Issues in the Standard of Care for Certified Athletic Trainers

SHARON A. WEST
&
MARGARET E. CICCOLELLA
University of the Pacific

INTRODUCTION

Negligence is conduct that falls below a standard of care established by law for the protection of others against unreasonable risk of harm. Actionable negligence requires an injured plaintiff to establish three elements: a legal duty to use due care, breach of that duty, and a proximate or legal causal connection between the breach and the plaintiff's injuries. (Keeton, Dobbs, Keeton, & Owen, 1984)

The existence of duty and whether a defendant's conduct constitutes a breach of duty are determined in relation to circumstances of time, place, and person. General principles of negligence obligate each of us to a standard of care of an ordinary, reasonable, and prudent person under the same or similar circumstances (Keeton et al., 1984). Further, the concept of duty expresses policy considerations that lead the law to say that a particular plaintiff is entitled to protection (*Dillon v. Legg*, 1968).

In the case of certified athletic trainers, the standard of care to which they are legally obligated reflects general principles of negligence as well as policy considerations. The athletic trainer has a "duty to conform to the standard of care required of an ordinary careful [athletic] trainer" (*Searles v. St. Joseph's*, 1997). Case law has explicitly articulated the importance of policy in determining the standard of care required of the athletic trainer. In this light, duty may reflect ideas of morals and justice, administrative convenience, and/or our social ideas as to where loss should fall (*Kleinknecht v. Gettysburg College*, 1993).

It is impractical to define a standard of care required of the athletic trainer that covers all circumstances. The conduct required cannot be so narrowly defined that it covers all possible situations in which an athletic trainer may find herself. The preamble to the National Athletic Trainers' Association (NATA) Code of Ethics acknowledges this very point, stating that the Code's

principles "cannot be expected to cover all specific situations that may be encountered by the practicing athletic trainer, but should be considered representative of the spirit with which athletic trainers should make decisions" (2003, ¶ 2).

It is the intent of this article to review case law that has considered the standard of care for athletic trainers. Duty is the cornerstone of a lawsuit involving an allegation of negligence. It is not the intent of this article to cover all issues and circumstances related to the standard of care. This would be both impossible and impractical. It is simply hoped that by reviewing a reasonable number of issues, a better understanding of duty will follow which will clarify the nexus between legal and professional obligations in various circumstances.

THE EXISTENCE OR CREATION OF DUTY

Duty is the cornerstone of negligence; therefore, if no duty exists, there can be no liability in negligence. For example, in *Burden v. Wilkes-Barre* (1998), the Board of School Directors decided against hiring a certified athletic trainer even though they knew that other area schools were hiring certified athletic trainers to treat injured athletes. During an August practice, a high school football player experienced cramps, collapsed, and died. The court held that there was no affirmative duty on the part of the school to protect the player from injury (p. 572). In the absence of a duty, there could be no breach of duty. Therefore, there was no liability for the death of the player. This case might have been decided differently if the school board had hired an athletic trainer. Once a duty is assumed, there is the obligation to act within the context of general principles of negligence (Keeton et al., 1984). A determination that the school board assumed a duty by hiring an athletic trainer would have required examination of whether a breach of this duty caused the harm suffered by the athlete.

Assumption of duty was at issue in *Kennedy v. Syracuse University* (1995), where a scholarship member of a gymnastics team suffered a serious wrist injury during practice, which required two surgeries. Kennedy argued that since the university always had an athletic trainer present at football and basketball practice and games, it voluntarily assumed a duty to do the same for other sports, including gymnastics. While Kennedy claimed the failure to have an athletic trainer present resulted in the exacerbation of the original wrist injury, the court found otherwise and dismissed the case (p. *4). However, Kennedy failed to establish a prima facia case in negligence (element of causation was not established) and the issue of assumption of duty was not decided.

Foreseeability of Harm

The forseeability of harm is crucial to the question of whether a duty exists. For example, in *Kleinknecht v. Gettysburg College* (1992/1993), the forseeability of cardiac arrest in a student was examined. In this case, parents filed a wrongful death action against the College when their son Drew died of cardiac arrest during a practice session of its intercollegiate lacrosse team. The lower court held that the College had no duty to anticipate and guard against the chance of a fatal arrhythmia in a young and healthy athlete (p. 454). The facts of this case revealed that prior to Drew's death, no athlete at the College had experienced cardiac arrest while playing any sport. Drew had no medical history of heart problems and the National Institutes of Health examined his heart as part of the autopsy and found no pathology.

