Legal Issues Surrounding Concussions in Youth and High School Sport:

Finding a Standard of Care

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National Sports Law Institute and
Sports Law program, Marquette University Law School
Participation Youth Sports

- 60,316,548 participants
- 44,031,080 actual
- Average 5 years participation

2008

<table>
<thead>
<tr>
<th></th>
<th>6 &amp; under</th>
<th>7-9</th>
<th>10-12</th>
<th>13-15</th>
<th>16-18</th>
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</thead>
<tbody>
<tr>
<td>Boys</td>
<td>64%</td>
<td>60%</td>
<td>70%</td>
<td>73%</td>
<td>63%</td>
</tr>
<tr>
<td>Girls</td>
<td>36%</td>
<td>40%</td>
<td>30%</td>
<td>27%</td>
<td>37%</td>
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</tbody>
</table>

National Council of Youth Sports

Report on Trends and Participation
In Organized Youth Sports

Market Research Report
NCYS Membership Survey - 2008 Edition
Sports injuries for youth/high school athletes

  - 1.6 → 3.8 million TBIs annually in sport/recreation

  - 2001-2005 → 207,830 emergency room visits for concussion and other traumatic brain injuries (TBI) related to sports and recreation activities → 5-18 years old

- RENNIE FERGUSON ET AL., GAME CHANGERS: STATS, STORIES AND WHAT COMMUNITIES ARE DOING TO PROTECT YOUNG ATHLETES. (2013)
  - 2012 → 1.35 million children went to emergency departments with sports-related injuries.
    - 20% injury-related visits to emergency departments for children.
  - 163,670 children went to emergency departments for sports-related concussions, which is one child every three minutes
Sports injuries for youth/high school athletes


1. Majority of people playing contact sports are under age of 19
   1. 300,000 sports related concussions annually

2. 5.6% high school football players sustain in given season (2013 1 M participants = 56,000)
Sport Concussions in High School

- High School Sports-Related Injury Surveillance Study (2011-2012 school year)

Figure 2.1 Injury Diagnosis by Type of Exposure, High School Sports-Related Injury Surveillance Study, US, 2011-12 School Year
Sport Concussions in High School

TABLE 1
Concussion Rates Among High School Athletes by Sport: High School Sports-Related Injury Surveillance Study, United States, 2009-2010 School Years

<table>
<thead>
<tr>
<th>Sport</th>
<th>Concussions</th>
<th>Athlete Exposure (All)</th>
<th>Rate per 10,000 Alls</th>
<th>Rate Ratio (95% CI)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Competition</td>
<td>Practice</td>
<td>Total</td>
<td>Competition</td>
</tr>
<tr>
<td>Football</td>
<td>548</td>
<td>364</td>
<td>912</td>
<td>229,445</td>
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<tr>
<td>Boys' ice hockey</td>
<td>69</td>
<td>11</td>
<td>80</td>
<td>47,418</td>
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<td>Boys' lacrosse</td>
<td>75</td>
<td>18</td>
<td>93</td>
<td>71,900</td>
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<tr>
<td>Girls' soccer</td>
<td>133</td>
<td>76</td>
<td>169</td>
<td>148,389</td>
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<tr>
<td>Girls' tennis</td>
<td>45</td>
<td>15</td>
<td>60</td>
<td>52,381</td>
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<tr>
<td>Girls' field hockey</td>
<td>85</td>
<td>22</td>
<td>107</td>
<td>153,055</td>
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<tr>
<td>Boys' tennis</td>
<td>82</td>
<td>15</td>
<td>65</td>
<td>166,937</td>
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<tr>
<td>Boys' wrestling</td>
<td>63</td>
<td>49</td>
<td>112</td>
<td>138,203</td>
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<tr>
<td>Girls' field hockey</td>
<td>29</td>
<td>23</td>
<td>81</td>
<td>70,180</td>
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<tr>
<td>Boys' basketball</td>
<td>71</td>
<td>25</td>
<td>96</td>
<td>181,541</td>
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<tr>
<td>Girls' softball</td>
<td>36</td>
<td>22</td>
<td>58</td>
<td>123,815</td>
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<tr>
<td>Girls' gymnastics</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>8431</td>
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<tr>
<td>Cheerleading</td>
<td>2</td>
<td>21</td>
<td>23</td>
<td>16,412</td>
</tr>
<tr>
<td>Boys' baseball</td>
<td>4</td>
<td>10</td>
<td>14</td>
<td>167,203</td>
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<td>Girls' volleyball</td>
<td>16</td>
<td>15</td>
<td>31</td>
<td>162,854</td>
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<tr>
<td>Girls' swim/dive</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>45,564</td>
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<tr>
<td>Boys' track/field</td>
<td>3</td>
<td>5</td>
<td>8</td>
<td>82,960</td>
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<tr>
<td>Boys' swim/dive</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>37,586</td>
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Gender comparison

