCT) to ensure that each member knows exactly what do in case of injury or illness. They must know what steps must be taken to ensure the athletes safe and proper recovery after injury or illness.

 The final step in the D.I.M. process is to mange the plan. In athletic training the AHCT should meet frequently to determine the risks associated with certain sports and work together to limit the risks to the athlete. This is something that must be taken seriously and is ever changing as conditions and the sport evolves. Typically the athletic trainer is going to take lead as the risk manager. The athletic trainer is typically the one health care professional that is on site the most (Almquist et al., 2008). Other ideas should be taken into consideration and feed- back from coaches and administrators should come quite regularly. As problem arise and need to be addressed the risk management plan should be changed so that the athlete’s health and safety is always taken care of.

 Working in the athletic training profession there is always a need for a risk management plan. There are many instances where an athletic trainer is dealing with life or death injuries and circumstances. Many more times the athletic trainer is dealing with injuries that could lead to drastic life changes if they are not handled properly. It is important to know exactly what risks are associated with each sport and how each sport needs to be handled to ensure that appropriate medical coverage and care is in place.

 Like I stated before, the biggest liability that I have is providing appropriate medical coverage to my athletes. I am currently the only athletic trainer at my high school and I am expected to cover fourteen sports and 10 separate sites by myself. There are many things that can stand in the way of the appropriate coverage of these practices and events. The reality is that many of these sports overlap and have practices and games at the same time. It is important to take the proper steps to ensure that the athlete is properly taken care in the event of injury and myself, as the athletic trainer, is not present at that particular site at that moment.

 The risks that are associated with sports are going to vary from season to season and sport to sport. Overall the biggest risk coming from sports is an athletic injury or illness. When these injuries present themselves they must be handled properly to ensure that that athlete does not suffer further injury or re-injury. If these injuries are not handled in a way that is beneficial to the athlete the athlete can suffer permanent damage or even death, in some instances. I must take the proper steps to ensure that the athlete’s well being is taken into consideration over anything else. I must also ensure that all members of the AHCT are properly trained and prepared for whatever type of injury or illness may be presented to them. It is not possible for myself, as the athletic trainer, to be present at every practice and event each day. It is important that there are steps in place that limit the risk of injury or illness for our athletes and that they are receiving the appropriate medical coverage.

 The first step in my risk management plan is to ensure that each athlete has an appropriate pre-participation physical examination. According to Anderson (2006), “initiation of a plan to minimize risks should begin with an evaluation of sports-medicine operational protocols and guidelines related to the pre-participation examination, including issues related to diagnostic screening processes” (p. 11). The PPE should determine the overall well being and readiness to participate in athletics. According to Almquist et al. (2008) “ the PPE is essential to identify athletes at risk for injury and to implement corrective actions before injuries occur” (p. 417). Each year the athletes that I deal with will have a PPE and information will be provided to ensure they are healthy enough to compete in their desired sport.

 The second step of my risk management plan is to ensure that each of my athletes is wearing the proper protective equipment. I will take an active roll in advising in the selection, fit, function, and maintenance of all athletic equipment. According to Almquist et al. (2008) “ it is incumbent upon the sponsoring entity to ensure that all equipment worn and used is in good condition, appropriate, and properly fitted” (p. 419). Each institution needs to ensure that qualified personnel, such as coaches and athletic trainers, are the ones fitting equipment and checking for any defects in that equipment (Almquist et al., 2008). It is extremely important for myself to supervise the equipment fitting process. It is also imperative that I work with each coach and make sure that each athlete is wearing the equipment during practice or events and that they are wearing it properly. I must educate the athlete on the importance of wearing the protective equipment and help them understand how it can limit the risk of injury if they wear it and wear it properly.

 The third step of my risk management plan is to implement a series of emergency action plans for my athletic teams and facilities. According to Almquist et al. (2008) the emergency action plan (EAP) should include planning for responses to medical emergencies involving spectators, coaches, and officials; crowd control; and evacuation in the event of severe weather, fire, and other natural or manmade disasters” (p. 420). These EAP’s should be very detailed and give specific directions as to what to do in the case of an emergency. According to Anderson (2006), “ it is important that an emergency action plan be venue and event specific” (p. 13). I will work with the AHCT to implement a plan for each site and athletic team. Every sport is going to have varying risks. I must ensure that that each sport is taken into consideration and realize that much of the set-up of each venue can be different depending on the sport. I also need to ensure that the EAP is followed exactly as it is written. According to Anderson (2006), “ there are tremendous implications to risk management in emergency planning, and any deviations from the institution’s operational protocol need to be well supported based on the individual case and circumstances” (p. 14). Each member of the AHCT and local EMS will be trained in the EAP as well as receive a copy of each sport and venue’s EAP. In the case of Kleinknecht v. Gettysburg College the court showed that an institution must provide prompt and adequate emergency services for school-sponsored athletics (Andersen, et al, 2002). This will limit second- guessing, and allow the athlete to be taken care of properly.