The lack of foreseeability of the harm was central to the lower court's ruling. "A duty should not be imposed . . . just because it is possible to imagine a student having a cardiac arrest. Rather, the case law fairly establishes that a duty will be imposed only when an event is reasonably foreseeable" (*Kleinknecht v. Gettysburg College*, 1992, p. 453). Nonetheless, the lower court was overruled by a holding that it was foreseeable that a member of the College's intercollegiate lacrosse team could suffer a serious injury during an athletic event (p. 1370). Therefore, it was not reasonable for the College to fail to protect against such a risk. In considering the burden in protecting against such an injury (e.g., to have a cardiopulmonary resuscitation [CPR] certified athletic trainer on site at each and every practice and game), the court found that "the College owed a duty to Drew to have measures in place . . . to provide prompt treatment in the event he or any other member of the lacrosse team suffered a life-threatening injury" (*Kleinknecht v. Gettysburg College*, 1993, p. 1370).

This decision mirrors the position of the NATA regarding the necessity for emergency planning. It is not the unforseeability of a specific injury that obligates the certified athletic trainer. Instead, it is the reasonable foreseeability of the possibility of a life threatening injury that imposes the duty to protect against the risk of harm by implementing an emergency plan (Andersen, Courson, Kleiner & McLoda, 2002).

Special Relationship

A special relationship may provide a basis to impose a duty where it would not otherwise exist. This was demonstrated in *Kleinknecht v. Gettysburg College* (1992/1993) where the parents of an athlete argued, in part, that the College had a duty of care to their son by virtue of his status as a

member of an intercollegiate athletic team. In considering this argument, the court looked to other cases that found no duty of care by a college to its students. More specifically, the court looked at *Bradshaw v. Rawlings* (1979) where no duty was owed to a student who left a college sponsored picnic in an intoxicated state and was severely injured in a car accident. In this case, the court decided "the modern American college is not an insurer of the safety of its students" (p. 138). However, in *Kleinknecht*, the court distinguished between the student who is a recruited athlete and the student at college pursuing his private interests. The court found that Gettysburg College actively recruited players to participate in its intercollegiate lacrosse program and reversed the lower court ruling that the College's duty of care to the student-athlete did not include a duty to provide prompt emergency medical services (*Kleinknecht v. Gettysburg College*, 1993). Similarly, the court in *Pinson v. Tennessee* (1995) found that a recruited athlete participating in a scheduled practice for an intercollegiate team enjoyed a special relationship with the university. Accordingly, the court in *Pinson* found the university and its employees had a duty to provide appropriate care in the treatment of its athletes (p. *7).

Orr v. Brigham Young (BYU) (1994/1997) is in direct contrast to the holdings in *Kleinknecht v. Gettysburg* (1993) and *Pinson v. Tennessee* (1995). In *Orr*, the court rejected an intercollegiate football player's claim that a duty was owed to him on the basis of a special relationship with the university by virtue of his football status. Orr, a football player at BYU, was treated for back pain over two seasons. Initially, the associate head athletic trainer concluded that Orr had a probable sacroiliac joint immobilization and treated him accordingly with heat, massage, mobilization, and electric stimulation. The player's pain continued throughout the season. The following spring, Orr complained of lower back pain and stiffness and was again treated by the athletic trainers. At the end of the next football season, the pain continued and Orr was ultimately diagnosed with a herniated disc which was surgically repaired.

Orr's suit against BYU was largely predicated upon an allegation that the duty of care created by the special relationship between a university and its student-athlete was breached. As in *Kleinknecht*, the court considered the distinction between the general student and the student-athlete. Contrary to *Kleinknecht*, the court in *Orr* found the distinction to be contractual (see also *Kennedy v. Syracuse*, 1995, p. *3). Specifically, it noted that BYU agreed to provide benefits including medical services in exchange for a student's promise to play football (*Orr v. Brigham Young*, 1994, p. 1528). The court acknowledged that negligence in providing these services could result in

liability (*Orr*, 1994, p. 1528). However, the court noted that "nothing in the facts supports Orr's contentions that, by playing football for BYU, he became in essence a ward of the university without any vestige of free will or independence" (*Orr*, p. 1528). The court stated that participation in athletics is not coerced and that university students are adults (p. 1528). Therefore, the court did not impose an additional duty beyond those owed to other students.

