Athletes, Biometrics, and Ethical Implications

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Roadmap

- Current use of biometrics/biodata in professional sport
- HIPPA regulations
- Biodata, wearables and health information in the major league (MLB, MLS, NBA, NFL, NHL) CBAs
- Ethical dilemmas
- Model Rules
Athlete’s Biometric Data (ABD)

- Measurement and statistical analysis of an athlete’s physical characteristics

https://www.slideshare.net/sawyerfitness/biomechanics-53724056
Collection of Athletes’ Biodata (ABD)

- Catapult
- DEXA
- miCoach
- Motus
- Polar
- Smartlife
- Viperpod
- WHOOP
- Whisp
- Zephyr
What are teams doing with the data?

- Baseline
- Contact force
- Diagnostics
- Fitness
- General wellness
- Injury prevention
- Injury recovery
- Readiness for play
- Sleep
- Tactical formations
- Training optimization
Conceptual Schematic for ABD

x axis:
Medical information/ PHI
Spectrum: categorically medical, nature, how used

y axis:
Traditional ("Moneyball") analytics
Spectrum: numbers only, health information used

Proprietary/ Intellectual property
Spectrum: level of processing
Health Law

ABD contains Personal Health Information

CBA
Exemption for Sports Teams

HIPPA
Consent/Waiver
Collective Bargaining Agreements

Healthcare and Medical = Mandatory Subject of Bargaining

- **Required tests**
  - Draftees: baseline, intelligence, personality testing
  - Players: physiological monitoring and testing, blood, neurological

- **Extensive disclosure requirements**
  - Team
  - Insurance companies
  - Commissioner/League/Federation
  - Other teams (trades)
  - Injury related information to media/public
ABD in the CBA’s

- NBA “Wearables” Provision
  - Joint committee establishes standards
  - Wearables not allowed in games
  - Players have full access; teams limited access
  - Wearables are voluntary
  - Management use of ABD limited
* Monetizing the data/who gets the $ still unknown

- NFL, MLS, NHL, MLB clauses limited/favor management
The ABD Battleground

- Players concerned data will be used against them
  - Problems opting out
  - Problems opting in
  - CONTRACT NEGOTIATIONS
  - SALARY ARBITRATION
  - Public perception

- Owners concerned about performance: wins = $$$
- Technology companies proprietary interests ($$$)
Bio-ethics

- Around the clock monitoring
- Scope
- Purpose
- Conflicts of Interest
- Informed consent
Security

- De-identified
- Heavily encrypted

- Hackers
  - Cardinals-Astros hacking incident

- Team cybersecurity
  - Vendor contracts
  - Data breach insurance
Model Rules

Rule 2.1 Advisor
- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Transactions With Persons Other Than Clients
Rule 4.1 Truthfulness In Statements To Others
- In the course of representing a client a lawyer shall not knowingly:
  - (a) make a false statement of material fact or law to a third person; or
  - (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.
Questions?

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