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RETOUR À LA COMPÉTITION LES ASPECTS MÉDICO – SPORTIFS, ÉTHIQUES ET JURIDIQUES

RETURN TO COMPETITION, MEDICAL, LEGAL, AND ETHICAL CONSIDERATIONS

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RETURN TO COMPETITION **MEDICAL, LEGAL AND ETHICAL CONSIDERATIONS**

By Dr Michel Léglise, Chairman of the Medical Commission

Abstract

The decision to return to play is more complicated than a physician's clean bill of health or a coach's attestation that an athlete is in good physical and technical condition.

Their opinions, their common decision, often gives rise to commentary, criticism and even pressure from the athlete himself, his entourage, his parents if he is a minor, a club, federation, employers, sponsors and the media, many of which fail to take into consideration respect for an athlete's health.

A physician is the undisputable guarantor set in place to safeguard an athlete's physical and psychological well-being. At times a medal, money or success comes into play, but rarely by the athlete himself. Too often these criteria surface from his entourage.

Such abuse of power in the handling of an athlete's sporting career is both unacceptable and deserving of heavy sanctions. Any person in the life of an athlete, whether in a decision-making role or wielding pressure, must remember that he will be held **legally** accountable for upholding his professional, moral and **ethical responsibilities**.

Return to the sports field, return to maximum effort, physical preparation and technical training, then competition always represents a challenge for an athlete, not only from the physical, technical and psychological point of view, but also because the athlete may sometimes need to solve family, social, or financial problems, or work or sponsor-related issues. These problems and issues may, moreover, have been at least part of the reason why the sports activity was stopped. It is therefore not hard to see that although medical reasons are, admittedly, the main cause of an interruption in sports activity, they are not the only cause and other factors must be taken into account.

Since we know that **physical and moral health** is at the very heart of the subject and of paramount importance, it appears useful at this point to look into how the attitudes of coaches, relatives and others may be harmful.

Indeed, these people may be more concerned by less honourable interests than the athlete's health, by the result ..., whatever the price.

We will examine ETHICAL drifts that may have LEGAL implications, especially in the case of top athletes, whether real professionals or not, and under-age athletes for whom parents are responsible.

In principle, unless exception, whatever the reason for interrupting the sports activity, the shorter the interruption, the easier the return to play, since physical condition, automatic reflexes, joint suppleness, etc. rapidly decrease with inactivity, *but in all cases we will see* that returning too quickly can be dangerous and inappropriate. No stage in physical, physiological and psychological progress must be neglected. The athlete, doctor and coach trio must plan this together.

I) RETURN TO COMPETITION

The deciding factors:

The decision is based on assessments at 3 levels:

1 An assessment of the athlete's health by the competent, specialised medical team

This assessment, as any medical act or decision, must be independent of any external influence, that is to say any pressure from family or other persons close to the athlete, third-party persons or organisations. The information provided by the coach is invaluable.

The health assessment will take into account:

- The athlete's personal medical history, any recurrent accidents, specific weaknesses, associated additional chronic pathologies (tendinitis, lower back pain, etc.) that, singly, may not be very serious but together can cause real discomfort; repeated interruption/return periods and age, etc. are also taken into account.
- Physical signs and functional diagnostic examinations, at rest and during exercise, imaging and biological examinations - in other words all classic medical tests in sports medicine checked during exercise, when this is possible.
- Psychological factors assessed by a specialist

2 Assessment of physical risks by the coach

There will, of course, be the need for dialogue with the medical team, taking into account the physical and technical program for return to play and how this evolves, in order to precisely fix the level of constraints based on the athlete's physical and psychological possibilities at a given time.

3 Incidental factors

These are related to the attitude of the athlete, family and other persons, and the pressures that he or she may undergo.

