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Injury breaks in fencing: Where does the liability lie?

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Abstract

Sports at any level, but particularly the higher levels with professional athletes, often have problems with injuries interrupting gameplay. In team sports, the player can usually either be substituted for a replacement or the teams can carry on with fewer players. Individual sports such as fencing however present a different problem. Do you let players continue on toward glory and simply push past the potential injury at the potential risk to their health, or should players be forced to retire from the field and lose their place in the competition? Whose fault would it be if a player became badly injured after being allowed to carry on?

Fencing is a highly competitive and unique sport that remains an individualistic competition even when performed as a team sport. While it has all the injury problems that plague sporting competition, the available solutions are often not as clear-cut as they could (or should) be. This paper investigates the potential liability arising from this lack of clarity.

Keywords: *Negligence, Regulation, Medical, Injuries, Retirement, Rule-making, Governing Bodies*

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INTRODUCTION

You'd think you'd have enough to worry about in a fencing match with someone intent on hitting you with a sword, however the threat of injury and the ability to carry on after will always prey on your mind.

This article will examine the regulatory and legal implications of imposing timed injury breaks for fencing, and whether these breaks can continue to be justified. Indeed, a quick glance at other contact and collision sports, suggests that the rules in relation to treatment for injuries occurring on the field of play in other comparable sports are either much more restrictive of the types of treatable injury,¹ the time-period allowed,² or when any treatment can be given.³

The key question this article poses is whether Fencing has got medical rules that are fit for purpose, or whether the governing body should redouble its efforts.

FENCING: A QUICK STAB AT THE RULES



In a nutshell, the sport of Fencing is attempting to stab an opponent whilst he tries to prevent this from happening. Indeed, Sara Jacobson (a twice former USA Olympic competitor) described the sport as *physical chess*,⁸ as fencers try to outwit each other using a combination of specific footwork, trickery and precision thrusts of the weapon to strike the opponent in specific areas.

Olympic Fencing is governed by the Federation International D'escrime (FIE) and divided into three main weapon categories (Foil, Epée and Sabre). While the playing surface (the piste) and clothing are predominantly the same, the weapons and corresponding point-scoring rules vary by discipline. These different rules create three entirely different styles of play as different traits and tactics suit different weapons.

The Foil is a thin sword originating from the side sword worn by French courtiers. As such, foil fencing was designed to train people to fight with this type of weapon. Attacks only score when they hit the chest or neck and there is a system of rules to prevent people simply running up and both stabbing each other at the same time. These rules are known as the right of way and summarise whether a point can be scored. In most circumstances, attacks without the right of way will not score. For example, if your opponent is trying to hit you, you will have to deal with the attack before responding either by parrying, or forcing them to miss or stop their attack. Once this has been accomplished, then you can gain the right to strike them and score the point.

¹ International Tennis Federation (ITF), *Duties and Procedures for Officials* (2014) [F4]

² The World Karate Federation (WKF) *Kata and Kumite Competition rules* (v8.0, effective 1 January 13) – allows a (potentially extendable at the discretion of the referee) three minute period in which competitors can receive treatment [10.6]

³ The *International Boxing Association: Technical & Competition Rules* (AIBA, 2008) declares a Win by Retirement, or Referee Stopping Contest (RFC) if a boxer is unable to continue. There are no additional injury periods beyond the formal rests between rounds, or a break imposed because of foul play.

⁴ The Guardian Newspaper, *'Fencing: an instant expert's guide to the Olympic sport'*

⁵ Aron Szilagyi (Gold) – Men's Individual Sabre, London 2012 Olympics (Olympics YouTube channel)

⁶ Gascon v. Piasecki – Men's Individual Epee Final, London 2012 Olympics (Olympics YouTube channel)

⁷ Lei Sheng (Gold) – Men's Individual Foil, London 2012 Olympics (Olympics YouTube channel)

⁸ S Jacobson *'Taking a stab at fencing the 'physical chess' of the Olympics'* *Wired.com* (July 2012) (online) [<http://www.wired.com/playbook/2012/07/sada-jacobson-baby/>]

The Laws of the Game:

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The origins of the Epée is from duelling weaponry. Since duelling rules changed over time, from fights to the death, to simply the drawing of first blood, so have the rules of modern épée fencing have had to reflect this. As such, there is no right of way and it is possible for both players to score at the same time, with the entire body being the target.

Last but not least is the Sabre. This weapon originates from the cavalry sabres used on horseback. It has very similar rules to the foil, except the whole torso including the head is the target and competitors cannot cross their feet (as this would not have been possible on horseback).

As with any highly competitive sport, fencers are vulnerable to injury from the exertions of the activity. In fencing, the injury risk is also increased both by the presence of weapons and through the unusual footwork and body positions undertaken [during one-on-one fights]. Indeed, it is not unusual for fencers to damage their knees, ankles and ligaments.⁹ To date, the available evidence suggests that over the past 30 years, the acute injury risk (*i.e. injuries that occur as a direct result of participating in a fencing competition that are severe enough to require the competitor to withdraw from a competition*) are between 0.0-0.3 per 1,000 athlete exposures. The study also suggests that women are at a greater risk for a time-loss injury (35%),¹⁰ while competitors in sabre appear to have a significantly higher rate of injuries than foil or épée.

