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Q: What should athletes know about health care power of attorney documents and HIPAA releases?

Thanks to Renee Evangelista and Colin Sherer for putting together this Q and A.

A: While most high school and athletics training programs require that athletes sign HIPAA releases that permit trainers to share the athlete's health information whenever medical care is required to treat athletics injuries, every athlete must think about serious injury situations in which he or she is incapacitated and his or her health care proxy or surrogate needs to make a serious medical decision. Who should be making this decision on the athlete's behalf?

For many athletes, particularly those who have made it to the collegiate or professional level, the greatest fear is being sidelined by an injury. Thus, athletes undergo extensive training to attain peak physical condition and use state-of-the-art equipment to protect themselves from the inherent dangers of their sport. However, despite such preparation and preventative measures, injuries are inevitable, and too few athletes take the simple steps necessary to ensure that the right person will be there to make medical decisions for them should they be unable to do so. Before stepping onto the field of play, every athlete should consider executing the following documents:

Health Care Power of Attorney
This document may also be known as a health care proxy or a designation of health care surrogate, depending upon the state in which it is established. It permits you to designate an individual as your health care agent to make medical decisions when, in the opinion of your attending physician, you are incapacitated, either because of a temporary medical setback or an extended illness. As a result, you can avoid the time and expense of having a guardian appointed by a court. In some states, this is a statutory form, in others, the form is more flexible. Either way, the document will generally include a living will declaration which specifies your wishes with respect to life support by artificial means should you be diagnosed with a terminal medical condition from which you are not likely to recover (alternatively, the living will provisions may be in a stand-alone document). Finally, this document often allows you to provide for organ and tissue donation if you so desire.

HIPAA Release

Under the law of many states, the above document does not become effective until an individual becomes incapacitated. Under the Health Insurance Portability and Accountability Act (HIPAA), a doctor cannot give information about a patient's health care without the patient's consent. Situations can arise where a health care agent is unable to obtain information necessary to make informed decisions on an individual's behalf. To avoid this situation, you should designate your health care agents to be "personal representatives" under HIPAA. They then would be authorized to have access to your medical information.

A copy of each of these documents should be kept on file with your doctor as well as the team's training staff so that it is available wherever the game takes you.

For more information on this topic, please contact Renee A.R. Evangelista, Esq., Co-Partner-in-Charge of the Rhode Island Offices of Edwards Wildman Palmer LLP, a law firm with offices in Boston, Chicago, Ft. Lauderdale, Hartford, Los Angeles, Madison, NJ, New York, Newport Beach, Providence, Stamford, Tokyo, Washington DC, West Palm Beach and Hong Kong (associated office), or her associate, Colin O. Sherer, Esq.

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