



The Medical and Legal Landscape of Athletic Concussions

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Speaker Biographies

Panelists

Michael Buckner, JD, is the managing shareholder of Buckner Sports Law in Florida. Michael conducts internal investigations and legal cases for global sports organizations, college sports departments, and universities relating to alleged unethical conduct, sports regulatory violations, academic fraud, student-athlete abuse, governance issues and performance enhancing drug policy violations. Michael was formerly with Holland & Knight LLP, where he headed its collegiate sports administration and compliance practice, representing clients in education, commercial, and appellate matters.

Darryl Conway, MA, ATC, EMT-T, is Associate Athletic Director of Student-Athlete Health & Welfare at University of Michigan. Darryl is responsible for the formation and delivery of concussion education programs to players and coaches. He supervises the athletic medicine trainers, nutritionists, and equipment managers and serves as a liaison to the team physicians. Darryl previously spent nine years as the assistant athletic director for sports medicine at the University of Maryland where he led the day-to-day operations of the Sports Medicine Department.

Mike Williams, CMAA, is the Athletic Director at Gettysburg Area (PA) School District. Williams is the former Coordinator of Athletics for the Howard County Public School System (HCPSS) in Maryland. While in Howard County, he was recognized as a national leader in concussion education and management and interscholastic sports for students with disabilities. The programs he helped develop there became models for Maryland State Legislature mandated programs. Mike has presented at national and state conferences, consortiums, and webinars.

Moderator

Joe Vossen, JD, is Associate Risk Management Counsel at United Educators. He is a former litigator who now advises K-12 schools, colleges, and universities on risk management practices. Joe researches and reviews claims data, legal requirements, and developing trends and writes risk management content to support UE members. He authored several UE resources on athletic concussions: managing the risks at K-12 schools, the importance of releases and assumption of risk forms, club and intramural sports, and NCAA guidelines.

Sample Policies

■ **Lawrence Academy (MA)**

Concussion Protocol

www.lacademy.edu/page.cfm?p=1443

Lawrence Academy's protocol includes a parent/athlete concussion packet with more information about head injuries. The document also includes a description of the stepwise return to play process.

■ **Foothill High School (CA)**

Concussion Protocol

www.tustin.k12.ca.us/Page/4063

Foothill High's concussion web page begins with an excellent educational video: Concussions 101 by Dr. Mike Evans. Visitors can also download injury guidelines and the official protocol.

■ **Tracy Unified School District (CA)**

Concussion Information Sheet for Student-Athletes & Parents

www.tracy.k12.ca.us/sites/khs/Documents/Concussion%20Info.pdf

This information sheet is distributed to parents and student athletes before the season begins. The document includes a signature page and fact sheets (in English and Spanish) from the CDC.

■ **College of the Holy Cross**

Policy on Management of Mild Traumatic Brain Injury

http://offices.holycross.edu/sites/all/modules/tinytinymce/tinymce/jscripts/tiny_mce/plugins/filemanager/files/healthservices/HCConcussionPolicy.pdf

Holy Cross' policy contains multiple appendices including a student athlete concussion responsibility statement for signature, NCAA fact sheets for students and coaches, and concussion history follow-up questions.

■ **Virginia Tech University**

Sports Medicine Concussion Management Policy

www.hokiesports.com/sportsmed/policies/concussion-policy.pdf

Recognizing the need to constantly evaluate a concussion management plan, the policy is reviewed each May and updated by August 1. The document offers detailed explanations of the baseline testing and assessment processes.

■ **University of North Carolina at Chapel Hill**

Sport Concussion Policy

www.goheels.com/fls/3350/pdf/RiskManage/ConcussionPolicy.pdf?ATCLID=209290942&DB_LANG=C&SITE=UNC&DB_OEM_ID=3350

Developed by researchers at the Gfeller Sport-Related Traumatic Brain Injury Research Center, this policy assigns specific athletic department staff with education, training, and documentation of the plan.



Checklist Creating an Athletics Concussion Management Plan

No athletic safety issue has garnered more attention recently than concussions and other traumatic brain injuries. The potential for catastrophic injury coupled with evolving science and legal requirements makes concussions a serious safety and liability concern. The National Collegiate Athletic Association (NCAA) estimates that concussions account for nearly 20 percent of athletic injuries. Over the last five years, all 50 states established standards for handling youth concussions. In that same period, the NCAA has updated its concussion guidelines three times. Despite the attention, an October 2013 report on youth concussion by the Institute of Medicine (IOM) highlights that much is still unknown about the treatment and impact of this injury.

For each question, check the appropriate “yes” or “no” box. Review any box checked “no” to determine whether the suggested practice is possible. Use the “actions needed” box to identify any follow-up actions your institution may wish to take.

1 Pre-participation

Legal Landscape

Has your institution consulted with an attorney about complying with league rules, athletic association requirements, and relevant state laws pertaining to concussions, such as those addressing the:

- Education of coaches, parents, and athletes about the nature and risks of concussions? Yes No
- Removal from play of any athlete suspected of having a concussion? Yes No
- Requirements for evaluating and returning to play an athlete suspected of having a concussion? Yes No

A concussion management plan is critical to colleges in ensuring player safety and reducing liability risks related to concussions in varsity sports. Since 2010, the NCAA has required institutions to have a plan on file. College administrators can use this checklist, which suggests a protocol for pre-participation and response, to develop a sound concussion management plan for intercollegiate athletics. Institution club and recreational sports programs also may find this checklist helpful.