<table>
<thead>
<tr>
<th>Sex</th>
<th>Competition</th>
<th>Practice</th>
<th>Total</th>
<th>Competition</th>
<th>Practice</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Boys</td>
<td>181</td>
<td>54</td>
<td>235</td>
<td>653,362</td>
<td>2,789,509</td>
<td>3,442,812</td>
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<tr>
<td>Girls</td>
<td>259</td>
<td>77</td>
<td>336</td>
<td>550,533</td>
<td>1,452,518</td>
<td>2,003,031</td>
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<tr>
<td>Total</td>
<td>438</td>
<td>131</td>
<td>569</td>
<td>1,203,895</td>
<td>4,242,027</td>
<td>5,445,922</td>
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</tbody>
</table>

Anatomy of a concussion

Here is what happens to the brain to cause a concussion:

1. Initial impact

2. The force from the impact causes the brain to strike the inner surface of the skull and rebound against the opposite side.

3. In severe concussions as the brain rebounds, it twists.

4. The brain swells. In a severe injury, the swelling puts pressure on the brain stem, which controls breathing and other basic life functions.

Sources: Dr. Jay Rosenberg of Kaiser Permanente Medical Care Neurology; American Academy of Neurology; The Human Body

MARK NOWLIN / THE SEATTLE TIMES
K-12 EDUCATION

School-Based Physical Education and Sports Programs

<table>
<thead>
<tr>
<th>Interscholastic Sport</th>
<th>% of All Middle Schools</th>
<th>% of All High Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>Badminton</td>
<td>4.2</td>
<td>7.2</td>
</tr>
<tr>
<td>Baseball</td>
<td>35.7</td>
<td>79.6</td>
</tr>
<tr>
<td>Basketball</td>
<td>76.4</td>
<td>90.9</td>
</tr>
<tr>
<td>Bowling</td>
<td>3.0</td>
<td>17.2</td>
</tr>
<tr>
<td>Cheerleading or competitive spirit</td>
<td>50.9</td>
<td>77.3</td>
</tr>
<tr>
<td>Cross-country</td>
<td>38.9</td>
<td>68.4</td>
</tr>
<tr>
<td>Downhill or cross-country skiing</td>
<td>3.2</td>
<td>5.9</td>
</tr>
<tr>
<td>Fast pitch or slow pitch softball</td>
<td>45.2</td>
<td>77.9</td>
</tr>
<tr>
<td>Field hockey</td>
<td>7.1</td>
<td>10.2</td>
</tr>
<tr>
<td>Football</td>
<td>53.0</td>
<td>71.0</td>
</tr>
<tr>
<td>Golf</td>
<td>22.1</td>
<td>68.4</td>
</tr>
<tr>
<td>Gymnastics</td>
<td>5.2</td>
<td>10.1</td>
</tr>
<tr>
<td>Ice hockey</td>
<td>2.4</td>
<td>14.3</td>
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<tr>
<td>Lacrosse</td>
<td>3.7</td>
<td>12.8</td>
</tr>
<tr>
<td>Rifle</td>
<td>2.1</td>
<td>3.8</td>
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<tr>
<td>Soccer</td>
<td>32.3</td>
<td>60.3</td>
</tr>
<tr>
<td>Swimming or diving</td>
<td>6.9</td>
<td>37.8</td>
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<tr>
<td>Tennis</td>
<td>12.6</td>
<td>53.0</td>
</tr>
<tr>
<td>Track and field</td>
<td>52.1</td>
<td>73.2</td>
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<tr>
<td>Volleyball</td>
<td>57.3</td>
<td>71.4</td>
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<tr>
<td>Water polo</td>
<td>0.5</td>
<td>2.6</td>
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<tr>
<td>Weight lifting</td>
<td>9.9</td>
<td>23.8</td>
</tr>
<tr>
<td>Wrestling</td>
<td>28.7</td>
<td>49.6</td>
</tr>
</tbody>
</table>


Note: All NHAPS estimates used in this report have margins of error at the 95 percent confidence level of plus or minus 7 percentage points or less, unless otherwise noted.
Youth Football


  - “football accounts for the highest incidence of concussion, and therefore receives the most attention”

1. 5 million participants in U.S.
   - 1.3 million high school
   - 3.5 million youth (70%)

