



Any Questions?

This issue, our expert answers the top 10 questions asked in athletics risk management.

By Dr. Richard P. Borkowski

David Letterman offers his television audience a nightly "Top Ten List." In this issue, I offer the top ten most-asked questions I receive about risk management.

My list is not nearly as entertaining as the one on *The Late Show*. It is, however, informative and should help lower the chances of litigation against coaches and athletic directors.

These questions arise during workshops, in response to my articles, over the phone, by mail, and now via e-mail. The answers come from 35 years of experience in sport and recreation risk management. They are practical ideas, not legal advice. Consult your lawyer for legal interpretations.

No. 10: What does "standard of care" mean? I hear about our duty of care to athletes, but isn't keeping athletes safe just common sense?

For the most part, our duty to keep athletes safe involves common sense. But it is also about meeting what society calls a standard of professional care. Basically, you have a duty to:

- Offer proper instruction.
- Offer appropriate activities.
- Offer proper supervision.
- Offer proper equipment and facilities.
- Offer proper warnings.
- Offer proper conditioning.
- Offer proper care after an injury occurs.
- Follow appropriate rules and regulations.
- Maintain records.

It is important to understand what the standards are for today's athletic programs. For example, what is considered proper conditioning has changed significantly since I first started coaching. There are many good books out on the subject (see "Resources" box).

No. 9: What is an acceptable safety zone outside the boundary lines of a field or court?

The simple answer is to have as much space as possible outside the formal playing area. Most governing bodies list suggested buffer zones in their rule books. In basketball, for example, 10 feet is the recommended buffer, with three feet the minimum.

Unfortunately, most school athletic facilities, old and new, do not have enough buffer space. That means you need to pad the hard surfaces, adjust the activity to lower the chance of players making contact with hard surfaces, or not allow the activity to be played in that facility.

No. 8: I've heard that coaches are supposed to supervise players at all times, including in the locker room. How can coaches be in the gym and locker room at the same time?

The best solution is to have a locker room monitor, just as some schools have a hallway monitor. Talk to central administration about this need if you can't cover it in your athletics budget.

Another solution is to have an assistant coach supervise the locker room while the head coach is at the activity site, or vice versa. If this is not possible, the coach and all players should remain together at all times, from locker room to court/field and back to locker room. If a male coach is working with a female team, ask a female coach or faculty member to supervise the locker room for this team—and possibly the male coach can reciprocate in some way.

Whatever the strategy, continually remind the players about their own duty to act responsibly as they move from the locker room to the activity area. Let them know the locker room is not a place to goof off or act crazy.

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Twenty years ago, we didn't worry about supervising players as they showered and dressed. But lawsuits from locker room accidents (and common sense)

equipment is handed down because it is no longer 100-percent effective. If a helmet is not good enough for a varsity player, it is not good enough for a fresh-

or to fix holes in a baseball backstop? It is cheaper than any lawsuit, and more importantly, it helps keep kids safe.

Speak to your principal about the problem. If nothing happens, write a letter to the superintendent and school board. Forget about not being a so-called "team player" and going with the "flow." You are concerned about safety. Everyone else should be, too.

While you're reporting the problems, try to remove or cover the hazard. Another option is to work with the coach to adjust practices.

No. 5: What's the best wording to use on informed-consent or permission-to-play forms?

Basically, a form should be understandable and succinct. It should be activity-specific. It should refer to the issue of negligence and inform parents about the possibility of minor and serious risks, including the death of the participant. It should be signed and dated by every participant's parents. The best option is to have your school's legal counsel compose the forms.

Most athletic administrators want to know, "Can I lose the homestead?" Generally, you will not lose your money. Law firms typically seek financial restitution from those that insure you and the institution. But you will probably lose sleep and a sense of credibility.

now tell us we should. The locker room has proven to be a breeding ground for hazing. In addition, lots of bodies in a small place can easily lead to accidents and injuries.

No. 7: Is it acceptable to use protective equipment handed down from the varsity team?

Yes, if the protective equipment will still protect the players. However, most

man player. Proper fitting is another concern when varsity-size equipment is passed on to 9th and 10th graders.

No. 6: My athletes practice and compete in a facility that is not as safe as it should be, but it is the only one available for its sport. What should I do?

Unfortunately, this situation is not uncommon. Why can't schools afford padding on the wall behind a backboard

GamePlan Risk Management

No. 4: I have to use non-faculty coaches, and most of them have no certification. What can I do to protect the school from liability?

Certainly, you must follow the policies of your school regarding the training of non-faculty coaches. You should also get them certified as soon as possible via the rules of your state's athletic association.

In the meantime, require these coaches to read your athletic department handbook, review all policies with them, and evaluate them often, on the court or field. I would further suggest holding a few short, informal meetings during the early part of the season for review and reinforcement.

No. 3: What's the minimum number of coaches I must have for a sport to meet our duty of reasonable care?

There is no magic number. The number of coaches for a sport depends on the activity, the size of the team, and the experience of the coach. One coach for the diving team sounds reasonable, but one coach for the track and field team does not.

No. 2: Can any coach be sued?

Yes. Any coach at any level can be sued. Anyone can be sued for almost anything these days. In general, two things determine if the coach and the institution will win in court: Whether the coach met the standard of care for coaching, and the skill of the lawyer defending the school.

No. 1: Can I as an athletic director be sued?

Yes. The athletic director is usually listed with the coach, since he or she is the

direct supervisor of the coaches. The school board, the superintendent, and anyone else associated with the accident will also be listed in the case. The idea is to get off that list as soon as possible.

Most athletic administrators also want to know, "Can I lose the homestead?" Generally, you will not lose your money and your assets. Law firms typically seek financial restitution from those that insure you and the institution. But you will probably lose sleep and a sense of credibility.

The first case I was asked to testify for involved a coach in New York. The coach and school were exonerated. The coach thanked me, and in the same breath said he would never coach again. More than money is lost in litigation.

RESOURCES

> For a review of a coach's basic duties of care, check out Dr. Borkowski's latest book, *Coaching For Safety*, at: www.esd112.org/insurance_programs/resources.html. The book can be downloaded for free.

> For more articles by Dr. Borkowski on risk management, go to: www.AthleticSearch.com, and type "Borkowski" into the search window.