If a player presents with an injury and is not able to continue when the *en garde* starting call is made, then the referee will call over the medical staff and an injury break is implemented during which the player will receive treatment from an appropriate medical expert.¹¹ At the 2012 Olympics, a rule change was implemented to the effect that the medical officers had to examine and treat the injury within ten minutes. If at the end of this injury period the player could not continue, the fencer had to either be withdrawn (allowing their opponent to immediately progress to the next round), or in the case of team competitions, an injury substitute could be made providing that the team had one available and that they had not made any prior substitutions during that match. This latter scenario was illustrated in the Mens Foil Match of the 2012 London Olympics, where following treatment for a leg injury sustained during the match, Sebastian Bachmann (part of the Germany Foil team) was subsequently withdrawn and replaced by another member of his team.¹²



The injury

SHOULD FENCING HAVE INJURY TIME-OUTS: ARE THE COMPETITORS TAKING THE PISTE?

The use of injury time-outs in competitive sporting matches¹³ has recently been criticised as being wide open to abuse. By their very nature, medical time-outs interrupt the continuous flow of matches. This has implications both for TV coverage (which often has to be concluded within tightly restricted time-scales) and for the competitive strategies employed by the athletes. Indeed, in 2013, Victoria Azarenka was widely criticised by the media for taking an extended medical time-out during a critical point in the Australian Open tennis.¹⁴ While Azarenka was legitimately entitled under the rules to take two consecutive medical time-outs

⁹ Professor PA Harmer, 'Research and Injuries: Making Fencing safer – our first priority' (2009) 12 *Escrime* 22

[<http://www.fie.ch/download/medical/fr/medical%20escrime%20XXI%2068.pdf>]

¹⁰ PA Harmer, 'Fencing' in *Vol.XVI, Epidemiology of Injury in Olympic Sports* (eds: DJ Caine, PA Harmer & MA Schiff) (The Encyclopedia of Sports Medicine series, Wiley-Blackwell 2011) 124

¹¹ FIE, Rules for Competitions, t.33: Accidents, withdrawal of a competitor (Updated, August 2014)

[http://www.fie.ch/download/rules/en/book_t_august_2014.pdf]

¹² *Men's Fencing Team Foil*, London 2012 Olympics (Olympics YouTube channel) at 42:55

¹³ While it is acknowledged that researchers do suggest that many injuries actually occur within training sessions, it is important to note that this article is only focussing on competitive regulated environments,: D Caine, C Caine, K Linder E Zemper P Harmer 'Epidemiology of Sports Injuries: Human Kinetics' [1996] (186-195)

¹⁴ Game Theory, 'Just give me a minute' *The Economist* (28 Jan 2013)

The Laws of the Game:

An online peer-reviewed law journal for emerging sports law professionals

(one for an injured rib, and another for a knee injury), some commentators felt that the timing of the treatment amounted to gamesmanship, particularly in light of her subsequent reversal of playing fortunes. Indeed, criticism of medical stoppages is not limited to tennis, for example, it is comparatively easy to identify similar (infamous) examples in football¹⁵ and rugby.¹⁶

What perhaps makes fencing distinctive, other than the use of weaponry in the contest, is that in contrast to these other professional sports, fencing is based on traditional values of honour and respect for the contest. You have to salute your opponent and the referee before a bout begins and when one ends. To not do so, apart from being highly disrespectful, can earn in-game punitive measures as high as being banned from the tournament. To suggest therefore that some competitors are intentionally abusing their position by delaying the bout or through deliberate time-wasting measures seems to undermine one of the very tenets of the sport. The problem for regulators is that these legitimate concerns surrounding gamesmanship should also be balanced by the fact that competition organisers and governing bodies owe a duty of care to the athletes at their event.¹⁷ If athletes are struggling with an injury and are unable (or even unwilling) to seek treatment for it, to what extent should officials intervene?

WHAT INJURIES ARE TREATABLE AND WHEN: PAS DE TOUCH(-ING)?

Importantly, in Fencing, for a competitor to receive an injury time-out and treatment, this injury needs to have been assessed and '*properly attested by the delegate of the FIE Medical Committee or by the doctor on duty.*'¹⁸ This means that a competitor or their coach cannot unilaterally decide that they need treatment, rather only the most extensive or debilitating cramping (that is clinically evident) will be allowed treatment. While this is undoubtedly unfair to those competitors who may have minor or intermittent cramp, the rule-change was implemented specifically to avoid the perception that competitors had been abusing the previous system.¹⁹ Under these new injury rules, treatment can only take place for a maximum of ten minutes and injuries can only be treated once. In an attempt to discourage fraudulent claims, an unjustified demand for a medical break can also be punished by a red card (penalty hit).²⁰

By contrast, the rules in tennis are much more detailed and specific:

- Conditions are split into 'treatable'²¹ and 'non-treatable'²² conditions, while any instances of cramp can only be treated at the changeover of ends rather than during the games
- Medical time-outs are generally limited to 3mins of treatment from the point of diagnosis by the physiotherapist

This raises an interesting legal issue, which to a certain extent mimics the current debate facing football concussive injuries²³ - is it possible to accurately diagnose and treat medical injuries within a time-pressured and noisy sports environment, or should athletes who require interventions for medical injuries or illnesses be forced to retire (for their own safety or long-term health)?

