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Not the Last Word

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Not the Last Word: A Goldwater Rule for Sports Medicine

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President Trump sure has kept the nation's amateur psychologists busy. Self-appointed mental-health experts, including newspaper columnists, late-night comedians, and my wife's Uncle Stanley, all have detailed opinions to share about President Trump's state of mind.

But it's not just the amateurs who are taking this approach. Dr. Bandy Lee, a psychiatrist at the Yale School of Medicine, has recently edited a book, *The Dangerous Case of Donald Trump: 27 Psychiatrists and Mental Health Experts Assess a President*, to "warn against the president's psychological instability and the dangers it poses" [12, 13]—without the benefit of a face-to-face evaluation.

By publishing this book, Dr. Lee allegedly violated Section 7 of the American Psychiatric Association's Principles of Medical Ethics [23], the so-called Goldwater Rule, which states that "it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination" [2]. The Goldwater Rule is named after Barry Goldwater, the 1964 Republican Presidential nominee who was labeled by psychiatrists who never examined him as a "paranoiac" with "delusions of persecution", "irrationally cruel" [20], and generally unfit to serve as president. Goldwater successfully sued a magazine that printed these opinions; the judgment was upheld by the U. S. Supreme Court [8].

I wonder if there is a role for a Goldwater Rule in orthopaedics, specifically regarding sports injuries of professional athletes.

Newspaper and online articles describing the injuries of professional and elite college athletes frequently are peppered with quotations from orthopaedic surgeons who have never examined the athlete in question. Twitter feeds are loaded with unprompted comments from orthopaedic surgeons. The information shared by physicians is scrutinized rapidly not only by sentimental fans with their hearts on their sleeves, but by fantasy-league participants [10] and gamblers who have fortunes on the line [22]. And while almost all of the statements I have read over the years have been reasonable, armchair medical commentary can be harmful, and explicit professional standards may therefore be helpful.

A Goldwater Rule for sports medicine must start from the premise that commentary about professional athletes can educate the public. People respond to stories much more than facts and figures, and therefore a lesson woven around the experiences a famous person is more likely to stick. In my practice, recounting the unfortunate episode of Jerry Rice and his patellar fracture in a game just 14 weeks after ACL surgery [21] does more to support my unhurried rehab schedule than any speech about the biology of healing.

With that in mind, I propose the following framework:

1. Physician-commentators should state explicitly that they have never met the athlete in question.

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2. Physician-commentators should not disparage the famous patient with speculation, even with statements that are generally true. For instance, fifth metacarpal neck fractures may be associated with poor impulse control and wall punching. Osteonecrosis of the femoral head may be associated with alcoholism. Wondering without evidence whether those generalities apply to a particular athlete, however, is unfair.
3. Physician-commentators should take care to not disparage the treating providers, either. A team physician's treatment strategy may on the surface seem strange, but it may be driven by facts the public does not know. These facts may include elements of the past medical history or the preferences of the patient-athletes or their agents. Plausible justifications for nonstandard approaches should be offered.
4. Nonstandard approaches to diagnosis and treatment should be placed in context. Immediate surgery for a fifth metatarsal fracture may make sense for a football player hoping to salvage the second half of the season, but not for many other people. That distinction should be stressed.
5. Ignorance should be confessed. If you don't know, say "I don't know". Much of sports medicine concerns orthopaedics, but not all of it: Nutrition, cardiology, and psychology, to name just a few examples, may be the topic of the day. If the subject is outside of one's expertise, no commentary should be offered.

Are these rules needed? Sally Satel, a colleague of Dr. Lee's at Yale, stated that the main reason for the Goldwater Rule is that psychiatry must not "squander the profession's authority and goodwill" [19]. That rationale might apply to all fields of medicine. But the need for guidelines goes beyond that. The Goldwater Rule was enshrined following a successful lawsuit, in which Mr. Goldwater convinced the court spurious psychiatric opinions met the legal standard for libel. Along those lines, inappropriate comments about a professional athlete's injury or its treatment may be similarly damaging to the reputation of the athlete or physician. All of us—doctors, patients, and society at large—will be better served by eliminating inappropriate comments in the first place.