DUTY BASED ON SPECIAL KNOWLEDGE AND ABILITY

Professionals typically have special knowledge, skill, and/or experience and the law requires a standard of care consistent with such qualifications. The standard of conduct includes consideration of what is customary and usual in the profession (Keeton et al., 1984). Further, principles and professional position statements give insight into the standard of care as articulated by the governing association. For example, the NATA and the NATA Board of Certification explicitly recognize and demand conduct on the part of certified athletic trainers that is consistent with their special qualifications. The NATA, through its affiliation with the Commission on Accreditation of Allied Health Education Programs, carefully scrutinizes the curricula and faculty at accredited institutions that educate athletic trainers. It requires a thorough examination process through its Board of Certification providing evidence that certified athletic trainers are professionals with knowledge that the average person does not have.

The NATA Code of Ethics (2003) makes reference to special qualifications in its Principles. Members are required to provide competent care consistent with the profession (1.2), adhere to NATA guidelines (2.2), provide only those services for which they are qualified via education and/or experience (3.2), and maintain high standards in the provision of services, recognize the need for continuing education, and participate in research (4.1, 4.2, 4.5).

A review of case law demonstrates that athletic trainers are held to a standard of care that is different from other professions. For example, the courts have distinguished between the duty of athletic trainers and coaches, both of whom have a general duty to exercise reasonable care to protect the health and safety of their athletes (*Cerny v. Cedar Bluffs*, 2001; *Searles v. St. Joseph's*, 1996/1997). The specialized skill and knowledge of the athletic trainer provides a basis on which to distinguish between the duty of the coach and the athletic trainer to an injured athlete. In *Cerny v. Cedar Bluffs* (2001), the court held coaches to a standard of care of "the reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement" (p.

706). The court considered evidence regarding the educational requirements for coaches that included courses in first aid and the prevention/treatment of athletic injuries. By comparison, the training of athletic trainers was beyond that possessed by coaches with respect to the diagnosis of an athletic injury. Therefore, the standard of care was determined to be different for these professionals.

Unlike the coach, the specialized skill and knowledge of the athletic trainer is often beyond a lay person's knowledge and, therefore, typically requires expert testimony to determine standard of care issues. In *Searles v. St. Joseph's* (1997) the court concluded that the standard of care required of a coach for the health and safety of athletes can be ascertained by a lay person. However, the "standard of care applicable to an athletic trainer who treats physical injuries or who must make judgments about the severity of a physical condition does not ordinarily lend itself to common knowledge" (*Searles*, 1997, p. 210). Therefore, where the "conduct in question involves specialized knowledge, skill, or training, expert testimony may be helpful or even necessary to a determination of what the standard of care requires under particular circumstances" (*Cerny v. Cedar Bluffs*, 2001, p. 705).

DUTY TO MAKE A MEDICAL REFERRAL

Principle 3.3 of the NATA Code of Ethics explicitly mandates a duty to make a medical referral, "members shall . . . make referrals . . ." (2003, ¶ 5). The failure to make a referral which in turn causes harm can be a basis for liability. In *Jarreau v. Orleans Parish* (1992), a high school football player experienced a wrist injury during a game. The athlete complained that his wrist continued to hurt and was swollen but continued to play despite being adversely affected by the injury. The athletic trainer did not refer the player to an orthopedist until after the season ended. The orthopedist found a non-union of a navicular fracture with cystic changes that affected healing. The physician testified that the delay in treatment likely exacerbated the injury, limited the results of treatment that included two surgeries, and caused a permanently disabling condition.

In considering the issue of duty, the court in *Jarreau* agreed with the athletic trainer that they could not be expected to diagnose the extent of the injury. However, according to the reasonable person standard, the court stated that athletic trainers "should recognize their limitations in this regard and seek expert medical advice for their players in the face of continuing complaints involving pain and swelling" (*Jarreau*, 1992, p. 1393). Since the athlete presented a persistent medical complaint, a duty existed to enable the athlete to

access treatment made available by the school board. The court found contributory negligence on the part of the athlete, holding that the athlete also had a duty (to himself) to consult a physician or request a referral (p. 1394).