2. Followed 6-9 year olds
   1. During games 307 impacts
   2. Practice 441 impacts (impacts of higher magnitude)

3. Level of severity is similar to some of the more severe impacts college players experience, even though the youth players have less body mass and play at slower speeds
<table>
<thead>
<tr>
<th>Sport</th>
<th>Number of Schools</th>
<th>Number of Participants</th>
<th>Number of Schools</th>
<th>Number of Participants</th>
<th>Number of Schools</th>
<th>Number of Participants</th>
</tr>
</thead>
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<tr>
<td>ADAPTED SPORTS (7/5)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Basketball</td>
<td>29</td>
<td>225</td>
<td>26</td>
<td>167</td>
<td>392</td>
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<tr>
<td>Bocce – Indoor</td>
<td>72</td>
<td>482</td>
<td>71</td>
<td>434</td>
<td>936</td>
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<tr>
<td>Bocce – Outdoor</td>
<td>53</td>
<td>380</td>
<td>51</td>
<td>433</td>
<td>615</td>
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<td>Bowling</td>
<td>118</td>
<td>839</td>
<td>118</td>
<td>708</td>
<td>1,538</td>
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<tr>
<td>Cycling</td>
<td>5</td>
<td>19</td>
<td>5</td>
<td>11</td>
<td>30</td>
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<tr>
<td>Flag Football</td>
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<td>24</td>
<td>2</td>
<td>24</td>
<td>48</td>
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<tr>
<td>Floor Hockey</td>
<td>63</td>
<td>263</td>
<td>53</td>
<td>168</td>
<td>431</td>
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<tr>
<td>Golf</td>
<td>8</td>
<td>22</td>
<td>8</td>
<td>12</td>
<td>34</td>
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<td>105</td>
<td>12</td>
<td>71</td>
<td>175</td>
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<tr>
<td>Soccer</td>
<td>100</td>
<td>701</td>
<td>99</td>
<td>478</td>
<td>1,179</td>
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<tr>
<td>Softball</td>
<td>130</td>
<td>767</td>
<td>128</td>
<td>627</td>
<td>1,394</td>
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<td>Strength Training</td>
<td>15</td>
<td>137</td>
<td>12</td>
<td>62</td>
<td>199</td>
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<td>Tennis</td>
<td>59</td>
<td>400</td>
<td>56</td>
<td>401</td>
<td>801</td>
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<td>Track</td>
<td>59</td>
<td>423</td>
<td>57</td>
<td>353</td>
<td>775</td>
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<tr>
<td>AIR RIFLE / (1/1)</td>
<td>50</td>
<td>617</td>
<td>46</td>
<td>408</td>
<td>1,025</td>
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<td>ARCHERY (4/4)</td>
<td>91</td>
<td>1,478</td>
<td>92</td>
<td>1,169</td>
<td>2,647</td>
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<tr>
<td>BADMINTON (4/7)</td>
<td>210</td>
<td>4,259</td>
<td>448</td>
<td>11,811</td>
<td>16,070</td>
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<td>BASEBALL (48/26)</td>
<td>15,832</td>
<td>474,791</td>
<td>227</td>
<td>1,259</td>
<td>476,050</td>
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<td>BASKETBALL (51/31)</td>
<td>17,856</td>
<td>538,676</td>
<td>17,483</td>
<td>433,120</td>
<td>971,796</td>
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<td>BOWLING (22/24)</td>
<td>2,511</td>
<td>28,359</td>
<td>2,494</td>
<td>25,450</td>
<td>53,809</td>
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<td>CANOE FELDING, OUTRIGGER (1/1)</td>
<td>59</td>
<td>1,199</td>
<td>60</td>
<td>1,139</td>
<td>2,338</td>
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<td>COMPETITIVE SQUAD (24/32)</td>
<td>723</td>
<td>3,011</td>
<td>4,647</td>
<td>116,938</td>
<td>119,919</td>
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<td>CREW (7/7)</td>
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<td>2,659</td>
<td>165</td>
<td>4,628</td>
<td>7,197</td>
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<td>CROSS COUNTRY (51/51)</td>
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<td>249,200</td>
<td>13,918</td>
<td>214,369</td>
<td>463,569</td>
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<tr>
<td>DANCE/DRILL (3/7)</td>
<td>49</td>
<td>364</td>
<td>1,284</td>
<td>24,963</td>
<td>25,327</td>
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<tr>
<td>DECATHLON (6/4)</td>
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<td>292</td>
<td>21</td>
<td>156</td>
<td>408</td>
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<td>DRILL TEAM (1/2)</td>
<td>63</td>
<td>704</td>
<td>285</td>
<td>4,629</td>
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<td>EQUESTRIAN (3/4)</td>
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<td>178</td>
<td>219</td>
<td>1,404</td>
<td>1,582</td>
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<td>FENCING (7/7)</td>
<td>100</td>
<td>1,984</td>
<td>106</td>
<td>1,749</td>
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<td>FIELD HOCKEY (5/19)</td>
<td>7</td>
<td>288</td>
<td>1,820</td>
<td>61,883</td>
<td>62,171</td>
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<td>FLAG FOOTBALL (4/6)</td>
<td>24</td>
<td>407</td>
<td>245</td>
<td>7,019</td>
<td>7,516</td>
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<td>FOOTBALL – 11-Player (51/32)</td>
<td>14,048</td>
<td>1,086,827</td>
<td>460</td>
<td>1,531</td>
<td>1,088,159</td>
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<td>6-player (6/0)</td>
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<td>4,422</td>
<td>21</td>
<td>9</td>
<td>4,422</td>
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<tr>
<td>8-player (19/12)</td>
<td>763</td>
<td>19,251</td>
<td>30</td>
<td>127</td>
<td>19,378</td>
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</table>
High School Football