The rules above merely codify common decency, so some may say that they are not needed. Orthopaedic surgeons have certainly been more circumspect than their colleagues in psychiatry regarding political comments. After all, when candidate Trump could not remember which foot had the bone spurs [7] that exempted him from the Vietnam war, no orthopaedic surgeon wrote a book entitled *The Curious Feet of Donald Trump: 26 Bones That Might Be Affected*.

Well-formed rules promoting a fair and accurate discussion about professional athletes' injuries can educate the public and improve musculoskeletal health.

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At the start of the 2017-2018 season, the National Football League (NFL) launched a new ad campaign, one which touted the NFL as the "longest-running entertainment show on TV" [4]. Movie-style posters and trailer clips warned viewers to "brace themselves for shock and awe" in the coming season, and the ad released before the league's opening game closed with the powerful message: "The best entertainment in the world is back. Let the show begin" [15].

This marketing strategy capitalized on the fact that, today, professional athletics are grounded not just in competition or teamwork, but in entertainment. More than just participants, athletes have become commodities that fans consume through attending games, viewing televised competitions on their televisions and smartphones, supporting media coverage of elite athletes, engaging in fantasy leagues, or simply purchasing team merchandise.

Dr. Bernstein's column presents a thoughtful response to the potential dangers of armchair medical commentary, including damage to the reputation of the athlete or the physicians themselves. I agree that to enact a full-scale Goldwater Rule for sports medicine would be to dismiss the very nature of this multibillion-dollar entertainment industry, one which derives nearly as much from the observers—the fans and reporters and commentators and physicians—as from the athletes themselves.

Further, full-scale extension of the Goldwater Rule might improperly conflate expressing a negative opinion with having deliberate malice. Senator Goldwater's lawsuit was successful because the publication's inflammatory comments met the high standard required of libel cases involving public figures [5, 11, 17, 20], but only in extreme scenarios might the same be said of a sports medicine physician's evidence-based and professional diagnostic opinion.

Most importantly, this piece identifies some of the benefits of physician commentary on athletes' injuries, perhaps the most compelling of which relates to health education. As Dr. Bernstein aptly points out, professional athletes provide a powerful opportunity

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to convey lessons about injury treatment and prevention. This opportunity is epitomized by today's shifting conversation surrounding concussions in contact sports. Following increased attention to head injuries in the NFL, National Hockey League, and other professional leagues [3, 16, 18], legislators have imposed contact restrictions in practice and training; leagues have adopted rule and equipment modifications prioritizing player safety; and athletes, parents, and families have been provided the knowledge to make more informed choices on their participation in these sports [6]. Just as we must not squander our profession's authority and goodwill, we also must not squander this opportunity to educate the public.

In order to protect the reputation and authority of our profession, there should be some guidelines surrounding the physician-commentator's contributions to this discussion. Must these guidelines be formal regulations? Perhaps not, and perhaps to impose formal regulations would detract from opportunities for healthcare education. Instead, these rules can be a standard of etiquette incorporated into the professional conduct curriculum of sports medicine fellowship training, and professional guidelines for the AAOS and sports medicine societies. The guidelines presented by Dr. Bernstein in this column offer us exactly that standard, in the form of a framework for professionalism that we can adopt for ourselves and teach to the next generation of sports medicine physicians.

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Physician commentary on injuries to athletes is a desirable activity for both the physician involved and the public. It offers the public an insight into the injury and explanation of ramifications with regards to loss of playing time for the athlete, and for the physician, it offers exposure and perhaps some "tasteful marketing" of their expertise. By contrast, misstatements can be harmful to everyone involved including the athlete. As Dr. Bernstein points out in his article on the Goldwater Rule, this opportunity comes with responsibilities. The rules he recommends represent safe guidelines for all those sports medicine physicians who wish to enter this realm and serve as experts to the public.