This holding comports with the ethical principles of the NATA. The fact that an athlete bears some responsibility for delayed treatment by willingly participating with an injury and failing to consult with his own physician does not mitigate the duty of the athletic trainer to make a medical referral.

DUTY TO COMMUNICATE

Athletic trainers have a duty to communicate the nature and extent of an athlete's injury to both the athlete and the coach. This is demonstrated in *Searles v. St. Joseph's* (1996/1997) where a former basketball player who suffered knee injuries sued the college, coach, and athletic trainer for negligence. Searles experienced permanent knee damage after he continued to play after being diagnosed with patellar tendonitis. After the basketball season ended, he had two knee surgeries. Searles brought suit alleging, in part, that the athletic trainer failed to advise the coach of the seriousness of Searles' injuries, that Searles should not have been playing basketball, and that the condition of his knees was such that continued play would likely cause permanent injury (*Searles*, 1996).

The athletic trainer testified that he recognized the nature of Searles' problem and was concerned that continued play would result in greater injury to the knee. Further the athletic trainer testified that he discussed Searles' medical problem with the coach. The coach testified he was aware of Searles' knee injury but said he was never advised by the athletic trainer that continued play could permanently injure Searles' knee and that he did not recall the athletic trainer suggesting that Searles not play. Further, the coach testified that the athletic trainer, not the coach, decided whether an injured player could play basketball (*Searles*, 1996)

Expert testimony was not required to establish the applicable standard of care relevant to allegations that the athletic trainer failed to communicate to the coach and the player. Laypersons could apply their common knowledge to establish duty when there is a failure on the part of the athletic trainer to (1) communicate the severity of a player's injuries to a coach and/or (2) advise an athlete that he should not continue playing with his medical condition (*Searles v. St. Joseph's*, 1997, p. 1211).

Athletic trainers also have a duty to report the nature and extent of an athlete's injuries to the treating physician. This is demonstrated in *Pinson v. Tennessee* (1995) where a college football player suffered severe and

permanent neurological damage after two head injuries. During a football practice, Pinson suffered a blow to the head which rendered him unconscious for a period of 10 minutes. Pinson was allowed to return to football practice nine days later despite having suffered headaches and reporting those headaches to the athletic trainer. Three weeks later, Pinson suffered another blow to the head, collapsed unconscious, and remained in a coma for several weeks. The court held that the athletic trainer's negligence in not reporting Pinson's headaches to the physician "was more likely than not a substantial factor in the misdiagnosis of [the initial] head injury" (*Pinson*, 1995, *7) and was the proximate cause of his permanent injuries.

DUTY TO PROVIDE EMERGENCY SERVICES AS A MATTER OF PUBLIC POLICY

In *Kleinknecht v. Gettysburg College* (1992/1993) an athlete collapsed during a fall practice and no athletic trainers or athletic training students were present. Testimony was offered that the collapsed athlete's skin turned blue and a continuous "funny. . .gurgling" (*Kleinknecht,* 1993, p. 1363) noise was coming from him. The team's coaches were present but were not certified in CPR and the nearest telephone was 200-250 yards away from the field. Help was summoned with an athletic training student being the first medical personnel to reach the athlete, followed by a certified athletic trainer who administered CPR. An ambulance arrived, drugs were administered by a paramedic, and the athlete was defibrillated. Despite repeated resuscitation efforts, the athlete could not be revived. The parties vigorously disputed the amount of time that elapsed in connection with the events following the athlete's collapse.

The court ruled that the College had a legal duty to implement preventive measures assuring prompt assistance and treatment in the event one of its student-athletes suffered cardiac arrest while engaged in school-supervised intercollegiate athletic activity (p. 1375). The court considered legal precedent from the Pennsylvania Supreme Court which stated that "the concept of duty amounts to no more than the sum total of those considerations of policy which led the law to say that the particular plaintiff is entitled to protection . . ." from the harm suffered (*Kleinknecht*, 1993, p. 1372). The court noted that even though a heart attack in a young athlete is not reasonably foreseeable, policy considerations impose a duty to protect against medical emergencies. Therefore, as a matter of policy, the College had a duty to adopt preventive measures reasonably designed to avoid possible death from a life-threatening injury.