  - 497 fatalities of football players from 1945 – 1999
  - 69% due to brain injuries
  - 7.08 average injuries HS annually
  - All while supervised / Most while being or making a tackle
  - Perhaps the most worrisome finding in this study is that 59% of those contacted stated that the athlete had a prior mild head injury, with 71% occurring during the same season.
High School Football

- High School Sports-Related Injury Surveillance Study (2011-2012 school year)

Figure 3.1 Diagnosis of Football Injuries by Type of Exposure, High School Sports-Related Injury Surveillance Study, US, 2011-12 School Year

- Competition n=287,710
  - Strain/sprain: 15%
  - Contusion: 37%
  - Fracture: 22%
  - Concussion: 14%
  - Other: 12%

- Practice n=270,723
  - Strain/sprain: 18%
  - Contusion: 39%
  - Fracture: 25%
  - Concussion: 9%
  - Other: 9%
Why are concussions a special issue for youth/high school athletes?

1. More vulnerable to concussions
2. Longer period of recovery than adults
3. Less likely to go through medical screening prior to participating
4. No access to team doctor or trainer when a concussion occurs

- May be a higher DUTY for sports organizations/ schools / coaches / or health care providers to protect the health and safety of youth

• Marie-France Wilson, Young Athletes At Risk: Preventing And Managing Consequences Of Sports Concussions In Young Athletes And The Related Legal Issues, 21 Marq. Sports L. Rev. 241 (2010).
Who is liable? Setting a Standard of Care

- Participant ➔ no difference than other sports injuries
  - Negligence, assumption of risk, participant and recreational immunity standards

- Medical Personnel

- Governing Body/Association

- Coach/School
Medical Personnel - Trainers
Duty → of coach, trainer, medical personnel

- Duty to properly assess the athlete’s condition
- Duty to provide or obtain proper medical treatment
- Duty to provide clearance to participate
- Duty to inform the athlete of the risks of athletic participation given the particular medical condition
Breach of Duty

- Standard of Care/Duty
  - Of accepted sports medicine practice
  - Held to level of care that a reasonable sports professional would be held to in a similar situation

- Problem → lack of universally accepted standard for proper assessment and treatment of concussions

- Speed v. State, 240 N.W. 2d 901 (Iowa 1976)
  - A physician is liable for injury to a patient caused by failure of the physician to apply that degree of skill, care, and learning ordinarily possessed and exercised by other physicians in similar circumstances.
  - COURT → need not go beyond the evidence regarding [the doctor’s] conduct. The trial court found that doctor negligent "in that he failed to employ recognized and appropriate tests or examinations to gather the information necessary to prescribe a proper course of treatment of Plaintiff’s condition. . . ."
Medical Guidance and Standards


2. AM. ACAD. OF NEUROLOGY, POSITION STATEMENT ON SPORTS CONCUSSION (Oct. 2010).


5. AM. ACAD. OF NEUROLOGY, SUMMARY OF EVIDENCE-BASED GUIDELINE UPDATE: EVALUATION AND MANAGEMENT OF CONCUSSION IN SPORTS (2013).