Signs and Symptoms

- Does your institution's concussion management plan identify the following signs and symptoms of a concussion? Yes No
- Loss of consciousness
 - Amnesia
 - Disorientation
 - Drowsiness
 - Difficulty concentrating
 - Ringing in the ears
 - Confusion
 - Headache
 - Nausea/vomiting
 - Fuzzy or blurry vision
 - Balance problems
 - Sensitivity to light and/or noise

Education and Documentation

Education

- Does your institution annually educate or train athletes about concussions? Yes No
- Does your institution educate or train the following individuals about concussions? Yes No
- Coaching staff (including volunteers)?
 - Athletics health care providers?
- Does your institution make resources about concussions available for the entire campus community? Yes No

At a minimum, do your institution's concussion education, training, and resources:

-
- Define concussions? Yes No
-
- Explain the potential seriousness of concussion injuries? Yes No
-
- Emphasize that purposeful or flagrant head contact is not permitted or safe in any sport? Yes No
-
- Provide the signs and symptoms of a concussion? Yes No
-
- Address the importance of promptly reporting concussion symptoms to medical staff? Yes No
-
- Explain the role of physical and cognitive rest in recovery? Yes No

Documentation

- Does your institution document which individuals it educates about concussions? Yes No

Assumption of Risk or Waiver

Do athletes annually sign an assumption of risk or waiver acknowledging:

Actions Needed

Actions Needed

- A concussion is a potentially serious head injury that can result in brain injury or death? Yes No
- Participating in their sport may result in a head injury or a concussion? Yes No
- They have received information about the signs and symptoms of a concussion? Yes No
- Helmets, face shields, mouth guards, and other protective equipment do not eliminate the risk of concussions? Yes No
- Purposeful head contact in any sport is not permitted? Yes No
- They will immediately report to medical staff if they suspect a teammate has a concussion? Yes No
- They will immediately report to medical staff if, following a blow to the head or body, they experience signs and symptoms of a concussion? Yes No
- They will not return to practices or games if experiencing concussion-like symptoms following a blow to the head or body? Yes No
- A repeat concussion is more likely when an athlete returns to play before symptoms resolve? Yes No
- The institution has the authority to permanently retire an athlete from sports if it determines the risks of concussive injury present a serious threat to his or her safety and well-being? Yes No
- As permitted by state law:* They waive their right to sue the institution for losses arising out of a concussion injury? Yes No
- Given potential differences in the laws where your institution operates and where athletics competitions occur, has your institution consulted with legal counsel about which form—an assumption of risk or a waiver—is preferable for athletes to sign? Yes No

Coach Acknowledgement Form

Do coaches annually sign a form acknowledging that they:

- Received information about the signs and symptoms of concussions? Yes No
- Received and read the institution's concussion management plan? Yes No
- Understand their role in the institution's concussion management plan? Yes No
- Agree to follow the recommendations of athletics health care providers regarding removing athletes from and returning them to play? Yes No

Athletics Health Care Providers Acknowledgement Form

Do athletics health care providers affiliated with your institution annually sign a form acknowledging that they:

- Received information about the signs and symptoms of concussions? Yes No
- Read the institution's concussion management plan? Yes No
- Understand their role in the institution's concussion management plan? Yes No
- Agree to encourage athletes to report to a medical staff member any suspected illness or injury including the signs and symptoms of concussions? Yes No

Roles of Athletics Health Care Providers and Coaches

With respect to athletics health care providers affiliated with your institution, does your institution:

- Give them unchallengeable authority to determine the removal and return-to-play of injured athletes? Yes No
- Outline their roles in writing? Yes No
- Require them to practice within the standards established for their profession? Yes No

Are coaches prohibited from:

- Serving as the primary supervisor for athletics health care providers? Yes No
- Having sole hiring or firing authority over athletics health care providers? Yes No
- Challenging the authority of health care providers to determine the removal and return-to-play of injured athletes? Yes No

Medical History and Baseline Evaluations

Medical History

During the pre-participation evaluation of athletes, is information collected about:

- Previous concussions, including: Yes No
 - The number of such injuries?
 - Approximate dates?
 - Whether the athlete experienced loss of consciousness or amnesia?
 - The approximate length of time required for symptom resolution?

Actions Needed

Actions Needed

- Learning disabilities? Yes No
- Migraine or other headache disorders? Yes No
- Psychiatric illnesses? Yes No
- Chemical dependency? Yes No
- Seizures? Yes No

Baseline Assessment

During a baseline test a trained health professional may assess an athlete's history of concussions, balance, and, potentially, cognitive function. Baseline test results are then compared to a similar exam conducted during the season if an athlete has a suspected concussion. Does your institution:

- Use a baseline assessment that consists of:
- A symptoms checklist? Yes No
 - A standardized cognitive and balance assessment? Yes No
- Use the same assessment tools post-injury? Yes No
- If your institution uses neuropsychological testing as part of its baseline assessment, is a neuropsychologist or a physician experienced in the use and interpretation of such testing consulted in:
- Developing and administering the test?
 - Interpreting the results?

