

Wisconsin Concussion Law is a No Brainer

by

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I. Introduction

The statistics are overwhelming. Somewhere between 1.6 and 3.8 million sports-related concussions occur in the United States every year, an estimate that led the Center for Disease Control and Prevention to conclude that concussions have reached an “epidemic” level.¹ A recent study of U.S. high schools indicated that concussions account for nearly 15 percent of all sports-related injuries reported to athletic trainers, which have resulted in a loss of at least one day of play for young people ages 15 to 24.² Sports are the second leading cause of traumatic brain injury, behind only motor vehicle crashes.³ At least one football player sustains a mild concussion in nearly every American football game.⁴ Even more worrisome is that 40% of young football players resume play after a concussion before the coaches’ guidelines suggest.⁵

Perhaps the most troubling issues, however, are the long-term off-the-field risks, which can range from death to permanent brain damage, headaches, difficulty in concentration, learning disabilities, amnesia, and non-fatal permanent neurological functional disabilities.⁶ Once an athlete has suffered an initial concussion, his or her chances of sustaining a second one are three to six times greater than an athlete who has never had a concussion.⁷ In fact, 16.8 percent of high school athletes suffering a concussion have previously been concussed, and an alarming number of concussions go completely unreported.⁸ Second-impact syndrome can occur for those athletes that have been previously concussed and can lead to rapid brain swelling and death.⁹

Wisconsin Senator Alberta Darling (R-River Hills) recognized the need for action when she sponsored Senate Bill 243 in October 2011, a bill that finally put Wisconsin, at the time, in line with the 34 other states that had adopted

¹ Lindsay Barton, *Concussion Statistics in High School Sports*, MOMSTEAM, <http://www.momsteam.com/health-safety/concussion-rates-high-school-sports> (last visited Mar. 2, 2013).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Concussions*, WIAA, <http://www.wiaawi.org/Health/Concussions.aspx> (last visited Jan. 10, 2012).

⁷ Barton, *supra* note 1.

⁸ *Id.*

⁹ *Concussions*, *supra* note 6.

concussion legislation.¹⁰ Senate Bill 243 was necessary because many parents and coaches were unaware of concussions symptoms and consequences, thus putting youth a greater risk for brain damage and other side effects caused by returning to play too soon after a concussion.¹¹ Wisconsin's proposed bill was and should be one of the toughest. The Wisconsin Department of Public Instruction (DPI) and the Wisconsin Interscholastic Athletic Association (WIAA) are the best-suited parties for regulatory guidelines and implementation of a concussion policy.

The legislation needed to be all-inclusive; that is, it needed to not only affect high school athletes, but athletes in club and other recreational organizations as well. The DPI and WIAA are well equipped to create a model emergency plan that addresses concussions and other head injuries; this plan should be implemented not only by school districts statewide, but also by operators of other youth athletic activities.¹² It is absolutely imperative that a student athlete suspected of receiving a head injury be immediately removed from play and required to obtain a health care provider's written clearance before resuming participation.¹³ An educational and training component must accompany any legislation.

This law was not a political issue. This law was not about Democrats or Republications. This law was not about striking a balance to prevent overreaching. This law was not about statewide control versus local control. This law was not about a one-size fits all approach. This law was not about a choice to develop concussion policies. This law was about the health and safety of our children and the future of youth and interscholastic sports.

Former NFL Hall of Fame quarterback Troy Aikman, whose own career was cut short after multiple concussions, has stated, "I think that we're at a real crossroads, as it relates to the grassroots of our sport, because if I had a 10-year-old boy, I don't know that I'd be real inclined to encourage him to go play football, in light of what we are learning from head injury." ¹⁴

II. What is a Concussion?

A concussion is an injury that changes how the cells in the brain normally work. A concussion is caused by a blow to the head or body that causes the brain to move rapidly inside the skull. Even a

¹⁰ *State Senate Should Act on Youth Concussion Bill*, JSONLINE (Feb. 21, 2012), <http://www.jsonline.com/news/opinion/state-senate-should-act-on-youth-concussion-bill-4m49eua-139908243.html>.

¹¹ *Id.*

¹² *Id.*

¹³ *Concussions*, *supra* note 6.

¹⁴ Peter Barzilai, *Aikman Says Concussions, Saturation could be NFL's Downfall*, USATODAY (Feb. 22, 2012), <http://content.usatoday.com/communities/thehuddle/post/2012/02/troy-aikman-says-concussion-saturation-will-hurt-nfl-1#.UTLUfo4ard4> (last updated Feb. 23, 2012).