- We may be dealing with a determined athlete who really wishes to return to play, sometimes minimizing and hiding weaknesses and pain or, at the other extreme, an athlete who is encouraged to return with a full medical clearance but who finds reasons to delay this.
- Then there is the influence of the coach, the family and other persons, with sometimes conflicts of interests (between their own personal interests and the athlete's health), including in the case of parents.
- The influence of sponsors, clubs, the federation, etc., with sometimes the same conflicts of interests
- **LEGAL FACTOR** ... this factor is important

A return to play decision must also assess any associated **risks of legal ramifications** whether the decision is taken to refuse permission to return or to authorize this.

We can see that for two cases with very similar pathologies, there could be dispute and filing of a complaint for "loss of chance in sport" following a refusal to authorize return or for risk to health following authorization to return!

II) **MONITORING OF THE ATHLETE in THE RETURN-TO-PLAY PERIOD**

1 **MEDICAL ASPECTS**

* **medical monitoring**

This is based on an interview with the athlete, then specific, regular examinations and tests to constantly check training tolerance in general and, according to the case, the specific behaviour of the accident site or weakness that led the athlete to stop the activity. If possible, the athlete's potential should be determined each day and progress noted.

* **medical and paramedical treatment** should be ongoing ... before, during (for instance joint protection, strapping, etc.) and after exercise (recuperation treatment).

Recommendations should be added regarding a healthy life style, rest and diet.

"Excessive recourse to pain-killing treatments (in particular anti-inflammatory medications and analgesics) may be dangerous and poses a real **ethical problem**, just as recourse to doping substances, which, moreover, are illegal and lead to **disciplinary proceedings**.

2 **PSYCHOLOGICAL ASPECTS:**

A large number of questions in the field of psychology may be asked concerning the circumstances that caused the sports activity to be stopped and relating to the return to play.

We find the rather frequent attitude of athletes who do not wish to stop since they see this as failure, weakness or time lost on the road to success and who must therefore be compelled to stop.

On the other hand, an athlete may wish to stop because he has pushed him or herself too hard and feels that "enough is enough", is no longer interested in the sport from which he or she no longer derives any pleasure or rewards, does not achieve top performance or results ... too much effort and sacrifices are need for little or nothing in return, ... and then there are the injuries.

In such cases it is for the athlete to firstly, express his or her wish to return to play with, if the person so wishes, the advice of a psychologist and the coach. Psychological difficulties may arise: anxiety, fear of not returning at the best level and rapid discouragement.

3 **SPORTS ASPECTS**

Return to play must be accompanied by special measures.

This is where the federation club has a role to play but above all the coach who must organize:

- A lighter and progressive training session timetable and short-term and medium-term competition schedule. Emphasis is then placed on physical preparation, resumption of certain training exercises, generally an increase in the time for physical recovery and rest, etc.
- For certain sports, there should be reduced participation time for competitions at regional, national or international level, or participation in a limited number of events (a gymnast may participate in an agreed reduced number of events with, possibly, limits where the athlete usually finds difficulty, etc.), the coach has a key role to play through his or her technical knowledge and ethics which should help in assessing, more especially, the health risk for the athlete.

Daily collaboration with the doctor is primordial at this stage of return.

4 REGULATORY ASPECTS

National or international sports regulations and technical rules with their requirements may greatly influence the decision to return and how this is organized.

These rules and regulations must be taken into account in conscientious scheduling respecting the athlete's health by not exceeding his or her physical and technical possibilities even if the rules impose a higher level.

5 SOCIAL ASPECTS

The sports activity may have been ceased for reasons linked to studies, work, finances, family issues, meetings, the wish for free time or to achieve other goals.

The return must always, of course, be in the same conditions of medical clearance but there will necessarily be the need for moral and practical support in solving any problems that may still exist.

III THE RETURN to COMPETITION DECISION-MAKERS

Their responsibility

Their legal obligations

Their ethical obligations

The following persons are mainly concerned:

- * the athlete
- * the medical and paramedical team, psychologist, etc.
- * the coach, technicians, fitness trainer, etc.
- * the club, federation, administration and sports movement
- * the family and parents, if the athlete is a minor
- * the medias

THE ATHLETE

The athlete is, of course, the first person concerned

The athlete may be at the receptive end of requests from friends, advice, encouragement or even major pressure from members of his or her club, national team, federation, sponsors and employers.

