

A STERN MESSAGE FOR THOSE WHO CAN'T C

Written by Charles Jay
Tuesday, 05 August 2003 18:00

The 85th Round

Ladies and gentlemen, I want to be as brief as possible today. If you would, please consider the following hypothetical:

A fighter, who showed some definite signs of sluggishness last time out, wants to start over with a new promoter. During the process of negotiation, while there are still some I's to dot and some T's to cross, the promoter asks the fighter to take a complete physical, which includes some blood testing. It's nothing unreasonable - indeed, when a football player goes from one team to another in a trade, for example, he takes a physical so that the team that traded for him isn't getting "damaged goods". It's simply routine.

Well, in this case, the fighter tests positive for Hepatitis-C. From here on in it's not so routine.

Naturally, the promoter doesn't sign the fighter. But because he's concerned that word might get around the boxing grapevine, the fighter makes the promoter sign a confidentiality agreement, prohibiting any disclosure of the positive test results.

With this agreement in hand, the fighter has no thoughts of retiring, but instead endeavors to find a promoter who won't require him to go through a physical and a jurisdiction to fight in that doesn't test for Hepatitis-C. It's not too difficult to find both.

So ultimately a fight is scheduled, and an opponent is procured.

But obviously there's a problem that, for all intents and purposes, only the infected fighter is privy to.

The commission has been told about the positive Hepatitis test, but hasn't seen any concrete evidence of it. So, for as long as possible, their plan is to do nothing. Before exploring the ramifications of that particular posture, perhaps a quick orientation is in order.

According to the website <http://www.all-about-hepatitisc.com>, "Hepatitis C is a liver disease that is caused by the hepatitis C virus (HCV). The virus enters the liver cells, uses the cell's inner genetic machinery to make copies of itself, which then infect more cells.....In the United States alone, hepatitis C affects about 4 million people, making it much more common than HIV infection. In fact, hepatitis C is the most common bloodborne infection in the United States."

Also,

"Hepatitis C is usually spread from one person to another by direct exposure to infected blood or blood products, and needles or other sharp objects. With hepatitis C, there is risk associated

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with everyday events such as BLEEDING FROM CUTS or NOSEBLEEDS, and blood from menstruation."

Certainly it is not outside the realm of possibility that the disease could be transmitted from one fighter to the other.

Not only that, but there are other people to consider as well - the referee, the corner men, the doctors, the commission personnel at ringside, writers sitting around the ring apron, even customers in the first couple of rows of ringside seats - all of them could come in contact with Hepatitis-infected blood.

What's problematic is that they may never know it.

In fact, they may not actually discover it for years, and may infect other people in the interim.

"When symptoms do appear, they may be vague and include tiredness, stomach pain, and rash. Because HCV infection often has no symptoms, many people do not know they have hepatitis C and may be infecting others. **THE ONLY WAY TO KNOW WHETHER YOU HAVE HEPATITIS C IS TO GET A BLOOD TEST FOR HEPATITIS C.**"

Given those parameters, wouldn't you think it's only right to make people aware of the infected fighter's condition?

Yes. But there are roadblocks. One is that promoter's confidentiality agreement with the fighter. Another is something called HIPAA (Health Insurance Portability and Accountability Act), passed in 1996, which, according to the website <http://www.hipaadvisory.com>, establishes "security standards protecting the confidentiality and integrity of 'individually identifiable health information,' past, present or future." Who is affected? "All healthcare organizations. This includes all health care providers, even 1-physician offices, health plans, employers, public health authorities, life insurers, clearinghouses, billing agencies, information systems vendors, service organizations, and universities."

This obviously leads us down a slippery slope. Many questions need to be raised - first of all, considering the symptoms and the internal health, should a fighter with Hepatitis-C be in the ring for his own sake?

In a strenuous physical activity, given the probability of close combat, where a clash of heads can cause both fighters to bleed, doesn't there exist a point where the fighter's right to privacy ends and his opponent's right to know begins? Indeed, couldn't this be classified as a NEED to know? And wouldn't the aforementioned referee, judges, doctors, corner men, etc. also fall into this "need-to-know" category?

Yes. And, to the best of my understanding, it is provided for within HIPAA.

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According to a summary of the Privacy Rule of HIPAA, located at <http://www.hipaadvisory.com/regs/finalprivacymod/gpublic.htm>

"The Privacy Rule recognizes the important role that persons or entities other than public health authorities play in certain essential public health activities. Accordingly, the Rule permits covered entities to disclose protected health information, without authorization, to such persons or entities for the public health activities discussed below:

One of those activities includes.....

PERSONS AT RISK OF CONTRACTING OR SPREADING A DISEASE. A covered entity may disclose protected health information to a person who is at risk of contracting or spreading a disease or condition if other law authorizes the covered entity to notify such individuals as necessary to carry out public health interventions or investigations. For example, a covered health care provider may disclose protected health information as needed to notify a person that (s)he has been exposed to a communicable disease if the covered entity is legally authorized to do so to prevent or control the spread of the disease. See 45 CFR 164.512(b)(1)(iv)."

But under the parameters of my hypothetical, where none of the fighter's information is known, if a mishap occurred, and someone - anyone - contracted Hepatitis-C as a result of such contact with blood, and the jurisdiction had no safeguard for it through the testing of its licensed competitors, wouldn't that commission be on the hook for an awful lot of liability? Wouldn't the same hold true for the fighter infected with the disease, especially if he were fully aware of it?

If those commissioners actually had some prior knowledge of these possibilities, or if probable cause for suspicion were presented to them, wouldn't they be negligent if they didn't investigate it at the first opportunity, or didn't invoke the exception provided in HIPAA?

The answer to all of those questions is - you bet your ass. And you can argue all day about it if you want to.

To carry the hypothetical even further, what if it turned out that there was some kind of financial relationship, directly or indirectly, between the infected fighter and the people who were entrusted to make these kinds of decisions?

If that were the case, you would truly have a scandal of Jack Kerns-like proportions.

Let's say another boxing commission were in possession of a positive test for the disease, or to operate under the standards set up in some commissions, a fighter seeking a license simply failed to provide a NEGATIVE test when requested to do so. That commission has specific knowledge that the fighter is going to compete in another jurisdiction that might not test for Hepatitis-C. Does that commission have any obligation to inform the other commission as to such relevant information, or can it exercise the option that appears to be provided for it under

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the exceptions to the HIPAA Privacy Rule?

Hypothetically, if no one else bothered to provide the information about the infected fighter's condition to his opponent, would I be out of line if I decided to pick up the phone and call the opponent, letting him know the potential danger he was in?

Finally, the most salient question of all - considering all I have laid out for you, why in the world aren't all boxing commissions in the United States mandating pre-fight tests for this disease?

I sure wish everyone in Washington would think about THAT.

And I don't mean just the politicians.

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