- Does your institution record a baseline assessment for athletes in each of these sports? Yes No
- | | | |
|----------------|-----------------|--------------|
| • Baseball | • Football | • Rugby |
| • Basketball | • Gymnastics | • Soccer |
| • Diving | • Ice hockey | • Softball |
| • Equestrian | • Lacrosse | • Water polo |
| • Field hockey | • Pole vaulting | • Wrestling |

Health Care Plan

For each varsity sport, does your institution provide athletes with:

- Access to health insurance? Yes No
- Equal access to athletics health care providers? Yes No

Emergency Action Plan

For each athletic venue, is there an emergency action plan addressing:

- Methods of emergency communication? Yes No

Actions Needed

- Emergency contact information? Yes No
- Emergency transportation? Yes No
- Available emergency equipment? Yes No
- Response to the following catastrophic athletic injuries and illnesses? Yes No
- Traumatic brain injuries
 - Heat illness
 - Spine injury
 - Cardiac arrest
 - Respiratory distress, such as asthma
 - Collapses due to sickle cell trait

Is the emergency action plan:

- Reviewed and practiced annually by coaches and athletics health care providers? Yes No
- Updated annually? Yes No
- Easily accessible (e.g., posted at the venue and on the web)? Yes No

2 Response

Removal From Play

Is any athlete suspected of suffering the signs or symptoms of a concussion:

- Removed from play (e.g. competition, practice, and conditioning)? Yes No
- Evaluated by a medical professional with experience in the evaluation and management of concussions? Yes No

Medical Evaluation

Sideline Evaluation

Does the sideline evaluation of an athlete with a potential concussion include:

- An assessment of airway, breathing, and circulation (ABCs)? Yes No
- An assessment of cervical spine and skull for associated injury? Yes No
- The same baseline tests used previously on the athlete, such as a: Yes No
- Symptoms checklist
 - Standardized cognitive and balance assessment

Because amnesia, confusion, and mental status changes are more sensitive indicators of concussion severity, does your institution note the following when evaluating an athlete:

Actions Needed

- The presence of and duration of amnesia? Yes No
- The presence of and duration of confusion? Yes No
- The time between the injury and the development of symptoms? Yes No
-
- Are athletes immediately referred to emergency medical services if these events occur? Yes No
- Prolonged loss of consciousness
 - Seizure like activity
 - Slurring of speech
 - Paralysis of limbs
 - Unequal or dilated and non-reactive pupils
 - The severity of the injury exceeds the comfort level of the responding athletic or medical staff

Returning to Play From a Sideline Evaluation

- If an athlete is allowed to return to play following a concussion evaluation, does a medical professional monitor performance and periodically re-evaluate him or her? Yes No

Concussion Management

Removal From Play Following a Medical Evaluation

For athletes diagnosed with a concussion or exhibiting significant concussion symptoms, does your institution:

- Prohibit them from returning to play until medical clearance is granted and, at a minimum, for the remainder of the day? Yes No
- Take one of the following actions? Yes No
- Refer them to a physician or emergency department
 - Continue to observe and monitor them
 - Admit them to a hospital
- Ensure they are not left alone for an initial period of time? Yes No
- Provide the athlete and someone who can assist him or her, such as a roommate, with written instructions advising the concussed athlete to:
- Avoid alcohol or other substances that will impair cognitive function?
 - Avoid aspirin or other medication that increase the risk of bleeding?
 - Immediately contact medical staff if the following problems occur?
 - Worsening headache
 - Increased confusion
 - Dilated pupils
 - Stumbling/loss of balance
 - Decreased level of consciousness
 - Increased irritability
 - Vomiting
- Regularly monitor the athlete for deterioration? Yes No

Physical and Cognitive Rest

Until an athlete is asymptomatic, does your institution require those diagnosed with a concussion to:

- Get physical rest by refraining from athletic play, practice, or conditioning? Yes No
- Get cognitive rest, which may include avoiding these activities? Yes No
 - Studying
 - Class attendance
 - Homework
 - Video games
 - Texting
 - Accessing social networking tools

When cognitive rest is required for an athlete, does your institution:

- Receive permission to share health status with academic advisors and professors? Yes No
- Notify academic advisors and professors about the concussion and related signs and symptoms? Yes No

In determining the appropriate amount of physical and cognitive rest, does your institution's medical staff consider the athlete's:

- Post-concussive clinical symptoms? Yes No
- Previous history of concussions? Yes No
- Severity of previous concussions? Yes No
- Recent physical exam? Yes No
- Sport? Yes No
- Position? Yes No
- Age? Yes No
- Support system? Yes No
- Overall "readiness" to return to sport? Yes No

Return to Play

Before an athlete returns to play after a concussion, does your institution require:

- Clearance by a physician or physician's designee? Yes No
- Completion of a medically supervised stepwise process that begins only after the athlete:
 - Is asymptomatic?
 - Has post-exertion assessments that are within baseline limits?

Actions Needed

Retiring From the Sport

- Does your institution reserve, in writing, the right to permanently retire an athlete from sports? Yes No

Is an athlete's permanent retirement considered if he or she has:

- A history of concussions, particularly when there is evidence that smaller forces are sufficient to cause another concussion? Yes No
- Post-concussion symptoms lasting more than three months? Yes No
- Evidence of a head or neck injury that would increase the risk of future concussions? Yes No

Before your institution permanently retires an athlete from sports, does it consult:

- Legal counsel? Yes No
- Applicable medical professionals, such as the team physician, trainer, and a neurologist? Yes No
- The athlete? Yes No
- The athlete's family? Yes No

Documenting Treatment

When treating suspected and confirmed concussions, does your institution document the:

- Incident that caused the injury? Yes No
- Evaluation of the athlete? Yes No
- Management of the athlete? Yes No
- Clearance of the athlete? Yes No

Actions Needed



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Managing the Risks of Athlete Concussions

With good reason, concussions have become a top concern for youth sports. According to the Centers for Disease Control and Prevention, from 2001 to 2009 there was a 57 percent increase in emergency room visits for concussions and other traumatic brain injuries (TBI) by youth ages 19 and younger. Despite this increasing frequency, the culture in youth athletics often promotes competition over safety. The Institute of Medicine's (IOM) October 2013 report notes that many youth athletes don't report or underreport concussion symptoms to avoid removal from play.

