

Medical records

Who owns the information?

J Orchard

Databases of injuries in professional sport are valuable resources which should not suffer confidentiality restraints

When a doctor sees a patient and makes a medical record, there is potential for a dispute as to the relative rights that the doctor and patient have over this stored piece of information. The issue becomes more complicated when a third party such as

an insurance company is involved. What about when more than ten parties are involved? How about when a professional sporting competition and a sponsor, on the advice of a research panel, pay a consultant to collect information from salaried team doctors and an insurance

company on injuries that occurred to athletes at specific venues in the competition, and, as a result, the information is published in a medical journal and finally reported in the lay press? Is any of this information confidential? Can any of the listed parties object to the release of a report on the basis of their “ownership” of part of the information?

One of the fundamental ethical principles of medicine is that the doctor-patient relationship is privileged and confidential. In theory, a doctor treating a professional athlete should not pass on information on that athlete’s injury history without the expressed consent of the player. In practice, professional team doctors do this all the time, and players rarely object. If Joe Bloggs, the amateur, is playing football and dislocates his

shoulder, he can assume the right that his treating doctor will not pass on information about the injury to third parties not involved in the treatment. The situation is totally different if Joe Bloggs is a professional athlete. If he is being paid money to play football, then all of the parties involved in paying him the money (especially the viewing audience) want to know that he has dislocated his shoulder. They also want to know details, such as whether he will need surgery and how long it will be before he can play again.

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Professional athletes are celebrities working in a segment of the entertainment industry. Unfortunately, when they suffer injuries, this is part of the entertainment. The occurrence of injuries to public figures is seen to be public information, and hence in this sense no one “owns” the information. Unlike movies, which are rated unsuitable for children on the basis of sexual or violent scenes, sporting events are open to all viewers. Publicly no sporting administrator will ever condone violence or injuries in sport, yet a quick survey of spectator sports shows a high correlation between popularity and potential for injury. No one has ever requested a copy of a video of a Formula One Grand Prix with the crash scenes edited out because they “don’t like to see drivers getting hurt”. Anyone tragic enough to be watching a recorded video of a motor race is probably doing it for the opposite reason—to fast forward through the “boring bits” of the race where all the drivers are staying on the road.

There are occasions in which athletes and their entourage will deliberately try to hide the details of injuries for a secondary gain. A classic example of this would be a rugby player who decides to soldier on carrying a broken rib who doesn’t want his opponents to target him for extra tackling. On other occasions, athletes like to exaggerate minor injuries to cover up for a loss of form or failure to achieve selection in the team. In the vast majority of occasions, the media will be told the truth about an athlete’s injury. There is a good reason for this: journalists are very good at finding out the truth about injuries. They are almost as good as bookmakers, whose profitability depends almost entirely on being the first to find out when star players are going to be missing through injury. Professional

athletes of any significance will have their medical histories quickly uncovered by these two groups of allies.

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How accurate, extensive, and accessible are media reports on the injuries of professional athletes at the present time? In most cases the answers are very, very, and very. I was recently involved in a study designed to show how much detail there is available about injuries to professional athletes on the world wide web, specifically looking at the National Basketball Association (NBA).¹ There are at least 13 web sites that specialise in NBA injury reports. Over two recent seasons in the NBA, every time a player missed a game, a reason was posted on the web and, in the case of injury, a body area cited. In 82% of cases, the diagnosis was more specific including a body part and injury type, even in some cases where the diagnosis may have been sensitive or career threatening.¹ The diagnoses given on these web sites are generally likely to be accurate, as their collective profile shows a great similarity to the official injury profile of the NBA, which has also recently been published.²

One can argue about the accuracy of media and web reports about injuries in professional athletes, yet their proliferation makes it hard to mount a serious argument to say that confidentiality should be a barrier to performing analytical research on them. Unfortunately this argument is often made by both well meaning people who have no idea about professional sport and the legal profession. Fears about privacy do stand in the way of good research that would have the potential to benefit everyone. The most extensive injury database in professional sport is of injuries in the National Football League (NFL), which contains over 20 years of data.³ Over the same time period, NFL doctors have met at a draft combine on an annual basis to conduct preparticipation medicals on players who wished to enter the NFL. If the data from the combine and the injury survey were combined and published, the sports medicine community could be given an extensive prospective appraisal of the value of preparticipation medicals in predicting future injury risk. Apparently this has been suggested on many occasions but has never eventuated because there are too many parties with

an interest in these data and no agreement can be reached about the constraints of such a study.

I have had plenty of experience of dealing with the multiple parties involved in the injury surveillance system of the Australian Football League (AFL). We have been able to conduct this research in a background of excellent cooperation from the AFL medical officers, the AFL administration, and the AFL Players Association. The prevailing attitude has been that no single stakeholder “owns” the injury data, but each must be consulted in the process of conducting a study or analysis using these data. There is a danger that, with so many parties having a right of veto, important studies may not see the light of day. We must keep our eye on the ball to prevent this from happening. To date, I consider that it is fortunate that we have never submitted the AFL Injury Surveillance System to a university ethics committee. It is quite likely that, if an ethics committee ever crossed the path of the AFL injury surveillance system, it would demand it be halted until every player in the competition had given written permission for his injury data to be analysed. Fortunately people working within the AFL industry, who appreciate that a side effect of the enormous pay packet afforded to a professional football player is that his privacy is almost non-existent, have not made this ridiculous and destructive suggestion.

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To date there has been a small amount of information from the AFL injury surveillance system that has been censored by consensus. The Australian media has often made us think that we should not have bothered with our modesty. An example is that we do not publish a team by team ranking of injury incidence in our reports, because of the fear that the media will sensationalise this information and unfairly taint the teams with the greatest rates of injury. Because we do not publish such a list, the media compile their own lists of which teams have suffered the most injuries, and of course use them to create sensational headlines and unfairly taint the unfortunate teams who have suffered the most injuries. This of course happens

elsewhere. The NFL injury surveillance system has led to published relative injury rates between artificial turf and natural grass.³ Yet the American media is so hungry for information that at the end of the 1999 NFL season, the *LA Times* published its own study, based on media reports, comparing injury rates between teams playing on grass and artificial turf.⁴

The databases of injuries in professional sport, and for that matter amateur sport, are extremely valuable resources. The future of sports medicine publication is that hopefully there will be more papers published with exposures in the millions of hours,⁵ rather than the case series of a dozen or so patients from someone's private practice that have been the staples of sports medicine journals in the past. If we can start to get

some more serious numbers in our studies, then we will reach much more important conclusions and, in the end, be taken more seriously by the rest of the medical profession. The issues of confidentiality and privacy are significant. Individuals should not have to fear what happens to their medical history, but there is a greater loss to the public by not undertaking sports medicine research because of disputes over data ownership.

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