THE REST OF YOUR LIFE

Bicycling as a Way of Life

For Dr. Christiane Stahl, bicycling is not so much a hobby as a way of life. She's been commuting by bike to school or work since she was 8 years old.

"I use public transportation, but the nice thing about a bike is you're kind of out there on your own," said Dr. Stahl of the department of pediatrics at the University of Illinois at Chicago. "It's a little more individual and gives you more time for reflection. You're not distracted by all the social interactions that are going on when you take public transportation."

Every day she bikes 5 miles to work "if it's not actively precipitating and the wind is not more than 20 miles an hour against me."

Even Chicago's harsh winter days don't stop her. "I have little booties that I put over my bike shoes and big puffy bike gloves and hats to wear under my helmet," she said.

No special tires are required during her winter commutes because her route includes a network of bike lanes that "get cleared out pretty well" by city snowplows. However, degradation of the bike chain from road salt is an ongoing issue.

Among her favorite vacations are bike trips she's taken through Germany, Wisconsin, and South Carolina. Her easiest and most spontaneous trip "was on the back of a tandem bicycle around the Chicago area—taking advantage of the great trail system, the outdoor concert area of Ravinia Park, and views of Lake Michigan," she said. "Plus, I was in beeper range the whole time, and it's easy to make callbacks from the back of a tandem so no cross-coverage arrangements were required."

An advocate for bike safety, Dr. Stahl has served as a medical volunteer for Bank of America's Bike the Drive, an annual bike ride along scenic Lake Shore Drive that benefits the Active Transportation Alliance (formerly the Chicagoland Bicycle Federation), a not-for-profit biking, walking, and transit advocacy organization.

COURTESY DR. CHRISTIANE STAHL

Dr. Christiane Stahl, a pediatrician based in Chicago, bikes 5 miles to work every day.

She noted that as more people take up bicycling as an inexpensive and environmentally friendly commuting tactic, upgrades in the separation of auto and bicycle traffic will be needed.

"Until we do that, we're going to see rising rates of injury, because I think more people will turn to bicycling as a way of getting around," she said. "Compared with Europe, we have so far to go in terms of creating safer bikeways. I'm hopeful that will occur over the next decade or 2."

A self-described devoted helmet wearer, Dr. Stahl had one serious injury on a bike: a low-speed face plant when she dropped a wheel into a grate on the sidewalk. "Fortunately, I was just outside the hospital emergency room," she said. "I got a fair number of facial lacerations, but I didn't have any head injury."

While she knows her share of bicyclists who set goals to improve their speed or endurance—and fret about reaching those goals—Dr. Stahl is content to enjoy bicycling on her terms.

"For me, biking is not goal oriented," she said. "That's part of what I like about it. On the rare occasions when I'm sitting around and want to get out of the house, I'm just as likely to jump up on my bike and head out aimlessly. That's one of the chief joys of riding my bike: to explore, look around, and see things."

—Doug Brunk

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The purpose of "The Rest of Your Life" is to celebrate the interests and passions of physicians outside of medicine. If you have an idea for this column or would like to tell your story, send an e-mail to d.brunk@elsevier.com.

LAW & MEDICINE

Assumption of Risk

Question: A patient consults her physician for a painful wrist, which is treated with indomethacin. The patient has developed skin rashes caused by various medications in the past, but she does not inform the doctor about this. Shortly after starting indomethacin, she develops Stevens-Johnson syndrome. In regard to an assumption of risk defense, which of the following is true?

A. A patient has a legal duty to reveal to the physician all relevant medical history.

B. Assumption of risk is no longer a valid rule of law.

C. Assumption of risk is an affirmative defense in a tort action and constitutes a complete bar to recovery.

D. Assumption of risk is synonymous with contributory negligence.

E. Giving informed consent is tantamount to assumption of risk.

BY S.Y. TAN, M.D., J.D.

Answer: C. If a plaintiff is fully aware of the risk to which he or she is exposed, and voluntarily accepts that risk, there will be no recovery of damages if harm results. Known as assumption of risk, it constitutes a valid and complete bar to recovery. This defense has two main elements: a patient's full awareness of the risks, and his or her consent to waive all claims for damages.

In contrast, contributory negligence, which usually serves as a partial rather than complete bar to recovery, arises when negligence by the plaintiff played a part in the resulting injury.

Informed consent is when, after being apprised of the risks and alternatives, a patient gives the physician permission to proceed with diagnosis and treatment. However, this principle says nothing about a patient bearing the risk of harm arising out of negligence or incomplete disclosure by the physician.

The Restatement of Torts defines assumption of risk to mean that the plaintiff fully understands the risk and nonetheless chooses voluntarily to take it (Restatement of Torts, §496-C). One court put it this way: "The doctrine of assumption of the risk of danger applies only where the plaintiff, with a full appreciation of the danger involved and without restriction from his freedom of choice, either by circumstances or coercion, deliberately chooses an obviously perilous course of conduct so that it can be said as a matter of law he has assumed all risk of injury" (*Myers v. Boleman,* 260 S.E. 2d 359, Ga., 1979).

The assumption of risk defense has been asserted most prominently in sports activities such as boxing, where serious injuries are an integral known risk. Other examples include foolhardy actions, such as "where one tries to beat a rapidly approaching train across the track, to engage in drag racing or to walk upon a frozen pond where the ice is thin" (*Myers* case, *supra*).

A physician is expected to obtain a complete medical history, but although the patient is expected to be cooperative, he or she does not have to affirmatively volunteer medical information. A doctor cannot readily invoke this doctrine as a defense simply because the patient has not provided a complete medical history. Thus, in the question above (modified from *Hayes v. Hoffman*, 296 S.E.2d 216, Ga., 1982), the doctor's assumption of risk defense will likely fail. In the scenario described at the beginning of this column, the patient cannot be assumed to have understood fully the risk of not disclosing her drug allergies. She certainly did not anticipate developing something as serious as Stevens-Johnson syndrome. In a similar case where a patient developed anaphylaxis from using a sulfa-containing drug, an appeals court held that the trial judge erred by instructing the jury that a patient who fails to disclose relevant medical history to a physician has assumed risk of harm (*Hawkins v. Greenberg*, 283 S.E. 2d 301, Ga., 1981).

In other situations, however, an assumption of risk defense may be used successfully. For example, a patient in California voluntarily and actively sought unorthodox natural herbal treatment for breast cancer after she had refused all conventional therapy. She received full disclosure of the nature of the experimental treatment protocol, and the court therefore rejected her subsequent claim for damages. By giving informed consent to nonconventional experimental therapy in this case, the patient was in effect assuming the risk of harm (*Schneider v. Revici,* 817 F.2d 987, 2nd Cir., 1987).

In English law, the assumption of risk defense is called *volenti non fit injuri* (Latin for "to a willing person, no injury is done"). However, mere knowledge of risk does not necessarily imply consent. For example, a plaintiff once accepted a ride from a drunk driver and sustained injuries in a subsequent accident. The court ruled that *volenti* did not apply in such cases unless the drunkenness was so extreme and so obvious that accepting the ride was equivalent to walking on the edge of an unfenced cliff. ■

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