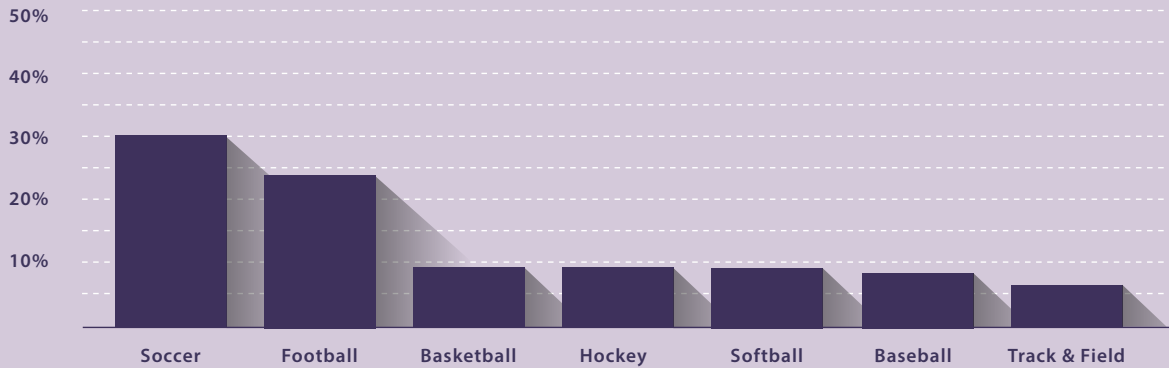
The liability risks posed by concussions further complicate this picture. In a recent study by United Educators (UE), a liability insurance provider focused exclusively on education, concussions comprised 70 percent of losses, including legal fees and settlements, for K-12 athletics claims. And over the last four years, all 50 states passed laws on youth concussion safety. Critical to school and athletic administrators is a concussion management plan. In this report, UE recommends actions to create a sound plan for promoting athlete safety.

Concussions are a type of traumatic brain injury (TBI) resulting from a bump, blow, or jolt to the head, or to the body that is transmitted to the head. The actions recommended in this report, and a school's concussion management plan, apply to any perceived TBI.

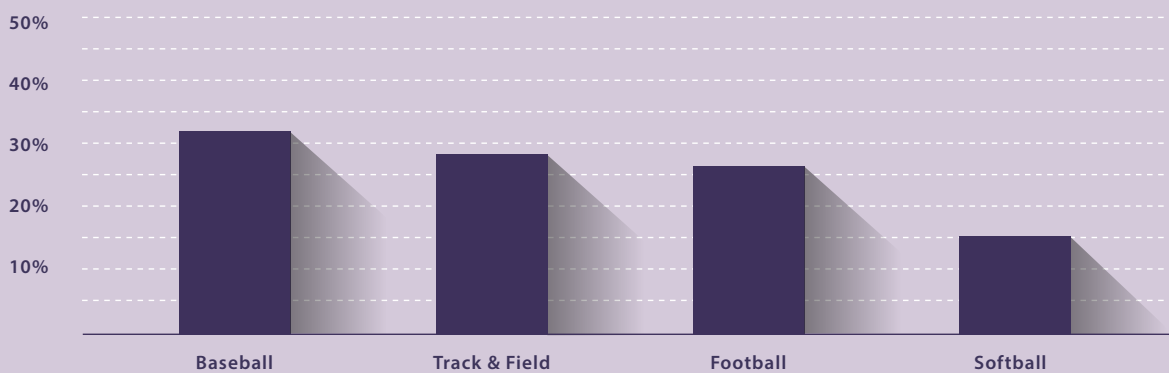
UE Claims Study

Between 2003 and 2012, UE received 157 K-12 athletics claims. Of those claims, 38 percent involved TBI—including concussions. In a study covering school sports and recreation programs, six out of 10 concussion claims occurred during competition, and four out of 10 during practice. These claims cost UE and its members more than \$3 million in losses.

Contact sports generated the most claims. Seven sports accounted for 95 percent of the study's concussions.



The seven most common sports did not generate all of the study's financial losses. Rather, four sports accounted for most claims losses from concussions.



A collision between two or more athletes was the cause in 48 percent of the concussion claims. However, athlete collisions did not result in any financial losses to UE and its members. In litigation resulting from head injuries, the most commonly cited cause of claims for athlete concussions was coach negligence (45 percent of claims) and facility defects (55 percent of claims). Examples of coach negligence and facility defects include:

Coach Negligence

- A softball player sustained a concussion after her coach hit the ball toward her head.
- A football player sustained a concussion when a teammate threw a football at his head when a coach wasn't present.
- A coach told track and field athletes they could practice unsupervised, and one was hit in the head with a discus.
- A football player received a concussion during practice. After telling his coach he had a headache, the student was instructed to leave school early but was assured he could play at the next game. At the game, the player was hit again and went into a coma suffering severe brain damage.