While I agree with these recommendations, I would note that most of these guidelines are already in place in the American Academy of Orthopaedic Surgeons (AAOS) Expert Witness Affirmation Statement [1]. This type of activity does not differ much from serving as an expert witness in a judicial proceeding and the same guidelines are applicable for both. Although sworn testimony seemingly carries a much greater burden of truth, and false testimony under oath can result in much greater penalties, an expert opinion given either in the courtroom or in the press should be taken equally seriously by the physician. The AAOS guidelines begin with the statement: "I will always be truthful," which seems to serve well as a first commandment in these situations. It is always important to emphasize that opinions are given without complete understanding of the specifics of the case in question. The physician should focus on the reported lesion and statistics regarding prognosis and return to play and emphasize that he/she cannot give more specific opinions based on the exact facts of the case which are not usually available.

Dr. Bernstein makes several other good points in this article, one of which is that recommendations made in the sports setting are often different than those made to recreational athletes. There is often an "artificial deadline" involved in the decision-making between a sports-medicine physician and the athlete based on the next important date on which the athlete needs to compete. Postoperative rehabilitation must be complete before the next season begins in order not to affect two seasons. The commenting physician and public may not take this into account and need to understand that the rationale for all decisions cannot be understood outside the organization.

I also agree with Dr. Bernstein that examples from injuries to professional athletes for patient education are invaluable. Players sitting out of important games including the playoffs serve as a good example for the young athlete whose eagerness to return must be tempered to allow adequate healing to occur. Every orthopaedic surgeon should keep relevant stories like these in mind to help with patient and family education.

It is always good advice to avoid disparagement, be judicious with one's comments, and to give thoughtful insights while admitting one's ignorance. The Goldwater Rules are a reasonable codification of this philosophy in sports medicine.

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When first reading Dr. Bernstein's eloquent piece on establishing a "Goldwater Rule" for sports medicine, I generally agreed with it. But as I thought further about the rule, I concluded that it is too problematic.

When examining any such proposed rule from my perch as an academic physician and one trained in the law, at least three questions come up: (1) Is it legal? (2) Is it practical? And, (3) is it wise? It seems to me that this

rule—which I will call the "Bernstein Rule"—falls short on at least two of these three criteria.

First, is it legal? On first glance, one would agree that a private organization can regulate the responsibilities of its members. However, on second glance, this is not so clear. If violating the Bernstein Rule means an ethics violation, one could argue that this is an unconstitutional impingement on free speech. The reasoning is that state licensing boards can use ethics violations to deny or revoke medical licenses. Therefore, under the Bernstein Rule, the state arguably could act to restrict or punish the free expression of opinion. At least one eminent legal scholar, Jeannie Suk Gersen DPhil, JD of Harvard Law School, has written that she has considered mounting such a First Amendment challenge to the Goldwater Rule [9].

Second, is it practical? Here, the experience of the American Psychiatric Association (APA) may prove instructive. While there have been a few disciplinary actions for violation of the Goldwater rule over the years, the APA eventually abandoned its efforts to enforce, given concerns about due process [9]. The existence of the rule did not, in any case, prevent the publication of the *Dangerous Case of Donald Trump*. And as far as I know, the distinguished authors of that book have suffered no significant harm to their careers or professional standing.

Finally, is it wise? It is instructive to remember that the original Goldwater Rule was in part influenced by guild pressure from the more-conservative AMA after the more-liberal psychiatric community opined on Senator Goldwater's mental health. Indeed, there are political pressures and policy considerations behind the original rule that are not readily apparent in the Bernstein Rule. While I can see that there is some wisdom here motivating the rule (such as the Hippocratic injunction to "do no harm" and the corresponding goal of the Bernstein Rule to prevent harm by unwise comments), do we really want to get involved in regulating speech? While not all speech is protected, the courts have had a tough time trying to discern wisely the contours of protected and unprotected speech. Why do we think that it will be any easier for doctors? Aren't there enough other pressing problems to tackle ethically? (See: The practice of concurrent surgeries in different operating rooms supervised by the same surgeon) [14]. While I do see that there is some wisdom here in Dr. Bernstein's idea, even the Owl of Minerva sometimes nods off.

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