Similarly, in *Orr v. Brigham Young* (1997), the court took a policy based approach in evaluating whether a special relationship existed between a university and its student athletes. The court noted that there are consequences to both the athlete and society when a duty is imposed. The court addressed whether the imposition of duty would result in a defendant's inability "to perform that duty without either radically changing its character or drastically circumscribing the function it was charged with performing" (p. 1528).

This has special relevance to the athletic trainer given the official position of the NATA requiring emergency planning (Andersen et al., 2002). It also has implications for the First Responder. Clearly, both the courts and the NATA require a reasonable plan for dealing with life threatening emergencies. The definition of a First Responder mandates careful consideration of the background, training, and experience appropriate for any person assuming such status. This represents one of the more crucial issues for athletic trainers given the potential for catastrophic harm under circumstances in which planning and/or personnel are deficient.

STATUTORILY BASED DUTY

The standard of care owed by an athletic trainer may be defined by state legislation. This is especially relevant for states that license athletic trainers, and therefore have statutorily prescribed limitations and delimitations on the conduct permitted by an athletic trainer. However, statutorily prescribed regulations are not always dispositive of an issue. For example, in *Orr v. Brigham Young* (1994/1997), an intercollegiate athlete sued for negligence claiming that BYU breached its duty of care to him because the athletic trainers were practicing medicine without a license. BYU denied that its athletic trainers made any diagnoses as contemplated by its state statutory law. The court agreed that Orr had no separate civil claim based upon the unauthorized practice of medicine, stating that "civil liability does not depend necessarily on lack of statutory licensing qualifications, but rather upon failure to exercise that degree of care and skill considered proper by correct and accepted standards of the profession involved, or stated otherwise failure to use that care exercised by skilled professional [people] doing like work in the vicinity" (*Orr,* p. 1530). The court went on to state that even if a statutory violation occurs, the standard of care must be judged under the circumstances (p. 1530). The court did acknowledge that practicing medicine without a license may be evidence of negligence (p. 1530).

IMMUNITY

Sovereign immunity is an eroding doctrine rooted in English law, i.e., "the King can do no wrong" (Keeton et al., 1984, p.1033). It provides protection for governmental officials at both the state and federal levels. Absolute and qualified immunities exist and in the case of athletic trainers serving in a public capacity (e.g., working at a state as opposed to a private university), qualified immunity may be used as a defense to liability (*Sorey v. Kellet*, 1988). It is beyond the scope of this article to engage in a detailed analysis of absolute versus qualified immunity. However, it is important to be cognizant of the fact that governmental immunities exist (Keeton et al., 1984) which may insulate a publicly employed certified athletic trainer from liability.

For example, in *Sorey* (1988), the court concluded that qualified immunity under Mississippi law shielded the athletic trainer from liability. In this case, a University of Southern Mississippi football player died hours after complaining of nausea and severe cramps and later collapsing on the field during an August practice. All of the defendants were named in their official capacities, and the asserted defense included qualified immunity under state law. The court considered consequences of immunity including the general costs of subjecting officials to the risks of trial, distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service (*Sorey*, 1988). The court analogized to precedent involving providing qualified immunity to physicians in state hospitals when acting in a discretionary capacity within the scope of their duties. The court applied the same reasoning and held that the athletic trainer was performing discretionary functions in administering medical treatment to Sorey (p. 964). Therefore, the court held that the athletic trainer was immune from liability (p. 964).

Similarly, in *Lennon v. Petersen* (1993), the court found that because the athletic trainers' job necessitated reliance on her own judgment to make difficult decisions, she was entitled to discretionary function immunity (p. 175). In this case, a college soccer player experienced sharp pain in his hip and groin area which the athletic trainer attributed to a groin strain and treated accordingly. Later in the season, the athlete consulted his own physician about the pain he continued to experience. Following a series of tests, it was determined that he was suffering from avascular necrosis of both hip joints which required surgery and possible hip joint replacements in the future. The court found, in this case, the athletic trainer had the responsibility to determine whether an athlete was faking or hiding an injury, ascertain the source, extent, and treatment of an injury, determine if the injury was responding to

treatment, and decide when an athlete should be restricted from play, referred to a doctor, or allowed to return to the field (p. 175). Because these functions require judgment and discretion on the part of the athletic trainer, the court found she was entitled to discretionary function immunity (p. 175).