Facility Defects

- A baseball player was struck in the head by a bat thrown from the batter's box because the dugout was too close to the field.
- A quarterback fell into a coma when he was forced out of bounds and struck his head on a metal object protruding from the ground.
- A softball player struck her head on an improperly located foul pole. The third party that owned the field did not have a contract with the school.

Actions for Managing Concussion Risks

To improve safety and reduce liability, create a concussion management plan. To account for differences in state law and emerging medical research, consult with a qualified attorney and medical professional in developing your plan. In addition, the following practices are recommended.

I. Preparation

Before a student is allowed to participate in athletics, consider these actions.

Action #1: Educate and train athletes, parents, coaches, and other staff. Athletes often practice and play when trained medical personnel are not available. The decision to remove an athlete from play often falls on coaches, parents, and players. Providing education and training can improve the institution's response.

Athletes and Parents

Students are usually the first to notice symptoms in themselves and their teammates. Parents see student athletes more than coaches, teachers, or doctors. Consequently, schools should educate athletes and parents on concussion, including:

- Their seriousness
- Signs and symptoms
- The importance of reporting any signs and symptoms they witness or experience

Education can take many forms, and may include in-person sessions as well as online information.

Coaches

Coaches are often the first responders and can identify concussion symptoms before a player does. Their authority and attitude toward concussions sets the tone for the entire team. Coaches need training on the:

- Potential dangers of concussions
- Signs and symptoms
- Importance of physical and cognitive rest following a concussion
- School's concussion management policy



Coaches are often the first responders and can identify concussion symptoms before a player does.

Faculty and Staff

Teachers and administrators have a stake in concussion management, too. Concussion symptoms that go unnoticed may become evident in the classroom. Also, while most concussion symptoms resolve within two weeks, a two-week absence can weaken academic performance.

Educate faculty and staff—even those not involved in athletics—on:

- The signs and symptoms of concussions
- How a concussion affects academic performance
- How to minimize time lost from school without compromising recovery
- The institution's policy on concussion management and cognitive rest



Action #2: Document the school's education and training on the risks of athletic participation.

Documenting concussion education efforts and demonstrating that students and parents understood the risks of athletic participation can help reduce liability. Moreover, in the event of litigation, a written record provides evidence that the institution met its duty of care. Each year, schools should require athletes to sign a narrowly tailored assumption of risk form for each sport, acknowledging:

- A concussion is a potentially serious head injury that can result in brain injury or death
- Participating in their sport may result in a head injury or concussion
- Purposeful head and neck contact in any sport is not permitted
- Helmets, face shields, mouth guards, and other protective equipment do not completely prevent concussions
- They will immediately notify an authority if they suspect a teammate has a concussion
- They will immediately report signs and symptoms of a concussion to an authority and not return to play

Parents and athletes age 18 and older should sign a waiver of liability for each sport. Consult with legal counsel regarding enforceability of waivers signed by minors.

Coaches, school personnel, and any others trained by the institution should sign a form acknowledging:

- That concussion education was provided
- What information was covered in the training
- Their promise to adhere to the institution's concussion policy

Action #3 Prohibit coaches from serving as the primary supervisor for athletics health care providers.

Athletics health care professionals, such as team doctors or athletic trainers, should have unchallenged authority to determine the removal and return-to-play of injured athletes. A coach's top priority may be competing, not athlete well-

Athletic pre-participation exams should address:

Any prior experience with concussion, including:

- The number of prior concussions
- Dates of occurrence
- Whether loss of consciousness or amnesia was experienced
- The amount of time required for symptoms to resolve

Learning disabilities

Migraine or other headache disorders

Psychiatric illness

Seizures

Chemical dependency

being. Athletics medical professionals, not coaches, are usually best positioned to identify health problems. To avoid a conflict of interest, prohibit coaches from serving as the direct supervisor for athletics health care providers and avoid giving coaches sole hiring or firing authority over them.

Action #4: Conduct pre-participation physical exams. Before the first practice or try-out, potential student athletes should receive a physical evaluation and clearance by a licensed medical professional. Athletic pre-participation exams (PPE) should be conducted by a physician experienced with athlete physicals.

Some schools conduct baseline tests in which a trained health professional may assess an athlete's history of concussions, balance, or brain function. Results are compared to a similar exam conducted when an athlete has a suspected concussion.

To be financially prudent, schools should consult with legal counsel on whether baseline evaluations are required under state laws or are otherwise advisable. Medical research does not support the necessity of this testing for all school-based programs. For example, the IOM report notes that "although baseline testing is common practice, studies provide mixed (and limited) evidence concerning the utility and cost-effectiveness of such testing."

Action #5: Develop an emergency action plan.

Coaches, administrators, volunteers, and athletes should know what to do when a catastrophic injury occurs. The National Federation of State High School Associations recommends that schools create a venue-specific, emergency action plan (EAP) that delineates personnel roles and actions in the event of a TBI. A school's EAP should:

- Be developed with input from legal counsel, administrators, coaches, and health care providers
- Delineate personnel roles in an emergency
- Identify methods of communication and contact information for emergency medical responders
- Note the location of emergency equipment and nearby trauma centers
- Plan for emergency transportation
- Identify the location of nearby trauma centers

Post the plan in a prominent place at venues used for athletic practices or competition. Provide copies to coaches, administrators, volunteers, and others involved in athletics. Annually review, revise, and practice your school's plan. Schools should test their plan through audits, table-top exercises, role playing, and disaster drills.

