

TRAINER FAILS TO REPORT HEAD INJURY SYMPTOMS TO PHYSICIAN

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As a general rule, in their personal and professional lives, every individual owes a legal duty to conform to the standard of care of the reasonable person under the circumstances. Based upon the customs, practices, and usages of a particular field or profession, reasonable care may presume a greater level of experience, knowledge, and appreciation of risks than the ordinary individual. For example, in the event of an injury, the reasonable sport coach or activity instructor has a legal duty to take proper post-injury procedures to protect against aggravation of the injury. In so doing, both coaches and trainers alike may be expected to provide initial first aid for both minor and serious injuries, e.g. wrapping a sprained ankle in an ace bandage or splinting and applying ice to a fracture. In addition, as illustrated by the *Pinson* decision described herein, the reasonable athletic trainer may also owe a legal duty to follow a physician's orders in treating an athlete.

FACTS OF THE CASE

In the case of *Pinson v. State*, C.A. No. 02A01-9409-BC-00210 (Tenn. App. 1995), plaintiff Michael Pinson suffered a blow to the head while playing intercollegiate football at the University of Tennessee at Martin (UTM). During a football practice on August 25, 1984, Pinson walked to the sidelines, said that he had been "kicked in the head," and collapsed unconscious. During the time that Pinson was unconscious, the UTM athletic trainer, James Richard Lyon (Lyon), examined Pinson. Lyon's personal notes from the day of Pinson's injury show that Lyon found palsy on the left side of Pinson's face, no control of the left side of his body, unequal pupils and no response to pain, sound or movement. These notes also show that Pinson remained unconscious for a period of ten minutes.

After his examination of Pinson, Lyon summoned an ambulance which transported Pinson to the hospital. Lyon did not personally accompany Pinson to the hospital but had a student trainer accompany Pinson. Lyon did not give the trainer any instructions about the information that the trainer should give the emergency room doctor. Hospital records show that the trainer informed an emergency room nurse that Pinson lost consciousness for about two minutes. Although Lyon visited the emergency room shortly after Pinson arrived, Lyon did not speak to a doctor about the neurological signs he had observed on the practice field.

At the hospital, Pinson's head was X-rayed and found to be normal. No CT scan was ever done. Pinson was admitted to the hospital for observation. On August 26, 1994, Pinson's treating physician at the hospital, Dr. O.K. Smith, telephoned Lyon and told him that Pinson should not participate in football practice for a week and that, if any further trouble arose, Pinson should return to Dr. Smith or another physician. On that same day,

Dr. Smith released Pinson to Lyon, and Lyon transported Pinson from the hospital to UTM.

When Lyon picked up Pinson, he complained to Lyon of a headache. Lyon did not record this headache in the UTM records. On August 27, 1984, Pinson complained of a headache and was given Empirin # 4 by Lyon. On August 28, 1984, Pinson told Lyon that he had a headache, but that it was milder than the one he had on the previous day. Lyon's notes of August 30, 1984, which refer to Pinson, contain the statement "Headache!".

On September 3, 1984, Lyon contacted Dr. Ira Porter, the UTM team physician. Lyon told Dr. Porter that Pinson was asymptomatic for a concussion on September 3. Lyon did not tell Dr. Porter about Pinson's headaches on the 26th, 27th, 28th, or 30th. Relying on Lyon's report of Pinson's condition, Dr. Porter concurred with Dr. Smith's prior advice that Pinson could return to practice if there were no further problems.

On September 3, 1984, Pinson returned to practice. He participated in practice, traveled as a member of the team and played in at least two games. Testimony from Pinson's mother, roommate and girlfriend, indicated that Pinson suffered headaches and complained of dizziness, nausea and blurred vision throughout this three week period from September 3 to September 24. Lyon did not report any of these symptoms to Dr. Porter. On September 24, Pinson walked to the sideline during a practice, stated that he had been "kicked in the head" and collapsed unconscious.