'ding,' 'getting your bell rung,' or what seems to be a mild bump or blow to the head can be serious. Concussions can also result from a fall or from players colliding with each other or stationary objects.¹⁵

A concussion will normally create change in the athlete's behavior, judgment, and physical functioning.¹⁶ Some signs and symptoms of a concussion include:

Signs observed by coaching staff ¹⁷	Symptoms reported by athletes ¹⁸
- Appears dazed or stunned	- Head or "pressure" in head
- Is confused about assignment or position	- Nausea or vomiting
- Forgets sports plays	- Balance problems or dizziness
- Is unsure of game, score, or opponent	- Double or blurry vision
- Moves clumsily	- Sensitivity to light
- Answers questions slowly	- Sensitivity to noise
- Loses consciousness (even briefly)	- Feeling sluggish, hazy, foggy, or groggy
- Shows behavior or personality	- Concentration or memory problems
- Can't recall events prior to hit or fall	- Confusion
- Can't recall events after hit or fall	- Does not feel 'right' "

The risk of a concussion should be a major concern for athletes and their coaches. Concussions are serious injuries that affect four areas of human function: 1) physical functioning, such as dizziness and headaches; 2) thinking; 3) emotions; and 4) sleep.¹⁹ Adolescents are more susceptible to concussions than adults.²⁰

III. Wisconsin's New Concussion Law

2011 Wisconsin Act 172 created section 118.293 [concussion and head injury] of the Wisconsin Statutes, which took effect on April 17, 2012. The purpose of the law is to ensure organizers, participants, coaches, parents and officials understand the nature and risk of concussions and head injuries in youth athletic activities and to set a mandatory procedure for when a concussion or head injury is suspected. As such, those involved with organized youth athletic activities should be aware of their new duties and obligations created under the statute.²¹

¹⁵ *Heads up Concussion in Youth Sports: A Fact Sheet for Coaches*, CDC.Gov http://www.cdc.gov/concussion/pdf/coaches_engl.pdf (last visited Mar. 2, 2013).

¹⁶ *Concussions*, *supra* note 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Patrick Fielder, *Concussion Bill Becomes Law*, AXLEY (June 5, 2012), <http://www.axley.com/articles/concussion-bill-becomes-law>.

2011 Wisconsin Act 172 applies to individuals engaged in "youth athletic activity."²² "Youth athletic activity" is

an organized athletic activity in which the participants, the majority of whom are under 19 years of age, are engaged in an athletic game or competition against another team, club, or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity.²³

However, the term under the statute does not cover activities that are part of nonathletic programs or athletic activities engaged in at colleges or universities.²⁴

The law provides that "[a]t the beginning of each season for a youth athletic activity," the athletic director is required to distribute a concussion and head injury information sheet to each coach and to each youth that wishes to participate in a youth activity.²⁵ No person is permitted to participate unless he or she has returned the information sheet signed by both the participant and his or her parent or guardian.²⁶

The law further provides that

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."²⁷

The law utilizes the term "health care provider." A health care provider means a person to whom all of the following apply:

1. He or she holds a credential that authorizes the person to provide health care.
2. He or she is trained and has experience in evaluating and managing pediatric concussions and head injuries.

²² *Id.*

²³ *Id.* (quoting Wis. STAT. 118.293(1)(c)(2012).

²⁴ *Id.*

²⁵ Jeremy Mayo, *A Local Look at Concussions: Part Three Awareness High Among Coaches At High School, Youth Levels*, RIVERNEWSONLINE (April 7, 2012), <http://www.rivernews.com/main.asp?SectionID=8&SubSectionID=77&ArticleID=51350>.

²⁶ *Id.*

²⁷ Wis. STAT. 118.293(4)(a)(2012).

3. He or she is practicing within the scope of his or her credential.²⁸

Wisconsin's concussion law does not make it clear if "health care providers" are limited to physicians or if the term is meant to "include other health care professionals, such as nurses or EMTs."²⁹

However, according to the Wisconsin licensing regulations for medical practices, only licensed physicians are certified to diagnose and treat human health issues (See Wis. Stat. 488.01(9)(a). Therefore, "health care providers" are limited to include only licensed physicians because the evaluation and management of pediatric concussions and head injuries is only within the scope of the credentials of a licensed physician."³⁰

The new law requires the athletic coach to keep the youth out of play until he or she has been evaluated by a health care provider and receives written clearance to participate in athletic activity again once their symptoms have resided.³¹

Furthermore, one important factor to note is that Wisconsin's concussion law is not geared toward penalizing the coach, athletic director, or health care provider for failure to recognize concussion symptoms because the statute provides immunity from civil liability unless the coach, athletic director or health care provider has demonstrated gross negligence in failing to ensure the safety of their players.³² In addition, "[a]ny volunteer who authorizes a person to participate in a youth athletic activity is immune from civil liability for any injury resulting from that act unless the act constitutes gross negligence or willful or wanton misconduct."³³

Wisconsin Statute §118.293(2) indicates that in consultation with the Wisconsin Interscholastic Athletic Association (WIAA), the Wisconsin Department of Public Instruction (DPI) shall develop guidelines and other information for the purpose of educating athletic coaches and pupil athletes and their parents or guardians about the nature and risk of concussions and head injury in youth athletic activities.³⁴

In July of 2012, the WIAA updated its concussion policy for all sports, and extensive information, policy and procedure can be found on concussions as it

²⁸ Fielder, *supra* note 21.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Concussions, supra* note 6.