Sometimes the athlete may not have completely understood the risks involved and it is for the doctor to explain these to him or her. Sometimes the athlete did not want to understand.

In other words, the only sensible and responsible attitude that the athlete can adopt is to strictly respect the **doctor's** instructions (medical instructions but also sports medical instructions after discussions with the coach). Otherwise, the athlete's **liability** may be incurred in the case of accident, including in respect to medical and social welfare cover and his or her insurer.

This rule does not apply to **minors** whose **parents** incur the same **liability**.

The athlete is free to choose the doctor but, for top-level athletes, the rules generally require confirmation and possibly **expert assessment** by the doctor of the relevant national federation.

If the athlete ignores the doctor's instructions or veto and continues to train and wishes to take part in competitions, it is the **responsibility** of the national federation not to select the athlete or allow him or her access to the events and even, if necessary, to training (within the limits of certain prerogatives).

A written undertaking signed by the athlete declaring that he or she assumes responsibility for going against the medical opinion has relatively little **legal value** and does not fully release the doctor from any liability/responsibility.

For some sports, for instance boxing, after a “knock-down” the rules impose a specific minimum period before return to competition. Other international federations do not have any rule of this type for access to competition, including for a return, and rely on the national federation assuming responsibility when the athlete registers

Thus athletes may sometimes be seen who are clearly unfit, injured or in pain but continue to compete without the IF being able to intervene. The lack of regulations does not exclude responsibility/liability and does not protect from possible **legal action**.

The DOCTOR and the medical team

The doctor and the medical and paramedical team are the main references regarding permission to return to competition, following an accident or even when the interruption is due to another reason, since this return makes major demands on the organism and physiological functions. These must, in any case, be evaluated by the doctor.

The doctor is bound by the Hippocratic Oath which clearly underlines his full independence and specifies that his sole concern must be the health of the person he examines.

The ethical rules that must guide him are indicated in the text of his oath (Universal Hippocratic Oath) and there is no need to rewrite these. This oath largely exceeds pure medical practice and specifies the general behaviour of the doctor with a patient. It is for the doctor to implement these principles in his or her decisions.

A doctor can be sanctioned by a civil or criminal **disciplinary** sports jury for any failure to honour this oath, even if this is not specified in the rules of the sport or the laws of the country.

The doctor’s medical knowledge must exceed those of a general medical practitioner and cover the usual medical problems associated with the sport and the special constraints of the practice of each discipline. Despite this, he must be supported by specialists. Dialogue with the coach can, of course, provide him with invaluable information.

Lack of medical knowledge may lead to **legal action** against the doctor.

Consequently, the doctor must be respected for his or her knowledge in the field of medicine, psychology and sport, and his moral values. The doctor’s decisions are final.

The doctor holds great **responsibility** ... that is to say the doctor is **accountable to the athlete** if he or she has not advised and guided the athlete well.

Responsibility also lies heavily on other stakeholders who have not respected the doctor’s decisions.

If the doctor refuses to authorize the athlete’s return, a document written and signed by the athlete (or the parents in the case of a minor) indicating that the latter assumes full liability in the case of an accident, has relatively little legal value. It is preferable for the doctor to draft and sign a document indicating inaptitude and that he does not authorize return to play. This document should also be signed by the athlete with the indication “*read on ...*”.

The doctor’s role is not only to check the athlete’s aptitude for return and to assist the athlete and coach during at least this stage of return, with medical, biological and psychological tests and examinations, and provide advice on life style and diet, but also to ensure that the athlete does not take medications that could artificially facilitate return to play and replace simple, natural training, and lead to the temptation of doping.

THE COACH

The coach's role is not only to train and prepare the athlete physically and technically but also, very often, to manage a large part of the sporting life of the athlete who has requested his or her assistance or has been entrusted to him or her.