Action #6: Understand the limitations of equipment in preventing concussions.

While protective equipment is important for preventing many types of injury, none

eliminates the risk of concussions, according to the IOM. In fact, wearing protective devices may embolden athletes to take risks. Educate athletes about the limitations of helmets, mouth guards, and other equipment in preventing concussions. Address these limitations in the athlete’s assumption of risk or waiver form.

II. Response

When responding to concussions, consider the following steps.

Action #7: Immediately remove from play any athlete displaying the signs and symptoms of a concussion. The first challenge in responding to a concussion is recognizing the signs and symptoms and removing a player for further evaluation. In several UE concussion claims, athletes who showed concussion symptoms were not promptly removed from play, which exacerbated their injuries and increased the school’s liability. When any concussion signs or symptoms are present, immediately remove an athlete from play. Coaches should never tell an athlete to “shake it off” or to return to play when concussion symptoms are present. Heed the CDC’s recommendation of “when in doubt, sit them out.”

Common Concussion Signs and Symptoms	
Physical	Headache, fuzzy or blurry vision, dizziness, fatigue, drowsiness, sensitivity to light, sensitivity to noise, balance problems, nausea, vomiting
Cognitive	Confusion, feeling slowed down, difficulty concentrating, difficulty remembering new information
Emotional	Irritability, sadness, feeling more emotional, nervousness, anxiety
Sleep	Sleeping more or less than usual, trouble falling asleep

Many of these symptoms may not develop for several hours after an injury. In fact, according to the CDC, many concussions are not identified until 24 hours or more after the injury.

Action #8: Seek diagnosis by a medical professional with concussion training or experience. When possible, athletes removed from play due to a suspected concussion should be evaluated by licensed medical professionals with experience diagnosing and treating concussions. Some state laws allow any licensed health care provider to conduct concussion assessments. However, using a provider with less experience or training could lead to misdiagnosis or put the athlete at risk of further injury by prematurely returning him or her to activity.

The lack of a reliable and objective test for concussion diagnosis makes an experienced health care provider invaluable. Brain images of concussion sufferers usually appear normal using CT scans or MRIs. To diagnose a concussion, a health care provider evaluates an athlete’s reported signs and symptoms. Given the subjective nature of this evaluation, proper concussion treatment is often dependent upon a health care provider’s concussion experience and training.

Action #9: Provide physical and cognitive rest to students suffering from a concussion. Athletes who have sustained a concussion need both physical and cognitive rest for recovery. Returning to school and play before symptoms resolve can prolong recovery and increase the risk of potentially serious repeat concussions from less force.

A plan for physical and cognitive rest is the accepted recovery standard. To promote a coordinated and effective response to concussions, some schools create concussion management teams composed of medical professionals, coaches, teachers, and parents. The team considers each athlete’s injury and develops an individual recovery plan. To ensure athletes receive proper physical and cognitive rest, consider these recommendations.

Physical Rest

A gradual return-to-play plan should be used for concussed athletes, with slow resumption of normal activity following successive stages of activity. The plan should be guided by a licensed medical professional, ideally one with experience diagnosing and treating concussions.

At each successive stage, athletes are evaluated by the medical professional to ensure they can tolerate increased activity. The athlete may require a return to a previous stage with failure to tolerate increased activity. Commonly, return-to-play plans include these six steps:

Stage	Objective	Level of Physical Activity	Recommended Activity
1	Rest and recovery	None	Basic daily living activities
2	Assess tolerance of activity	Light	Nonimpact aerobic activity
3	Begin assimilation into team	Moderate	Noncontact sport-specific drills
4	Ensure tolerance	Training drills	Noncontact activity at full speed, aerobic and weight lifting
5	Assess functional skills	Resume practice	Full contact practice with team
6	Resume activity	Return to play	Regular game competition

Cognitive Rest

There is no consensus on how much cognitive rest is necessary or effective after a concussion. The American Academy of Pediatrics (AAP) recommends a unique “return-to-learn” plan for each athlete. Balancing an athlete’s physical recovery with his or her academic performance is often difficult. Missing school while symptoms resolve can negatively affect academic progress. The AAP recommends the following adjustments, as needed, to promote cognitive rest.

Symptoms	Recommended Adjustments
Headache	Breaks or rest in a quiet area, such as a nurse’s office
Sensitivity to light	Reduce exposure to bright objects, such as computers, smart phones, or TVs
Sensitivity to noise	Limit or avoid band or PE class, lunch rooms, or other noisy environments
Difficulty concentrating or remembering	Extra time to complete exams or rescheduling of exams, reduced classwork and homework
Sleep disturbances	Late start or shortened school day to catch up on sleep

Action #10: Receive written clearance for return-to-play by a licensed medical professional. Only a licensed medical professional should clear an athlete for return to school and play. Require the clearing medical professional, the athlete’s parent, and the athlete to sign a return-to-activity form. While some schools accept return-to-play decisions from a medical professional chosen by the athlete’s parents, this practice can be problematic. Requiring a medical professional selected or employed by the institution to make return-to-play decisions prevents athletes from shopping for professionals who will allow them to play and potential conflicts between the school and the athlete’s expert.