Pinson was eventually taken to Jackson-Madison County General Hospital where he underwent brain surgery. Surgeons there found that Pinson had sustained a chronic subdural hematoma of three to four weeks duration and an acute subdural hematoma. Pinson remained in a coma for several weeks and was later to another facility for intensive rehabilitative treatment. As a result of his injuries, Pinson suffered severe and permanent neurological damage.

NEGLIGENCE CLAIM

Pinson brought a claim alleging negligence against UTM before the state claims commission. Three medical experts testified that Pinson's actions immediately following the blow to his head would have been highly relevant information in determining Pinson's treatment. Specifically, these experts testified that treating physicians at the hospital would have been more likely to order a CT scan had any one of them "been informed of the neurological symptoms that Pinson exhibited on August 25, 1984 (i.e., palsy on the left side of the face, no control of left side of the body, and the fact that Pinson was hit on the football field, then walked to the sidelines and collapsed unconscious)."

Based upon such expert testimony, the claims commissioner found "Lyon had a duty to report Pinson's neurological signs which he observed on August 25, 1984 to a medical doctor. In addition, the claims commissioner found Lyon also had a duty "to report Pinson's subsequent headaches to a medical doctor as Dr. Smith had instructed." The claims commissioner found further that Lyon was negligent in not reporting Pinson's

complaints of headaches to Dr. Smith or Dr. Porter, following Pinson's first injury. Based upon these findings, the claims commissioner held the State liable for Pinson's injuries and entered a \$300,000 judgment in favor of Pinson. The State appealed.

DUTY TO INFORM PHYSICIAN?

The issue before the appeals court was whether the UT athletic trainer had a duty to initiate a transfer of medical information to Pinson's physicians. If such a duty existed, the appeals court would then consider whether the claims commission had "erred in finding that the UT athletic trainer breached his duty to report head injury symptoms" and such breach of duty by the UT athletic trainer was the proximate (i.e., legal) cause of Pinson's injuries.

On appeal, the State maintained that "the UTM athletic trainer Lyon had no affirmative duty to inform Pinson's doctors about the neurological signs exhibited by Pinson directly after his first injury." In particular, the State asserted that there was no evidence that "that an athletic trainer has a duty to seek out and volunteer information to a physician or guess what information a physician might need for purposes of evaluating or treating an injured athlete."

Similarly, Lyon had testified that "the standard of care of an athletic trainer was only to accurately report to a physician information which the physician requested, including any observed physical symptoms." As a result, the State argued that "Lyon had a duty to report these signs only if requested to do so by a physician."

On appeal, the State had also argued that there was "no statutory duty that would require a trainer to volunteer information to an athlete's doctor." In so doing, the State cited the following state law regarding the certification of athletic trainers which, at the time Pinson's injury, provided in pertinent part:

"Athletic Trainer" means a person with specific qualifications as set forth in this chapter, who is employed by and works with an athletic team and who, upon the advice and consent of his team physician, carries out the practice of prevention or physical rehabilitation, or both, of injuries incurred by participating athletes at his educational institution, . . . In carrying out these functions, the athletic trainer is authorized to use whatever physical modalities as are deemed necessary by a team physician... T.C.A. § 63-24-101(1)(1990)

While acknowledging that this statutory definition of "athletic trainer" was not "intended by the legislature to define the duty of an athletic trainer," the appeals court, nevertheless, found this statutory definition to be "illustrative in determining the role of a trainer in an athletic program."

Since Pinson was participating in a scheduled athletic practice for an intercollegiate team sponsored by UTM under the supervision of UTM employees at the time of his injury, the appeals court found UTM and its employee, Lyon, owed Pinson a legal duty to "exercise reasonable care under the circumstances." In light of this legal duty, the issue

before the appeals court was “whether UTM and Lyon exercised the appropriate standard of care in their treatment of Pinson.” Moreover, the appeals court found the applicable standard of care could be established by Lyon’s own admissions. Specifically, Lyon had testified that it was the trainer’s duty to follow the physician’s orders in treating an athlete.