³² Wis. Stat. §118.293 (5)(a) (2012). Wisconsin Statute §118.293 does not create any liability for, or a cause of action against, any person.

³³ *Id.*

³⁴ *Id.*

relates to Wisconsin interscholastic athletics at:
<http://www.wiaawi.org/Health/Concussions.aspx>.

DPI has also adopted guidelines for concussion and head injuries as well as information sheets for athletes, coaches, officials, and parents. DPI has also developed agreements for both Coaches and Parents/Athletes at:
http://sped.dpi.wi.gov/sped_tbi-conc-guidelines.

IV. Some Thoughts

It is imperative for the safety of young athletes, that when a coach observes even the slightest symptom that correlates with a concussion, the player must be taken out until he or she has been evaluated and cleared for play.³⁵ "When in doubt, hold them out."³⁶ During athletic competitions, coaches are concerned with how their team or athletes are performing, how their game strategy is playing out, and what adjustments need to be made on the field. Now, coaches have a greater duty to also keep an attentive eye on any players that may be exhibiting symptoms from a concussion. Coaches have been trained on what to look for and the procedure to take if they indeed suspect one of their players is concussed.³⁷ The information is out there and now it is up to the coach to prevent unnecessary injuries by failing to recognize concussion symptoms exhibited by their student-athletes.

One of the most difficult obstacles a coach may face is a player who doesn't want to come out of the game and as a result the player may hide his or her injury from the coach.³⁸ For a star athlete or a player that has finally been given the chance to prove his or her abilities, the last thing that player may want to do is to come out of the game due to an injury. As a result, coaches not only have to worry about spotting concussion symptoms, they also have to be concerned with spotting a player trying to mask those concussion symptoms.³⁹ One way to combat this problem is for coaches to educate their players on the dangers of playing with a concussion and second-impact syndrome, which occurs from repeat concussions and only happens in youth athletes.⁴⁰

Coaches should stress to their players that some injuries sustained from concussions may last long-term such as chronic headaches and memory or

³⁵ *Concussions*, *supra* note 6.

³⁶ *Heads up Concussion in Youth Sports: A Fact Sheet for Coaches*, *supra* note 15.

³⁷ Mayo, *supra* note 25.

³⁸ Mayo, *supra* note 25.

³⁹ *Id.*

⁴⁰ Bryan Toporek, *Youth-Concussion Law Update: Wisconsin 36*, EDUCATION WEEK (April, 3, 2012), http://blogs.edweek.org/edweek/schooled_in_sports/2012/04/youth-concussion_law_update_wisconsin_makes_36.html.

learning problems.⁴¹ It is important for both players and coaches to be made aware that a concussion can occur without a loss of consciousness. This common misconception may cause youth athletes to ignore their symptoms when, in fact, the majority of concussions do occur without a loss of consciousness.⁴²

V. Risk Management - Conclusion

While the definition of a coach has broadly expanded from that of a teacher and instructor to a fundraiser, academic advisor, recruiter, public personality, budget director, and alumni glad-handler, the role of the coach as a risk manager should not be minimized. One of the most important, if not forgotten, roles of today's coach, whether it be at the collegiate or high school level, is that of a risk manager.

Risk management is all about safety, whether it involves equipment, playing condition, injuries, training, and rule-compliance. Understanding and implementing Wisconsin Statute §118.293 is nothing more than risk management in the form of rules compliance. The new statute will reduce liability and will reduce many of the risk associated with concussions. And by playing it safe, Wisconsin has the opportunity to educate, to detect, to treat, and most importantly, to protect the lives and best interests of our youth. Rules compliance for a coach under the Wisconsin law now means that the coach must remove the athlete from play and be sure that the athlete is evaluated by a trained health care provider, inform the athlete's parents about the possible concussion, and make certain that the athlete does not participate until the athlete is evaluated by a health care provider, is symptom free, and the health care provider provides written clearance to return to play.⁴³

At the end of the day, that is what Wisconsin Statute §118.293 is all about. It's a no-brainer, and that is why Wisconsin adopted its new concussion law.

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⁴¹ Laurel Rudolph, *Wisconsin Act 172: Youth Athlete Concussion Law*, MARSHFIELD CLINIC, <http://www.marshfieldclinic.org/patients/?page=sportsmedicine-wi-act-172-concussion-law> (last visited Jan. 10, 2012).

⁴² *Concussions*, *supra* note 1.

⁴³ WIS. STAT. 118.293(2012).