The coach must inspire great trust not only for his or her professional knowledge but also for his or her charisma and attitude that focuses on the full development of the athlete's physical and psychological potential through the sport, without forgetting social, professional and other aspects. The coach's role therefore covers much more than just developing the athlete's sports performance.

At medical level, the coach knows that he can count on the medical team's instructions and advice. **To help the athlete to fully develop his or her potential through sport and, above all, not to adversely affect the athlete's health, morality or social and emotional life ...** this characterises the coach's course of action; trust and respect imply ethical conduct in all circumstances.

Such an attitude, such **responsibility** does not protect the coach from **pressure** from others

Thus the coach is accountable to his or her federation (even if not directly linked to it) and public opinion, etc., since closely observed by the athlete's employers or sponsors! The latter may judge the coach almost entirely on the sports results and medals, and it is on these that the coach's reputation and image are based.

Ethical drifts

Poor ethical conduct by coaches is rare but often receives wide media coverage.

Such ethical drifts consist of physical constraints not related to the teaching of the sport, moral constraints, humiliation, bullying, perversion and sexual abuse, etc.

The RETURN TO COMPETITION decision is not escape pressure from stakeholders or even, more rarely, moral and emotional drifts.

A coach sometimes has a difficult choice to make but it always pays off in the long term if the coach respects a strict moral code and medical directives and advice.

The law in the sports sector and for all is very attentive to the coach's moral behaviour in all circumstances and even more so in the case of **children and adolescents**. Sooner or later a coach will be held accountable for improper conduct and can expect very heavy criminal and disciplinary sanctions.

THE CLUB - THE FEDERATION and THE GOVERNING BODIES

It often happens that a club, a region, a national federation, a supervisory sports ministry or a NOC place their trust in an athlete for many years with, of course, human and financial investments, and develop very positive feelings towards the person. And then the athlete is the key element in the team, etc. We can imagine many scenarios of this type.

It is then very tempting to try and convince the athlete (or even the doctor) to take the "small risk" of a return to play despite unfavourable opinions of medical personnel or sports people.

We should bear in mind that if, for instance, a national federation registers an athlete with the international federation for a competition, the signature of its chairman or his representative widely engages **THE RESPONSIBILITY of the national federation in respect to the athlete's physical and sports aptitude**. It is for the national federation to check an athlete's medical and sports aptitude when enrolling the person.

SPORTS REGULATIONS

Sports regulations, which fall within the competence of national and international federations, or national sports authorities, may have a great impact on the athlete's health since they often require the respect of technical rules that may be very rigorous and difficult to assume, especially during a return-to-play period. For example:

- Dates of selective competitions with compulsory participation which may affect the athlete's possibility of taking part in competitions over many months or even years,
- Some technical rules, for instance the "code of points" exercise scoring and evaluation system in gymnastics, fix strict requirements to be respected if an athlete wishes to have any chance of achieving a respectable performance. These requirements may have the dangerous effect of encouraging an athlete to push him or herself to the limit during a return-to-play period.

Thus an international or national federation or other authority must be aware that, when it establishes rules to give its sport a better image, this may possibly lead to consequences for health.

Consequently, the federations, when developing their rules, have a moral and ethical duty and even, for some jurists, a risk of **legal liability**

THE PARENTS, THE FAMILY

It is useful to recall that parents are the **sole legal representatives** in the case of under age athletes.

THEY THEREFORE HOLD LEGAL RESPONSIBILITY FOR THEIR CHILD.

The sport has evolved in such a way that young athletes are increasingly accepted in top level competitions.

These children and adolescents must always retain the link with their parents and family; this is extremely important for their psychological well-being.

For all those involved, that is to say the federation, club, doctor, coach, etc., the parents are the under-age athlete's legal representative.

At practical level, generally no problems arise in relations and collaboration between the coach, sports doctor and parents if the child's health is the primary focus of each.

Sometimes there may be a different opinions concerning stopping and returning to the sports activity.

Some parents are often not well informed or do not always understand the need for monitoring and rigorous medical precautions associated with the major training constraints.