¹⁵ BBC News, '*Football: Simeone admits faking World Cup injury*' (March 2 1999)

¹⁶ See for example the infamous 'Bloodgate' incident concerning a fake blood injury to allow a substitute rugby player enter the field of play

¹⁷ *Wattleworth v. Goodwood Road Racing Company and Others* [2004] EWHC 140 (QB)

¹⁸ (see n11) - T.33(1): Injuries or cramp, withdrawal of a competitor

¹⁹ Professor PA Harmer, '*Not all cramps are equal under the rules*' (2010) 69 *Escrime* 28

<http://www.fie.ch/download/medical/fr/medical%20escrime%20XXI%2069.pdf>

²⁰ (see n11) - T.33(3): Injuries or cramp, withdrawal of a competitor

²¹ (see n1) - For example: acute medical conditions requiring immediate medical attention, and non-acute conditions that gradually develop or are aggravated by the match

²² (see n1) - For example: conditions that cannot be treated appropriately or that would require injections or infusions. Importantly, general player fatigue would also fall within this category

²³ J Heshka & K Lines, '*NHL Concussion lawsuit and lessons for contact sports*' (2014) 12 *WSLR* 1



Bloodgate

The Laws of the Game:

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Imposing fixed time-limits on medical professionals may be important to allow competitions to continue with minimal delays, especially given that the average direct elimination fencing match will only last nine minutes! Indeed, perhaps somewhat counter-intuitively, research suggests that the distribution of fencing injuries seems predominantly to be minor surface trauma (abrasions or contusions) or musculoskeletal derangement (sprains and strains), rather than a high proportion of puncture, penetrating or “fencing-specific” injuries due to the required safety equipment worn by fencers at all competitions.¹ Given these findings, it might seem reasonable to expect to diagnose and treat a competitor within ten minutes.

From a medico-legal point of view however, it could be questioned whether such a rule is appropriate given the pressure it puts on medical staff and tournament officials. While there may often be no (or minimal) liability on competitors²⁴ or team captains²⁵ for the injuries suffered, the same does not necessarily hold for the referee,²⁶ the medical professional called upon to treat the athlete,²⁷ and the respective national and/or international governing bodies²⁸ who could all be liable if an athlete suffered lasting injuries.

CONCLUSIONS

There seems a comparative dearth of information and statistics regarding the use of injury time-outs in fencing (or indeed other sports). If we are to ensure that medical time-outs are used responsibly for genuine, treatable injuries, then it is important that these breaks are as transparent as they can be and that data on both their use, and the broad injury classification treated is made available for researchers. Given the comparative rarity of serious injuries in fencing, this legal landmine may be something that fencing regulators are content to side-step around. Indeed, ten minutes may indeed be the most appropriate number, but without the empirical data, there is a fear that the pressure to continue competing may mask more serious consequences.



Lamb Shin

So far, the fencing community has been lucky and there haven't been many incidents that have affected the injury breaks. As such, some will say that the rules are fine as they are, however one only has to look at the Lamb Shin debacle in the 2012 Olympics to see how ridiculous a perfectly sane 'on paper' rule can in fact be bizarre in reality. Hopefully the injury breaks rule won't go down in history in the same way, with potential worse career ending consequences.

²⁴ *Caldwell v. Maguire* [2001] EWCA Civ 1054: It is expected that competitors try to overcome their opponent through superior fencing ability. If however the competitors engage in irregular actions such as collision, jostling or excessive violence, these actions will be punishable under the rules (*Fencing Etiquette*, t.87 (2)).

²⁵The Court in *Vowles v. Evans & WRU* [2003] EWCA Civ 318 held that rugby team captains were under no liability for substituting injured players, and that the referee retained the ultimate decision-making responsibility

²⁶ *Smoldon v. Whitwork & Nolan* [1997] PIQR 133: Essentially the referee has ultimate control over the application of the rules and the safety of the competitors

²⁷ *Bolitho v. City & Hackney HA* [1997] 3 WLR 1151: Doctors and physiotherapists would be judged by the standard of the reasonable practitioner, rather than by the standards of the sport

²⁸ *Wattleworth v. Goodwood Road Racing Company and Others* [2004] EWHC 140 (QB): the governing bodies set down the rules of the contest and are best placed to understand the epidemiology of any injuries, and the appropriate risk management strategies to reduce or mitigate any injuries.

The Laws of the Game:

An online peer-reviewed law journal for emerging sports law professionals

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