Causation

- Athlete must prove that the breach was the legal cause of the injury
  - i.e. trainer/doctor’s actions considerable determining factor in causing the damage/harm
  - Concussions
    - Clearing athlete to play
    - Failure to conduct reasonable objective tests to assess athlete’s condition

  - Athlete hit in head during football practice → unconscious for 10 minutes
  - Sent athlete to hospital, did not communicate with attending physician
    - Athlete returned to play week later
    - Monitored by trainer but trainer did not report symptoms to team physician
    - Collapsed in practice, in coma for weeks and suffered severe and permanent neurological damage

- COURT
  - Trainer (and so school), breached duty to player to exercise the appropriate standard of care of an athletic trainer, and that this was a proximate cause of injury
  - Failure to report this information was a substantial factor in bringing about the permanent damage suffered because it was foreseeable that first injury would have been properly diagnosed and treated if the athletic trainer had reported the symptoms
Damages ??

  - Athlete received $1.5 million in damages ($450,000 from athletic trainer)

- Still difficult to determine

- Balance with Assumption of Risk
  - Precludes liability for injuries arising from those risks deemed inherent in a sport; as a matter of law, others have no legal duty to eliminate those risks or otherwise protect a sports participant from them.

Liability of Medical Personnel?

- Duty $\rightarrow$ many duties
- Breach $\rightarrow$ can be breached
- Cause $\rightarrow$ difficult to establish
- Harm/Damages $\rightarrow$ harm clear, damages difficult to assess
Liability of
State / National Associations & School Districts

When in doubt, sit them out!

When you suspect that a player has a concussion, follow the “Heads Up” 4-step Action Plan.
1. Remove the athlete from play.
2. Ensure that the athlete is evaluated by an appropriate health-care professional.
3. Inform the athlete’s parents or guardians about the possible concussion and give them information on concussion.
4. Keep the athlete out of play the day of the injury and until an appropriate health-care professional says he or she is symptom-free and gives the okay to return to activity.

Suggested Concussion Management
1. No athlete should return to play (RTP) or practice on the same day of a concussion.
2. Any athlete suspected of having a concussion should be evaluated by an appropriate health-care professional that day.
3. Any athlete with a concussion should be medically cleared by an appropriate health-care professional prior to resuming participation in any practice or competition.
4. After medical clearance, RTP should follow a step-wise protocol with provisions for delayed RTP based upon return of any signs or symptoms.
State High School Athletic Associations

- 50 states + DC
  - 19 states + DC have no formal policy and only provide basic information
    - Focus on education (point to NFHS and CDC information),
    - Indiana (ISAA), Pennsylvania (PIAA) no information

  - 31 states have more formal policies or extensive guidance
    - Focus on education (point to NFHS and CDC information) for coaches, athletes and parents
    - A few discuss return to play
    - Reaction to state law so very recent
    - Often mirror language of state law
Wisconsin Interscholastic Athletic Association

When in Doubt, Sit Them Out

Concussions 101, a Primer for Kids and Parents

What is a Concussion?

The Zurich Consensus statement is designed to build on the principles outlined in the original Vienna and Prague documents and to develop further conceptual understanding of this problem using a formal consensus-based approach.

- 3rd Consensus Statement
- 4th Consensus Statement
- WIAA Concussion Primer
- Return to Learn

Concussion Management

A sample concussion management plan for use by schools.
We, along with our community, commit to deliberate excellence for all learners by engaging and educating the whole person to succeed in a dynamic society.

NEW Wisconsin Concussion Law Act 172 - Status 116,293

Please Take Notice of Links on the right side of this page containing agreement forms, additional concussion information, and updates for athletes, parents, coaches, and officials.
### Governing body/association liability

  - Association argued had no duty of care
  - Court seems to agree that it has a duty, but that it was not breached when plaintiff was rendered a quadrapalegic after making a tackle (no causation)

  - Alleged that District had and breached a duty to promulgate rules concerning head injuries and a student's return to play after a head injury, and that the breach of such duty was a proximate cause of the injured plaintiff's injuries.
  - Court found no breach even if was a duty

  - Focus not on rules themselves, but on duty to exercise reasonable care in promulgating and enforcing rules
  - We conclude that, if a jury chose to believe this evidence, it could reasonably decide that the WIAA did not exercise reasonable care in adopting Rule 2-7-2 without making any inquiry into whether a competitive racing start in 3.5 feet of water was safe. There is, of course, evidence that would support the opposite determination, but we cannot conclude as a matter of law that the WIAA was not negligent.
Governing body/association liability

- May have duty of care
  - To set reasonable rules and monitor and enforce them

- Causation very difficult to establish
  - Need to connect unreasonable implementation or lack of reasonable rules to harm

- Issue will often focus on what are the actual rules
  - Association, national rules not mandatory, etc.
Liability of Coaches

