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**Are you ready for your sports facility
to become a temporary hospital?**

By Kevin H. Kelley and Andrea Austin

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As peak COVID-19 caseloads overwhelm many hospitals in hotspot cities, communities are turning to sports facilities as potential temporary field hospitals, post-acute care facilities, and even quarantine space for unhoused populations. Many in the sports industry are already fielding such calls and looking at what these uses might entail.

But before stadium and arena ops teams dive into how temp hospitals might work in their facilities, it's critical to understand how existing facility agreements will need to be navigated to enable medical uses without running afoul of your agreements.

The following checklist is meant to help you and your staff think through how you can help serve urgent community needs while safeguarding your facility and your operations long-term. Although these guidelines envision entering into an agreement with a medical provider such as a hospital system, many issues will apply equally and can be adapted to arrangements made with state or federal disaster response agencies.

Contract Framework

Who owns the facility?

- If the team operates its publicly-owned facility via a lease or operating agreement, will the team sublease the facility back to the public as a conduit for the medical provider? Or does the lease or operating agreement allow the team to sublease or license other uses to third parties, like medical providers? Is the public owner's consent required for any such subleases or licenses? Does the team's lease or operating agreement need to be amended to enable this use? And would city council or other legislative action be required to approve amendments or subleases/licenses? If so, that could be a time-consuming process.
- If the team owns its own facility, will it enter a direct contract with the medical provider, or will it contract with a government entity, which will in turn contract with the medical provider? Contracting with a medical provider directly will likely be faster and potentially easier, and more robust indemnification provisions are typically available, but contracting with a government entity may offer protections not otherwise available.

Do you have on-hand a complete inventory of all the agreements for the facility, including the lease or operating agreement (and all amendments), concession agreements, naming rights/sponsorship agreements, security contracts, and facilities maintenance and operations agreements? You'll need all of those to understand what approvals are required for this use and whose rights or obligations might need to be waived, or which agreements will need to be amended.

Key Contract Provisions

The agreement with the medical provider, whether entered into with the team directly or with a public stadium owner, will need to cover the following:

Term:

- How long do people intend to use the facility for medical care?
- Is it only for overflow during peak surge of COVID-19 caseload?
- Does it need to be available for a second wave later this year, or just for the initial surge as the pandemic sweeps the nation?
- What are your league's plans for salvaging a season, and how much notice is required to terminate the medical provider's term at the stadium, as conditions on the ground change?

Rent:

- Will this be a token amount, or will it be enough to cover facility operating costs?

Insurance:

- Considering the risks involved and the complexity of medical operations, required coverage levels should likely be substantial, and if the medical provider itself subcontracts for services (e.g., with physician groups, lab services, etc.) then insurance requirements should flow down. Public entities typically self-insure, but many sports facilities are owned by special public districts, which may not have access to the same coverage.
- Be sure to check subrogation language and what the underlying lease or operating agreement require for insurance, to understand how those provisions will be affected by a sublease/license for a medical use with either overlapping or different coverages.

Indemnification:

- Public entities often can't indemnify. And if there's a time when a team would likely want indemnification, it's for medical operations being conducted in a sports facility. So any agreements for a medical use should have robust indemnification from the medical provider flowing to both the team and the public owner of the facility.

Premises:

- What areas of the facility will be accessible and used by the medical provider? Field or court only? Stands? Medical training rooms? Food services?
- Will locker rooms be available for medical staff use? Are there associated security and privacy issues to be addressed, if so?
- Will suites be used for screening rooms, high risk isolation or other uses? Are there conflicts with suite license agreements, if so? How will you communicate with suite license holders about potential medical use of their suites that may raise safety concerns?
- Are there potential uses of the scoreboard or other electronic/announcing systems that the medical provider could envision using for its operations, and what are the related staffing implications?

Operations:

- Who will be responsible for setting up the medical operations, and for operating the facility during the temporary medical use? Although some temporary use agreements have attempted to pass that obligation to the medical provider, that solution is likely inappropriate for sports facilities, which are extremely complex from a building systems perspective – you probably don't want people unfamiliar with your facility trying to operate it.
- Who will be responsible for maintenance, from cleaning to fixing clogged plumbing? Does your maintenance contract involve union labor, which will require additional discussion and problem-solving? Do you want the medical provider to “layer” additional cleaning services, being responsible for not only their own operations but for additional facility cleaning as well (e.g., restrooms, entrance/exit areas, etc.)? Will the medical provider be responsible for both ongoing facility decontamination as well as post-use wind-down?
- Who will be responsible for facility security? Will the medical provider supply its own security personnel, or is it required to use the facility's security staff under the terms of existing security contracts? If the former, are any contract waivers/amendments needed, and will the team's existing security team still be needed to secure certain areas of the facility? If the facility's regular security staff will be used, what training will they receive specifically related to this medical use? Who will provide their PPE, if needed? What new protocols will need to be implemented? Are existing contract provisions and training protocols regarding staff safety sufficient for this scenario?
- If the stadium kitchens and service areas will be used, who will operate them? What does your concession agreement say about third-party usage of food service areas, liability for inventory losses and obligations for replacement/repair? Do you have a current inventory and equipment list? Would the existing contract classify the medical operations as “special events”, with attendant contract rights to provide service? Will the concession agreement need to be amended to allow third-party uses or to waive other rights and obligations? What additional insurance requirements are needed if food service areas are used to support the medical operations? What protocols will need to be implemented to support food prep and service within a social distancing environment? Who provides PPE and other supplies for serving this population?
- For any facility staff involved in facility operations during the temporary medical use, who will be liable if they become ill on the job from coronavirus exposure related to the medical use? Is worker's comp implicated at all?

Utilities:

- Will the medical provider be responsible for covering utility costs, and how will those costs be allocated/determined?
- Will additional generators be required or other utility needs specific to the medical use?

Repairs and Maintenance:

- How will the agreement with the medical provider cover potential damage to the facility caused by their operations, whether to turf, floor surfaces, plumbing or other building systems?
- Will any maintenance and repair obligations in the lease/operating agreement flow to the medical provider?
- Are there any planned or ongoing capital improvements that will need to be rescheduled to accommodate the temporary medical use, and are there any breakage costs with contractors that must be addressed?
- Are there any lease/operating agreement obligations with respect to capital improvements that will need to be waived?

Medical Issues:

- Has the medical provider obtained all the necessary state and federal waivers to be able to operate in a non-hospital setting?
- Will the medical provider source and rely on its own contracts for medical waste?
- How will the medical provider address HIPAA obligations, and how will they indemnify the team and/or facility owner and their staff for HIPAA-related issues in this unconventional setting?

Other Agreements

Sponsorship/Naming Rights Agreements:

- Are there any conflicts in category sponsorships that need to be addressed, for example if a medical provider other than a named sponsor in that category operates in the facility, receives media coverage related to the facility, and installs signage related to the temporary use?
- Are there any “make good” provisions under which the team must provide alternative sponsorship publicity due to the diverted use of the facility?

Non-Relocation Agreements/Provisions:

- If league play generally resumes elsewhere, is a temporary medical use of the facility excused in any non-relocation agreement, particularly if the team volunteers for its stadium to be used for temporary medical care?

Stakeholders and Communications

- ✓ Who are all your stakeholders who either have to approve changes to existing agreements, or who must be consulted? Local officials, lenders, league officials, sponsors, unions, employees and vendors are some of your immediate stakeholders, but players, contractors, fans and suite license holders will also need clear, consistent and frequent communication about how their interests in and concerns about the facility will be addressed during and after the temporary medical use is implemented.
- ✓ Abundant opportunities for positive publicity will need to be supported by targeted communications to stakeholder groups to assuage concerns, enlist support and build affinity for the team.
- ✓ Consider how and where to best leverage the team's philanthropic resources for both immediate needs and longer term partnerships and tributes.
- ✓ Who will be coordinating media coverage and outreach, outreach to and visits from elected officials, and other publicity-related issues? You will likely want to control or help shape messaging and activities related to media, so clarify in advance who the media point people will be for all parties and who will lead any press conferences and public events.

Summary

Running a medical unit in a sports facility requires considerable planning and flexibility, and the questions and issues raised above can help you think through how it could work in your facility, with your current agreements and operating environment. As on the field or the court, having the right team is critical. From risk management to legal and financial advisors to architects and building systems experts, make sure you have all the players you need to help answer your community's pandemic response while protecting your facility and staff long-term.

Key Contacts



Kevin Kelley, Partner | Denver
303.892.4424
kevin.kelley@huschblackwell.com



Andrea Austin, Partner | Denver
303.749.7264
andrea.austin@huschblackwell.com

This article is dedicated to the memory of Samuel Kelley, a career Army West Point grad whose golden years ended too soon due to the coronavirus; to families everywhere who have lost their loved ones in the pandemic; and to the tireless and courageous medical teams, first responders and front line workers everywhere who give their all to fight this disease.