Applying this “standard of care for an athletic trainer offered by Lyon himself at trial,” the appeals court found sufficient evidence to support the claims commissioner’s determination that “Lyon breached his duty when, contrary to the instructions of Dr. Smith, Lyon failed to report Pinson’s headaches to a physician before allowing Pinson to return to practice.”

It is undisputed that Dr. Smith instructed Lyon that Pinson was not to return to contact for one week and to report if any further trouble arose. Dr. Smith further instructed Lyon to report any signs of a head injury, including headaches, to Dr. Smith or to another physician.

It is further undisputed that on September 3, Lyon telephoned Dr. Porter, and discussed Pinson’s condition. During that telephone conversation, Porter asked Lyon “if [Pinson] was having headaches, visual problems, visual disturbances, vomiting, drowsiness, weakness.” Lyon told Dr. Porter that Pinson was asymptomatic for a head injury on September 3.

On appeal, the State had argued further that “Lyon did not breach any duty owed to Pinson because Pinson was asymptomatic for a concussion on September 3.” In so doing, the State maintained that “Lyon did not have a duty to disclose any information about Pinson’s previous complaints on August 26th, 27th, 28th or 30th to Dr. Porter because Dr. Porter inquired only as to Pinson’s condition on September 3.” The appeals court rejected this argument:

It flies in the face of reason for Lyon, as a certified athletic trainer, to suggest that he had no duty to report Pinson’s prior headaches to Dr. Porter on September 3, particularly when he had been instructed by Dr. Smith to inform a doctor of any further symptoms of a head injury...

On September 3, Dr. Porter asked Lyon if Pinson was experiencing any signs of head injury. Despite overwhelming evidence that Pinson was experiencing headaches and that Lyon knew about them, Lyon responded that Pinson was not exhibiting any signs of a serious head injury.

CAUSATION

Having found that the State owed Pinson a legal duty of care under the circumstances of this particular case, the appeals court then considered whether “UTM’s and Lyon’s conduct was not the proximate cause of Pinson’s injuries.” As defined by the appeals court, proximate cause requires that the defendant’s conduct must have been a “substantial factor” in producing plaintiff’s injury. Moreover, to establish proximate (i.e. legal) cause, “the harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence.”

Applying these principles to the facts of the case, the appeals court noted a consensus of opinion among the testimony of plaintiff's three medical experts that "Pinson would likely have had little or no permanent neurological deficit" if his injury had been "properly diagnosed prior to September 24, 1984." In particular, such expert testimony indicated that "Pinson's first injury would have been properly diagnosed and treated if Lyon had reported the neurological symptoms exhibited by Pinson from August 26 to September 24." If Lyons had apprised treating physicians of Pinson's symptoms, the medical experts agreed that Pinson would have been subjected to a neurological consult and CT scan which "would have helped reveal Pinson's injured brain."

Moreover, plaintiff's medical expert testified that "the state of Pinson's brain between September 3 and September 24 was "extremely swollen and very fragile." Under such circumstances, plaintiff's medical expert opined that "a trivial amount of trauma could have caused the acute subdural hematoma to develop." Given such testimony, the appeals court found it "clear that Lyon's conduct contributed significantly to Pinson's overall injury." As a result, the appeals court held that "Lyon's negligence in not reporting Pinson's headaches to a physician, after having been instructed to do so, was more likely than not a substantial factor in the misdiagnosis of Pinson's head injury." Further, the appeals court found that "Pinson's permanent injuries could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence."

It seems extremely foreseeable that withholding requested information from a team physician could result in permanent injury to a football player, who had collapsed unconscious the previous week. Finally, we are unaware of any public policy that would require us to hold a university unaccountable when the negligence of its employee results in severe injuries to an athlete.

The appeals court, therefore, concluded that "Lyon's negligence in not reporting Pinson's headaches was a proximate cause of Pinson's permanent injuries." As a result, the appeals court affirmed the judgment of the claims commission in favor of Pinson.