 I will provide on-site recognition, evaluation, and immediate treatment of all injuries and illnesses and make the appropriate referrals when dealing with these situations. This can be a difficult situation as an athletic trainer at a high school because of the demands placed on the athletic trainer. The athletic trainer must ensure that all member of the AHCT are well trained and prepared in the event that an athlete suffers an injury or illness. According to Auckerman, et al (2006), “ most coaches at participating high schools did not have CPR or first aid certification” (p. 132). It is imperative that our coaches have training in these two areas so that they can perform and initial evaluation of an injury or illness and determine the athlete’s readiness to return to play. As the athletic trainer I am typically covering games and practices six days a week and many times I have multiple events going on some days as well as practices. I need to ensure that my coaching staff can handle injuries and make determinations on the athlete’s ability to return to play until I can arrive on site. Also I do not travel with most sports and in those cases the coaches are the ones in charge of the athletes health care. The coach must be prepared to make decisions regarding the athletes overall health and be willing to make proper referral decisions.

 I must also do my part in ensuring that I make proper decisions about the athlete’s health. I must be able to recognize the signs and symptoms or injury and illness and make the proper referral as needed. In many instances the athlete can suffer life -changing events if an injury or illness is not properly referred. According to Andersen, et al., (2002) “ in Gathers v Loyola Marymount University the state court settlement included a statement that care was delayed for the injured athlete, and the plaintiffs further alleged that the defendants acted negligently and carelessly in not providing appropriate emergency response” (p. 101). Another case involved a football player at the University of Missouri that did not receive the proper care after collapsing at football practice. The athlete was not treated properly at eventually died because of lymphatic meningitis. The plaintiffs argued that the athlete was not properly evaluated and treated which eventually lead to his death (Price, 2005). Each athlete must be properly evaluated to determine the extent of the injury and treated by the standards set forth by the National Athletic Trainer’s Association position statements. Each athletic trainer has a duty to properly assess the athlete’s condition, provide or obtain proper medical treatment, provide clearance to participate, and inform the athlete of risks given the medical condition (Osborne, 2001).

 In my risk management plan I will also facilitate rehabilitation and reconditioning for injured athletes. According to Almquist et al. (2008) “ Organizations that sponsor athletic programs should establish an on-site member of the AHCT and identify this individual to manage the post-injury treatment plans of the athletes” (p. 421). In my career setting this is the responsibility of the athletic trainer. I must ensure that I am following the athlete’s physician’s protocol regarding specific injuries and illness and ensure that I follow that physician’s return to play protocol. By not following these protocols I put the athlete at an increased risk of further injury or re-injury. It is the responsibility of the athletic trainer that the athlete returns to play in a manner that promotes safety and overall well being.

 The final step in my risk management plan is to develop injury and illness prevention strategies. There are five areas that need to be looked at when developing prevention strategies. The first is to determine the existence and size of the problem. The second step is to identify what may cause the problem, followed by determining strategies that may prevent the problem. The fourth step is to implement prevention strategies, and the final step is to monitor and evaluate these strategies (Almquist, et al., 2008). It is the responsibility of the athletic trainer to devise ways to limit the risk of injury to the athlete. The athlete should have limited risk placed upon them when participating in sports. If there become obvious problems in regards to injury and illness is the responsibility of the athletic trainer to determine the cause and how the problem can be minimized.

 With all of the steps combined I am limiting risk of negligence placed upon myself. It is important to note that the standards of care set forth by the NATA must be adhered by daily in the athletic training profession. According to Osborne (2001) “ standards should be updated and modified periodically as the practice of sports medicine evolves to promote the health and safety of athletes” (p. 321). It is the responsibility of the athletic trainer to educate themselves periodically about changes in standards of care and also look at their own protocols and make adjustments as needed. As athletics change the athletic trainer must be prepared to meet the demands of the sports medicine field. As the athletic trainer it is vital to my career that I keep with up with the current trends and I treat my athletes with the best means possible. What works today may not always be the standard tomorrow. It is important to remember this and make changes to keep the athlete safe and on the field.

**Conclusion**

 Negligence is a liability that is always going to be at the forefront of athletic training. As budgets at institutions, especially high schools, become smaller and smaller the number of athletic trainers set to serve at high school are going to go down. We are in a time right now where most high school only can afford to employ one athletic trainer to take care of three to four hundred athletes. The athletic trainer is then expected to cover all practices and events. It is important to realize that this is not a reasonable possibility and there are going to be times when practices and events go uncovered. If athletic trainers can take steps to ensure that all athletes are healthy before they compete and also that there are individuals around them in practices and games to perform initial evaluations they can limit the risk of liability from negligence placed upon them.