Concussion Training for Coaches
Coach Standard of Care

  - Football player hit head while making tackle (Saturday), returned to game, then hit again in later practice drill (Tuesday) → suffered traumatic brain injury
  - Standard of care → "the applicable standard of care by which the conduct of the School’s coaching staff should be judged is that of a reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement."
  - Conduct required to meet standard of care
    - (1) the coach must be familiar with the features of a concussion,
    - (2) the coach must evaluate the player who appears to have suffered a head injury for the symptoms of a concussion,
    - (3) the evaluation must be repeated at intervals before the player can be permitted to reenter a game, and
    - (4) the coach must make a determination based upon the evaluation as to the seriousness of the injury and determine whether it is appropriate to let the player reenter the game or to remove the player from all contact pending a medical examination.
Coaches/Schools

- Jarreau v. Orleans Parish School Bd., 600 So. 2d 1389 (Lous 1992) (football)
  - This responsibility is especially clear in view of the inherent relationship between a coach and his players and the School Board's referral system for medical care through these coaches. Therefore, since this student/athlete presented a persistent medical complaint, we find that Coaches Sims and Dunbar did have a duty to enable Jarreau to access treatment made available to him by the School Board.

- Yanero v. Davis, 65 S.W.3d 510 (Ky. 2002). (baseball)
  - Teachers assigned to supervise juveniles during school-sponsored curricular or extracurricular activities have a duty to exercise that degree of care that ordinarily prudent teachers or coaches engaged in the supervision of students of like age as the plaintiff would exercise under similar circumstances.
Coaches

- Initially, coach as employee may often be immune from liability
  - Sovereign Immunity
  - Official Immunity
  - Participant Immunity
  - Volunteer Immunity

- If get past this, then may be duty and breach
  - Duty not to increase the risks inherent in sports participation
  - Evaluated compared to reasonable coach with similar training
Legal Liability

- Concussion *is/is not* an inherent risk in most sports

- Duty to properly supervise, train, and monitor

- Causation relation to harm even with breach
  - difficult to establish for coach or regulatory body,
  - easiest to show for medical personnel,

- Standards coach, association/district and medical personnel held to all very different standards
Duty/Standard of Care

• Some common law duties established in cases

• May rely on
  • Medical standards/guidelines that can often conflict depending on the occupation (i.e. trainer vs. team physician)

  • State association/school district standards and requirements that are not uniform among states, schools or districts

• Supplement with
  • Federal guidance
  • State laws
FACT SHEET: President Obama Applauds Commitments to Address Sports-Related Concussions in Young People

Sports are one of the best ways to keep our kids active and healthy, but young people make nearly 250,000 emergency room visits each year with sport or recreation-related brain injuries. As a sports fan and a parent with two young daughters, President Obama believes we need to do more to protect the health and safety of our kids.

Today, the President will host the first-ever White House Healthy Kids & Safe Sports Concussion Summit to advance research on sports-related youth concussions and raise awareness of steps to prevent, identify and respond to concussions in young people.

The truth is we still do not know enough about the consequences of traumatic brain injuries, where it’s a hard knock on the playing field or head injury sustained by one of our troops serving abroad. Every mother and father, friend and family deserves to know everything we can about the best way to care for our young athletes and veterans and that’s the core theme of today’s WHITE HOUSE SUMMIT.

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GAO-10-580T

**United States Government Accountability Office**
**Testimony**
**Before the Committee on Education and**
**Workforce, House of Representatives**

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**The White House**
Office of the Press Secretary

**May 29, 2014**

For Immediate Release
Federal Bills

- **H.R.3954: Concussion Awareness and Education Act of 2014**
  - **Description:** Provides systemic research, surveillance, development of rules of play, and dissemination of information on concussions

- **H.R.3532/ S.1546: Protecting Student Athletes from Concussions Act of 2013**
  - **Description:** Amends ESEA to condition each state’s receipt of funds, beginning in FY2015, on the state having in effect and enforcing a law or regulation that meets the minimum requirements for the prevention and treatment of concussions set forth in this Act.

- **H.R.2118/ S.1014: Youth Concussion Act of 2013**
  - **Description:** Directs CPSC to review the National Academies’ report within five months after the report is completed, to make recommendations to protective equipment manufacturers, and to initiate the promulgation of a consumer product safety rule if no voluntary standard is adopted within a one-year period.”