The attitude of other parents, who are (understandably) more protective, may be too emotional and subjective.

We often see two completely opposite, contradictory attitudes, sometimes for identical medical problems, mainly concerning measures linked to temporary inaptitude and return-to-competition decisions.

- Some parents, even for very minor incidents, regularly express the wish that their child should cease the sports activity until the pathology (sometimes presumed or really very slight) has completely healed.

This is a recommendable precautionary principle (an excess of caution?) and a protective, responsible and understandable attitude which should be discussed with the sports doctor and coach in order for a sensible, reasoned decision to be made whether on stopping or returning to competition.

- Some parents, no doubt very ill-informed and badly advised on medical issues, driven more or less by the desire to see their child become a champion at any price (perhaps projecting themselves in their child's performance?), intervene when it is question of serious medical

problems to block any interruption of the training or to ensure that it is as short as possible, without considering the consequences for the child's health sometimes with approval of an imprudent doctor whom they trust, sometimes with the approval of the coach who is just as imprudent.

This drift is serious and the parents bear heavy **responsibility** and legal liability.

A document written and signed by the parents indicating that, despite contrary medical opinion, they assume full responsibility for letting their child compete, has relatively little legal value and does not truly release the doctor from his responsibility.

In other words, the parents not only bear the legal responsibility but, more importantly, have **A MORAL and ETHICAL DUTY** to their child regarding his or her physical and psychological health.

Under no circumstances can they escape **legal proceedings** for neglecting this duty.

It should be noted that since **school attendance** is a **legal** obligation, the impact of return to competition on this must be taken into account.

THE EMPLOYERS – and the SPONSORS ...

In the case of professional athletes remunerated for practicing a sports activity and thus contributing to a company's image, the employer and the sponsor both wish the period of interruption to be as short as possible, which is quite understandable.

The employer may put pressure on the athlete to rapidly return to competition, possibly making it plain to the athlete and his or her advisers that otherwise the contract will end.

An employer concerned about his or her own "investment – image" will not always understand that the best protection of this "investment" is the respect of the athlete's health. A professional **legal body** could, depending on the case, sanction the employer or sponsor for their failures and requirements if they are contrary to the rules on the protection of health.

(It is important for athletes to ensure that their contracts contain a clause concerning possible health problems and appropriate insurance).

THE MEDIAS

The medias can greatly influence the behaviour of a top athlete, sometimes positively and sometimes negatively.

The medias, which are, generally, unaware of what has actually occurred and the precise medical diagnosis of the problem preventing the athlete's return, may make questionable interpretations not always recognizing the athlete's courage and determination.

Since athletes are concerned about their image and do not want to be forgotten by the medias, they may seek to return to competition as soon as possible, even if not ready.

APPENDED NOTE

Effort to combat doping and return to competition:

In the case of an athlete subject to a whereabouts reporting duty to allow doping tests to be conducted outside competitions:

Any athlete who wishes to end his or her career must notify this and will no longer be required to undergo doping tests. However, an athlete who decides to RETURN TO COMPETITION must notify this and wait one year (or 6 months in the case of certain international federations) before returning. The athlete may undergo doping tests during this period.

The return-to-competition decision provokes discussions that go far beyond the medical aptitude pronounced by the doctor and the physical and technical aptitude pronounced by the coach.

Their opinion, their often joint decision, sometimes provokes comments, criticisms or even pressure by the athlete and other stakeholders, including the athlete's parents in the case of a

minor, the club, federation, employers, sponsors or medias, which do not always give due consideration to the athlete's health.

The athlete's physical and moral health must be the sole criterion and it is the doctor who is the undeniable guarantor.

Other arguments are, nonetheless, put forward (the medal, money and success) and very often not by the athlete but by other stakeholders.

Certain drifts in the "management" of an athlete's life are unacceptable and may be heavily sanctioned

Each stakeholder, decision-maker or person putting pressure on the athlete to return should know that he or she has a professional, moral and ethical responsibility to respect the athlete's health and well-being, and failure in this respect can lead to legal proceedings.

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