 Athletic trainers need to also look at themselves and realize that there are certain things that they can do in their own practice to limit negligence. Osborne (2001) stated there were “six common sense risk management techniques that include to build relationships, obtain a written contract, obtain a preparticipation examination, obtain informed consent, keep records, and participate in continuing education” (p. 320). The athletic trainer needs to ensure that they know their athletes. They need to know what kind of health they are in and how they normally act before injury and illness. They also need to gain the trust of the athlete so that the athlete can feel like they can come to them when they are injured. The athletic trainer should also make sure that each athlete has a PPE and is healthy enough to compete. Informed consent allows the athletic trainer to treat and rehabilitate the athlete in times of need and allows the athlete to return to play in a safe manner. The athletic trainer should also document everything that they do with an athlete from treatments to injury evaluations. If there are ever any questions then they can go back to their documentation for a defense. Finally athletic trainers must stay up-to-date with current trends in athletic training and ensure that they are giving their athletes the very best health care.

 This assessment made me look at my own practice and find flaws that could potentially lead to a negligence suit. I began looking at this when we covered negligence. One of my biggest problems is providing appropriate medical coverage. I am the only athletic trainer and responsible for hundreds of athletes each day. There is not a possible way that I can be there for them at all times. I began looking at what could be done to ensure that the athletes were properly taken care of in my absence and how I could limit the risk of negligence not only for myself, but also the school district that I am employed in. This assignment allowed me the opportunity to critically look at the deficits that I am faced with everyday and allowed me to work through possible solutions. The assignment allowed me to work through solutions and work on protocols that I have already started implementing at my school. I strive to give the best medical care possible to my athletes and the reality of it is I am not always there enough because of all of the sports that I am expected to cover. I have had a hard time with this and I have felt like I am letting athletes down by not being there all the time for them. I feel like working through this risk management plan allowed me to research current trends in gain an understanding of how I can provide the appropriate coverage and care for athletes when I am not present.

 This assignment also gave me the idea of presenting a risk management plan to my school and coaches. I had never thought about having something on paper to minimize the risk of injury to our athletes. I had emergency action plans and I have several policies and procedures in place, but I did not have anything to present to my administration and coaches on how I am going to limit our risk of negligence and how they can play a vital role in that. I feel like this analysis showed there is still a lot of work to do, but if I work with my coaching staff and administration the areas that need work can be fixed and we can limit the risk of playing sports on our athletes.

 We have to remember when we work as athletic trainers we are there for the athletes. We have to utilize every method possible to give them the best experience possible and keep them healthy and on the field so that they can work towards their goals. If we do not limit the risk of injury to them we are doing them an injustice and we are not fully doing our jobs. This assessment allowed me to better understand which steps need to be taken to allow athletes to participate in athletics and work to reach their maximum potential. We need to protect our athletes and I feel that this assessment has shown me ways that I can work to take much better care of my athletes. It was difficult working through this assessment at times when I was going through research seeing how much I was lacking in providing appropriate medical coverage and care, but I feel I am a better athletic trainer after going through it and understanding what needs to be done to make myself a better athletic trainer and limit the risk of injury to our athletes.

**References**

Almquist, J., Valovich McLeod, T., Cavanna, A., Jenkinson, D., Lincoln, A., Loud, K., et

 al. (2008). Summary Statement: Appropriate Medical Care for the Secondary

 School-Aged Athlete. *Journal of Athletic Training* *, 43* (4), 416-427.

Andersen, J., Courson, R., Kleiner, D., & McLoda, T. (2002). National Athletic Trainers'

 Association Position Statement: Emergency Action Planning in Athletics. *Journal of*

 *Athletic Training* *, 37* (1), 99-104.

Anderson, B. (2006). Policies and Philosiphies Related to Risk Management in the

 Athletic Setting. *Athletic Therapy Today* *, 11* (1), 10-16.

Aukerman, D., McManama Aukerman, M., & Browning, D. (2006). Medical Coverage

 of High School Athletics in North Carolina. *Southen Medical Journal* *, 99* (2),

132-136

Cotten, D., & Wolohan, J. (2010). *Law For Recreation and Sport Managers.* Dubuque, IA:

 Kendall Hunt.

Osborne, B. (2001). Principles of Liability for Athletic Trainers: Managing Sport-Related

 Concussion. *Journal of Athletic Training* *, 36* (3), 316-321.

Price, J. (2005, August 24). O'Neal's Family Files Lawsuit; Death Linked to

 Meningitis. *The Missourian* . Columbia, MO, USA.