- **H.R.3113/ S.1516: ConTACT Act of 2013**
  - **Description:** Concussion Treatment and Care Tools Act (ConTACT), Amends the Public Health Service Act for the Secretary of Health to establish guidelines for states on the implementation of best practices for diagnosis, treatment, and management of mild traumatic brain injuries in school-aged children, including best practices relating to student athletes returning to play.
Federal organizations

- National Institutes of Health (NIH) (Department of Health and Human Services)
  - Responsible for conducting and supporting medical research to improve health and save lives, including developing strategies to prevent childhood illness and death and developing techniques and technologies for the rehabilitation of individuals with physical disabilities resulting from injuries, such as concussions.
  - CONCUSSION RESEARCH
Federal organizations

- Center for Disease Control (CDC) (Department of Health and Human Services)
  - Responsible for promoting the health and well-being of the U.S. population, including creating policies to prevent unintentional injuries among children and adolescents and to minimize the consequences of these injuries
  - Educational information and training → [http://www.cdc.gov/concussion/sports/index.html](http://www.cdc.gov/concussion/sports/index.html)
  - Evaluation of CDC training for coaches
    - Positive changes in high school coaches’ knowledge, attitudes, behavior, and skills related to concussion prevention and management, but
    - Barriers
      - Athletes’ and their parents “who discount the severity of concussions”
      - Lack of concussion specific injury policies
Federal liability

- Some general guidance,
  - Often mirrored in athletic organization guidelines
  - No real connection to medical guidelines

- Nothing to establish legal liability
State Level

- State laws
- State athletic association
- State government involvement
State Law

- **2009** → Rev. Code Wash. § 28A.600.190 Youth sports -- Concussion and head injury guidelines -- Injured athlete restrictions (Zackary Lystedt Law)


  - (23) (Gfeller-Waller Concussion Awareness Act).

- **2012** → Wis. Stat. § 118.2923. Concussion and head injury

**Now every state and D.C. have a youth concussion law**

1. Education requirements
2. Waivers/permission to play
3. Return to play
Educational requirements

- Or. Rev. Stat. § 336.485: **Concussions; training of coaches; participation by athletes; rules.**
  - (2)
    - (a) Each school district shall ensure that coaches receive annual training to learn how to recognize the symptoms of a concussion and how to seek proper medical treatment for a person suspected of having a concussion.
    - (b) The board shall establish by rule:
      - (A) The requirements of the training described in paragraph (a) of this subsection, which shall be provided by using community resources to the extent practicable; and
      - (B) Timelines to ensure that, to the extent practicable, every coach receives the training described in paragraph (a) of this subsection before the beginning of the season for the school athletic team.

- All states focus on educating the coach
Waiver/ permission to play

- Wash. Rev. Code § 28A.600.190
  - (2) Each school district’s board of directors shall work in concert with the Washington interscholastic activities association to develop the guidelines and other pertinent information and forms to inform and educate coaches, youth athletes, and their parents and/or guardians of the nature and risk of concussion and head injury including continuing to play after concussion or head injury. **On a yearly basis, a concussion and head injury information sheet shall be signed and returned by the youth athlete and the athlete’s parent and/or guardian prior to the youth athlete’s initiating practice or competition.**

- [http://www.wiaawi.org/Health/Concussions.aspx](http://www.wiaawi.org/Health/Concussions.aspx)

- **Sports is a privilege, if you do not sign you do not play**
Return to Play Guidelines

- N.C. Gen. Stat. § 115C-12
  - b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.

- Few states mention or specifically follow the medical guidelines on return to play
Liability?

- ½ of the state laws provide for immunity or specifically disavow liability for those involved

- Ga. Code Ann. § 20-2-324.1
  - This Code section shall not create any liability for, or create a cause of action against, a local board of education, the governing body of a nonpublic school, the governing body of a charter school, or a public recreation facility or the officers, employees, volunteers, or other designated personnel of any such entities for any act or omission related to the removal or nonremoval of a youth athlete from a game, competition, tryout, or practice pursuant to this Code section; provided, however, that for purposes of this subsection, other designated personnel shall not include health care providers unless they are acting in a volunteer capacity.

- Massachusetts
  - Nothing in this section shall be construed to waive liability or immunity of a school district or its officers or employees. This section shall not create any liability for a course of legal action against a school district, its officers or employees.
States Overall

- **Law**
  - No connection to the case law
  - No clear connection to the medical guidelines and research
  - References to training (most likely NFHS and CDC) but only for coach
  - Enhance potential immunity for those involved, do not create liability for not following

- **States supplement these laws with**
  - Athletic Association rules
  - Department of Education or other Agency guidelines
Wisconsin

1. Wisconsin Interscholastic Athletic Association When in Doubt, Sit Them Out

2. Department of Public Instruction Guidelines

3. Wis. Stat. § 118.293. Concussion and head injury

(3) At the beginning of a season for a youth athletic activity, the person operating the youth athletic activity shall distribute a concussion and head injury information sheet to each person who will be coaching that youth athletic activity and to each person who wishes to participate in that youth athletic activity. No person may participate in a youth athletic activity unless the person returns the information sheet signed by the person and, if he or she is under the age of 19, by his or her parent or guardian.