The publicly employed athletic trainer is encouraged to be informed of any available statutorily based immunities. However, immunity is no guarantee of insulation from liability and will depend upon the circumstances of the case. While discretionary acts often have associated immunities, liability for negligence is often statutorily prescribed and offers an avenue for recovery to the injured plaintiff.

CONCLUSION

The intent of this paper was to review issues relevant to the standard of care required of the certified athletic trainer. While a general standard of care exists, duty in a given situation is determined by both circumstance and policy. The circumstances that define athletic trainers' duty or standard of care include consideration of their specialized skill, knowledge, and training. Experts are often used to determine the standard of care in a given situation because the knowledge required is beyond common knowledge and therefore beyond the layperson. Athletic trainers have a duty to provide a standard of care that is consistent with the background and qualifications of professionals in the field under the same or similar circumstances. Their duty will be determined consistent with the standards imposed upon them by their profession, their special qualifications and the law. Additionally, professional position statements articulate with specificity the duty to which athletic trainers may be obligated.

The interplay of circumstance and policy in determining the standard of care for the athletic trainer begs additional review. Is the standard of care different for athletic trainers employed in interscholastic, intercollegiate, and professional sport settings? Where, if any, do differences exist? Do differences exist between states that define the standard of care and those who do not? As these and other issues are addressed, a better understanding of the standard of care to which the athletic trainer is obligated should emerge.

ABOUT THE AUTHORS

SHARON WEST is an Assistant Professor of Sport Sciences and Director of the Athletic Training Education Program at the University of the Pacific in Stockton, CA. She received her Ph.D. in Exercise Physiology from the

University of Miami in 2000 and has been a Certified Athletic Trainer since 1992.

MARGARET CICCOLELLA is a Professor of Sport Sciences at the University of the Pacific in Stockton, California. She received her Ed.D. in Exercise Physiology from Brigham Young University in 1978 and her Juris Doctorate from Humphreys College in 1992. Current teaching responsibilites include anatomical kinesiology and sports law. Dr. Ciccolella has been a member of SSLASP since 1990. A member of the California Bar Association, she serves as outside counsel for San Joaquin County Counsel.

REFERENCES

Andersen J. C., Courson R. W., Kleiner, D. M., & McLoda, T. A. (2002). National Athletic Trainers' Association position statement: Emergency planning in athletics. *Journal of Athletic Training, 37* (1), 99-104.

Bradshaw v. Rawlings, 612 F. 2d 135 (3rd Cir. 1979).

Burden v. Wilkes-Barre Area Sch. Dis., 16 F. Supp 2d 569 (M. Dist. Pa. 1998).

Cerny v. Cedar Bluffs Junior/Senior Pub. Sch., 628 N.W. 2d 697 (Neb. 2001).

Dillon v. Legg, 68 Cal. 2d 728 (Cal. 1968).

Jarreau v. Orleans Parish Sch. Bd., 600 So. 2d 1389 (4th Cir. 1992).

Keeton W., Dobbs D., Keeton R. & Owen D. (Eds.). (1984). *Prosser and Keeton on the law of torts*. St. Paul, Minnesota: West Publishing Co.

Kennedy v. Syracuse Univ., 1995 WL 548710 (N.D. NY 1995).

Kleinknecht v. Gettysburg Coll., 786 F. Supp. 449 (M.D. Pa. 1992), *rev'd & remanded,* 989 F. 2d 1360 (3rd Cir. 1993).

Lennon v. Petersen, 624 So.2d 171 (Ala. 1993).

National Athletic Trainers' Association (NATA) Code of Ethics (n.d.). Retrieved January 5, 2004 from http://www.nata.org/about/codeofethics.htm.

Orr v. Brigham Young Univ., 960 F. Supp. 1522 (D. Utah 1994), *aff'd without published opinion*, 108 F.3d 1388 (10th Cir. 1997).

Pinson v. State of Tennessee, 1995 WL 739820 (Ct. App. Tenn. 1995).

Searles v. Trustees of St. Joseph's Coll., No. CV-94-44 (Me. Super. 1996), *aff'd in part, vacated in part, & remanded*, 695 A.2d 1206 (1997).

Sorey v. Kellet, M.D., 673 F. Supp. 817 (S. D. Miss. 1987), *rev'd,* 849 F. 2d 960 (5th Cir. 1988).