“STANDARD OF CARE” v. STANDARD OF PRACTICE:
AN IMPORTANT DISTINCTION
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When persons are sued, a Plaintiff’s allegations of negligence or recklessness are usually at the heart of the Complaint that begins the lawsuit. This means, in so many words, that the defendant is accused of being at fault. This generalization is true for people in sports no less than other walks of life. For a plaintiff to win a lawsuit, except for special cases like products liability, proof of fault is required – i.e. that a defendant did something “wrong.”

Leaving aside intentional misconduct (such as biting off another’s ear), proving fault usually requires evidence that a Defendant breached a duty owed the Plaintiff. Generally this means that there is some standard of care that applies to the relationship between the Plaintiff and Defendant, and Plaintiff alleges and must prove that the Defendant violated that standard of care.

STANDARD OF CARE

"Standard of care" is the minimum acceptable conduct or performance related to a given activity or relationship. For example, meeting the applicable standard of care may mean a football coach should teach proper techniques to players, including keeping the head out of tackles – regardless what he actually teaches. Another standard of care may mean that an equipment manager should properly fit and recondition helmets, pads and other gear – regardless whether he actually does so. If a player receives a head injury during a tackle and when the coach and manager are sued, the standard practices of the coach and manager will be measured against the standard of care: What they should have done is used to evaluate the inadequacies of what they allegedly did do.

STANDARD OF PRACTICE

There is a big difference, conceptually, between the standard of care and standard practices. The “standard of practice” may or may not rise to the minimum level of care required by a given activity. Tradition, misunderstanding, economics and lack of knowledge may lead to a “standard of practice” which falls short of the standard of care. In the context of sports where a deficient standard of practice results in harm to a participant, liability is likely. Bluntly put, adopting “standard practices” which are somehow defensible is an empty exercise if the testimony at trial reveals that such “standards of practice” failed to meet the standard of care.

The speeding rush hour driver provides an illustration of how tempting it is to swap standard of care and “standard of practice.” At rush hour, everyone drives 70 MPH. It is the “standard of practice.” However, for the unlucky soul stopped for 70 MPH in a 55 MPH zone during rush hour, it is losing defense to claim that the standard practice at rush hour somehow overrides or supersedes the speed limit.

In a way, for purposes of assessing civil liability a standard of care is much like a speed limit. One might ignore it with impunity for a long time, but once caught, there is no legal justification for violating a standard of care.
Unfortunately, standards of care, unlike speed limits, are not posted for all to see. One has to search a bit. Moreover, there may be a gray area – room for argument – about what really is the standard of care in a given circumstance.

MEASURING UP

Once it’s too late – when a lawsuit is pending – lawyers must line up experts to give their opinions on the appropriate standards of care and whether, in hindsight, a hapless defendant “measured up.” To prevent this sort of misfortune, it behooves those in sports who are responsible for establishing policies and practices to look past their own field and locker rooms. This is a good practice for more important reasons: standard of care exist as threshold markers of one’s duty to another. Regardless of liability concerns, such standards announce what a given sports community agrees upon as the minimum requirements for health and safety.

In sports applicable standards of care can be discerned after consulting a number of sources. Sports texts and rulebooks, product labels and instructions, coaching associations, college and amateur sports organizations, and athletic professional associations may all provide useful information. It is unlikely, however, that one will be able to find any list or set of rules labeled standard of care. Life just isn’t that easy.

Identifying, as best one can, the proper standard of care for a sporting activity, and assuring that at a minimum, the local “standard of practice” conforms to the standard of care is time well spent. Changing local practice to meet or – better yet – exceed the standard of care improves safety and lessens exposure to liability.

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