(4)
(a) An athletic coach, or official involved in a youth athletic activity, or health care provider shall remove a person from the youth athletic activity if the coach, official, or health care provider determines that the person exhibits signs, symptoms, or behavior consistent with a concussion or head injury or the coach, official, or health care provider suspects the person has sustained a concussion or head injury.
(b) A person who has been removed from a youth athletic activity under par. (a) may not participate in a youth athletic activity until he or she is evaluated by a health care provider and receives a written clearance to participate in the activity from the health care provider.

(5)
(a) Any athletic coach, official involved in an athletic activity, or volunteer who fails to remove a person from a youth athletic activity under sub. (3) is immune from civil liability for any injury resulting from that omission unless it constitutes gross negligence or willful or wanton misconduct.
(b) Any volunteer who authorizes a person to participate in a youth athletic activity under sub. (3) (b) is immune from civil liability for any injury resulting from that act unless the act constitutes gross negligence or willful or wanton misconduct.
(c) This section does not create any liability for, or cause of action against, any person.
Duty/Standard of Care?

- No federal law
- State law, association guidelines, administrative rules and guidelines
- Sport specific guidelines
- Medical treatment guidelines
- International Consensus
- A CONTINUING ISSUE ➔
1) Youth/ High School Concussions are not the focus
2) **Education efforts not working.**

- Study of 778 football and girls soccer players (10.7% had a concussion during year studied → 22 had more than 2)
  - Majority of athletes continued to practice and play while symptomatic
  - 40% reported that their coach was not aware of their concussion symptoms, despite signing statement at the beginning of the year that they would tell their coach
  - Coach awareness of athletes’ concussions did not vary by education they received about concussions (use of video and accompanying quiz was least effective), nor by awareness of the requirements of the concussion law

2) Education efforts not working.

- Study of 496 coaches → all but three were required to complete concussion education
  - 74.4% required before could coach
  - 16.8% allowed to coach without completing concussion education
  - Only 55.2% were familiar with the term “graduated return to play,” the recommended management for concussion

- All athletes required to sign concussion information form, 89.3% did so
  - ½ coaches personally educated their athletes about concussions
  - 29.5% did not provide anything but the form

- Parent education most limited
  - 82.9% required to sign form
  - Only 16.2% coaches provided any further information

3) Kids do not tell their coaches

- 300,000 REPORTED sports related concussions annually

- Study of 167 high school athletes in football, soccer, lacrosse, or cheerleading

  - 89 participants recalled having possible concussion → Only 15 (16.9%) reported this to a coach or medical professional
  - Participants recalled 84 actual concussions → Reported only 41 (48.8%) to a coach or medical professional
  - Participants recalled 584 “bell ringer” events → Only 72 (12.3%) were reported
  - In games only, 320 concussive events → Only 73 (22.8%) reported

3) Kids do not tell their coaches

- Why not reporting?
  - athlete did not think it was serious enough to report (70.2%),
  - did not want to be removed from a game (36.5%),
  - did not want to let down teammates (27.0%),
  - did not want to let down coaches (23.0%),
  - did not know it was a concussion (14.9%)
  - did not want to be removed from practice (13.5%)
4) What guidelines do we follow?
5) Participation is declining

Pop Warner football saw participation drop 9.5 percent between 2010-12, the largest decline since the organization began keeping statistics more than two decades ago.

<table>
<thead>
<tr>
<th>Year</th>
<th>Players</th>
<th>Percent change</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>225,287</td>
<td>-4.0 percent</td>
</tr>
<tr>
<td>2011</td>
<td>234,723</td>
<td>-5.7 percent</td>
</tr>
<tr>
<td>2010</td>
<td>248,899</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Source: Pop Warner

- 2008-12
  - Soccer -7.1%
  - Baseball -7.2%
  - Basketball -8.3%
  - Football overall -5.4%
6) A NEW Issue?

IN 1904 THEODORE ROOSEVELT THREATENED TO OUTLAW FOOTBALL

BULLY I SAY, I WILL OUTLAW FOOTBALL IF THESE BRAIN INJURIES CONTINUE!

THE PRESIDENT IS ANGRY BECAUSE THERE WERE 14 COLLEGE FOOTBALL PLAYERS...

KILLED OR INJURED FROM BRAIN OR SPINAL CORD INJURIES
Questions?