Action #11: Reserve the right to permanently retire athletes from sports. The consequences of multiple concussions and subconcussive head impacts are not fully known or understood. However, more studies report unfavorable changes in cognitive function than do not. According to the IOM report, athletes with a history of concussion may have severe subsequent concussions and take longer to recover. As a result, a school should reserve the right, in its concussion policy, to permanently retire athletes from sports. For example, permanent retirement may be appropriate if an athlete:

- Has a history of prior concussions
- Shows evidence that smaller forces are sufficient to cause a concussion
- Suffers post-concussion symptoms lasting more than three months
- Experiences multiple head or neck injuries that increase the risk of future concussions

The decision to retire an athlete should be made upon recommendation by a physician and in consultation with the school's attorney, the athlete's parents, and the athlete.

Action #12: Document the treatment of head injuries. In many of UE's K-12 athletics claims, documentation of the athlete's concussion treatment was poor. This made it difficult to determine whether the school's treatment was appropriate. Schools must be able to prove they provided care to athletes who sustained concussions.

Electronic documentation makes it easier for medical providers to access player health information when they need it, such as at a competition or practice. Medical providers can also input information remotely. Many vendors back up treatment records on remote servers, ensuring record retention. An electronic system facilitates information sharing between trainers, doctors, and other medical professionals. In addition, schools should:

- Clearly document compliance with the school's written concussion management policies
- Carefully document treatment of head injuries that cause an athlete to miss practice or competition
- Consult with the school's attorney to determine the length of time to retain treatment records

Looking Ahead

These actions can help schools protect students from concussions and TBI. Establishing a sound foundation for responding to athlete concussions will promote athlete health. As medical research, recommended practices, and the law on concussions continue to evolve, schools should annually review and revise their concussion management plan to promote student safety. Invite stakeholders, such as medical professionals, legal counsel, and athletic administrators to participate. Seek input from students and parents to achieve buy-in for the school's plan and encourage safe behavior.

Acknowledgement

This *Independent School News*, "Managing the Risks of Athlete Concussions," was written by Joseph A. Vossen, JD, associate risk management counsel for UE.



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Blogs

Releases and Assumption of Risk Forms in Concussion Management

April 2014

A recent, informal poll of UE higher education members suggests that many institutions overlook a critical tool for managing the risks of intercollegiate athletic head injuries: a signed agreement acknowledging the danger of concussions and traumatic brain injuries (TBI) and, where appropriate, releasing the athlete's right to sue. A well-written assumption of risk form or a release can highlight the potential dangers of athletic participation, particularly in contact sports, and deter lawsuits.

Release or Assumption of Risk?

Consult with your legal counsel about whether an assumption of risk form or a release from liability is preferable. Your counsel can advise on the potential differences in the laws where your institution operates and athletics competitions occur. Enforceability of releases in sports and recreational activities varies among jurisdictions.

- A release from liability or waiver asks athletes to waive their right to sue. This language should be conspicuous; use capital letters, underlining, and bold font. Good releases are written in plain language, not legalese. See the [UE Checklist for Drafting Effective Releases](#) for sample language.
- An assumption of risk form is similar to a release but does not ask students to give up their right to sue. Rather, it simply asks the student athlete to acknowledge the specific risks inherent in each athletic activity and voluntarily assume these risks.

Institutions should require student athletes to sign a new form every year and retain signed forms consistent with their document and medical record retention policies.

What to Include in Your Release or Assumption of Risk

The release or assumption of risk for intercollegiate athletes should acknowledge:

- A concussion is a potentially serious head injury that can result in brain injury or death
- Participation in intercollegiate athletics may result in a head injury or a concussion
- Receipt of information about the signs and symptoms of a concussion
- Helmets, face shields, mouth guards, and other protective equipment do not eliminate the risk of concussions
- Purposeful head contact in any sport is prohibited
- The duty to immediately notify medical staff if a teammate experiences signs and symptoms of a concussion or suffers a suspected concussion
- The duty to immediately self-report to medical staff if the student athlete experiences signs and symptoms of a concussion or suffers a suspected concussion
- Athletes will not return to practices or games if experiencing concussion-like symptoms
- A repeat concussion is more likely when an athlete returns to play before symptoms resolve
- The institution has the authority to permanently retire an athlete from sports if it determines the risks of concussive injury present a serious threat to his or her safety and well-being

Resources

Checklist for Creating an Athletics Concussion Management Plan

Hamilton College

Athletics Release and Concussion Statement

University of Colorado

Concussion Disclosure Acknowledgement Waiver



Blogs

Concussions in Club and Intramural Sports

February 2014

Although club and intramural sports pose a risk of concussions, many participants do not receive the same education or training as varsity athletes. These sports programs usually lack the oversight and resources of an intercollegiate program. Poor concussion management can lead to improper identification and treatment of this serious injury; student athletes may not recognize their concussion symptoms and fail to seek medical care.

