Liability Risks in the Return to Play Decision

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All Clear ≠ All Clear

- The end of stay-at-home orders is a necessary, but not sufficient condition to avoiding liability.
- Transmission as a result of negligence, while difficult to prove, risks significant liability to the club AND its directors and officers.
What do you “need” to do?

- Duty of Care
  - The degree of attentiveness, caution, and prudence a reasonable person would exercise under the circumstances

- What is reasonable?
  - Guidelines from Public Health Depts, CDC, USOPC, Nat’l Sports Org
  - Community norms, but not just legal “herd immunity”
  - Highest duty where you know or should have known someone has it (also easier to prove causation)

- Develop and Enforce Protocols
  - Use guidelines that are adapted for your sport & facility
  - Information sheets + waivers (not a magic bullet)
What about Insurance?

• Insurance is difficult, if not impossible, to get
  • You’re probably not covered for a pandemic
  • Even if there’s no exclusion, insurance will likely fight coverage

• No coverage may = no permit
  • Most facilities require permit holders to get adequate insurance and to name the facility as an additional insured.
  • Access may depend upon schools or parks permitting without coverage

• Immunity Laws likely won’t be a panacea