To prevent concussion risks, United Educators offers the following suggestions for supporting club and intramural sports programs:

- **Develop a concussion management plan (CMP).** Seek professional legal and medical guidance. The [NCAA Sports Medicine Handbook](#) chapter on concussions is useful, although it doesn't apply to club sports. When drafting a CMP, consider the availability of resources and personnel in departments overseeing club sports. Institutions risk liability when they don't enforce their own standards.
- **Consult with counsel about pre-season baseline testing.** While [current research](#) does not support the testing's necessity, it is widely used in varsity programs and recommended by the NCAA. Many colleges and universities offer baseline tests for all club athletes, or those participating in contact sports, such as field hockey, lacrosse, rugby, and soccer, and wrestling. Athletes that opt out are asked to sign a waiver or assumption of risk form. Discuss with counsel whether baseline testing of club athletes is advantageous. Institutions choosing not to offer testing should document their reasoning.
- **Educate and train officers, coaches, athletes, and referees.** Club sports and intramurals are usually organized and managed by students. They are often the first to spot injuries since athletic trainers and physicians are typically not on

the sidelines. Educate coaches and athletes on concussions, including:

- Signs and symptoms of concussions
- The seriousness of this injury
- The requirement to self-report injuries
- The violation of the student code of conduct for those who fail to self-report

■ **Require athletes to sign a release before participation.** Retain these **forms** as evidence that the institution educated and supported its club and intramural teams in concussion management. Each release should:

- Identify the risks, including concussions, of club sports
- Acknowledge that the athlete is assuming the risks of participation
- Acknowledge an athlete received concussion education or training
- Require the athlete to immediately report any signs or symptoms they experience or observe in others
- Acknowledge that medical professionals are often not present and athletes are responsible for contacting health professionals or emergency services for an injury or medical issue
- Release the institution from responsibility for injuries or losses arising out of the athlete's participation

■ **Immediately remove from play or practice any athlete who is suspected of suffering a concussion.** The current standard is to return athletes to play only after an evaluation by a medical professional with experience in treating concussions. Make sure student athletes know where to obtain an evaluation and **clearance form**, such as the student health center, sport science department, athletic trainers, or local emergency room. Document provision of this information to all student athletes.

■ **Athletes who suffer a concussion must be cleared, in writing, by a medical professional before returning to play.** Many institutions require the completion of a **medical clearance form**.

■ **Document the institution's handling of concussions.** Retain documentation about the incident, evaluation, management, and clearance of the athlete.

Resources

From the UE Toolbox: Checklist for Creating an Athletics Concussion Management Plan

The Citadel Military College (SC)

Concussion Protocol Acknowledgement Form for Intramural and Club Athletics

Marquette University (WI)

Club Sports Concussion Management Protocol

University of Mary Washington

Sport Club Concussion Management Model

University of North Carolina

Sports Clubs Release and Indemnity Agreement



Blogs

NCAA Updates Concussion Management Guidelines

July 2014

The NCAA released new recommendations for the management of sport-related concussions. With the exception of unique guidance on football practices, the guidelines are intended to apply to every NCAA activity. Although these are recommendations, not NCAA rules, it is likely that they will become a new standard in intercollegiate sport concussion management.

The guidelines supplement or adapt the rules and recommendations in the **2013-2014 NCAA Sports Medicine Handbook**. UE recommends that colleges and universities review the new guidelines and consider updating their concussion management plans as necessary.

New Guidelines

- **Reduce live contact football practices.** Possibly the most significant recommended change in concussion management is that institutions limit “live contact” practices to two per week during the regular season. A live contact practice “involves live tackling to the ground and/or full-speed blocking.” Research shows that concussions are 14 times more likely to occur in live contact practices than those conducted at less than full speed.
- **Provide independent medical care.** A major new recommendation is the NCAA’s guidance that each institution “should, at a minimum, designate a licensed physician (M.D. or D.O.) to serve as medical director, and that medical director should oversee the medical tasks of all primary athletics health care providers.” Doctors and athletic trainers should have unchallengeable authority to determine medical treatment and decide when athletes can return to activity.

- **Publicize the plan.** Institutions should make their concussion management plan publicly available in print and/or online. UE recommends posting plans on websites to foster consistency across the institution. In addition, publicly available plans will facilitate the exchange of information between institutions and the adoption of uniform best practices.
- **Educate athletes, coaches, trainers, medical staff, and athletic directors.** Institutions should provide annual education and training on concussions and other head injuries. Many institutions provide NCAA fact sheets and conduct in-person training at athlete, coach, and staff meetings. All individuals should sign an acknowledgment that they have received training, read and understand the fact sheets, and reviewed the institution's concussion management plan.
- **Conduct a baseline assessment.** The NCAA recommends a one-time baseline assessment of all varsity athletes. The assessment can include, but is not limited to, a brain injury and concussion history, symptom evaluation, cognitive assessment, and balance evaluation.
- **Implement evaluation tools.** Following a head injury, medical staff should evaluate potential concussions with a symptom assessment and physical, neurological, and balance exams. Transportation to an emergency room is recommended when the **Glasgow Coma Scale** score is less than 13 or loss of consciousness lasts longer than one minute.
- **Enforce removal and medical clearance procedures.** Athletes with possible concussions should be withheld from athletic activity for at least the remainder of the day. Only medical staff can clear athletes to return to activity after a stepwise process.
- **Implement stepwise return.** Following a concussion, athletes should follow multistep return-to-play and return-to-learn processes. While this guidance is not new, for the first time institutions are advised to create a multidisciplinary team including doctors, trainers, faculty, teachers, neuropsychologists, and counselors to assist concussed athletes in their cognitive recovery.

Resources

[Guidelines for Diagnosis and Management](#)

[Guidelines for Independent Medical Care](#)

[Guidelines for Football Practices](#)

[Coaches Information Sheet](#)

[Athletes Information Sheet](#)

By Joe Vossen, JD, Associate Risk Management Counsel



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