

YOU AND THE LAW

Principles of Liability and Managing Sport-Related Concussions: Defenses against Negligence and Poor Concussion Risk Management

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Introduction

When it comes to managing sport-related concussions, athletic personnel must adhere to key principles of liability. These principles are aimed at ensuring the safety and well-being of athletes while minimizing the risk of liability. Keep in mind boys tend to be more aggressive and are far stronger than girls, so it is important to understand placing a male with females on contact (impact) sports teams could end in tragedy for a girl. The National Federation of High Schools (NFHS) (<https://www.nfhs.org>) in conjunction with the National Athletic Trainers Association (NATA) (<https://www.nata.org>) and the American College of Sports Medicine (<https://www.acsm.org>) has developed concussion courses for coaches and athletic administrators that many state high associations now require before a coach and athletic trainer can be certified to coach and work as an athletic trainer.

The NFHS, NATA, ACSM, and all 50 state high schools organizational bodies for interscholastic bodies suggest should be considered when drafting policies and procedures for the evaluation, treatment, and return to play after a concussion has taken place:

- **Stay Informed:** Athletic administrators, coaches, and athletic trainers should stay up-to-date with the latest research, guidelines, and best practices related to concussion management. This includes being aware of changes in concussion protocols and advancements in diagnostic tools to diagnose brain injuries. Your responsibility is not delegable, so remember that.
- **Education and Training:** As noted above, athletic personnel should receive proper education and training in concussion recognition, evaluation, and management. They should be knowledgeable about the signs and symptoms of concussion and the appropriate steps to take in case of a suspected concussion.
- **Implement Safety Policies:** Athletic trainers should work closely with school or organization administrators to establish and enforce safety policies and procedures related to concussions. This may include guidelines for return-to-play protocols, athlete education, and equipment safety.
- **Pre-participation Evaluations:** Consider utilizing thorough pre-participation evaluations can help identify any pre-existing conditions or risk factors that may increase the likelihood of concussions. Athletic directors and trainers should ensure that athletes are medically cleared before participating in sports activities.
- **Proper Documentation:** Accurate and detailed documentation is crucial in liability management. Athletic directors must make sure trainers maintain records of pre-participation evaluations, injury assessments, return-to-play protocols, and any communication with athletes, parents, or healthcare professionals.
- **Communication:** Effective communication with athletes, parents, coaches, and healthcare professionals is essential. Trainers should promptly report any suspected concussions, provide clear instructions for follow-up care, and keep all relevant parties informed throughout the recovery process.
- **Emergency Action Plan:** Athletic trainers should develop and regularly review an emergency action plan that outlines

the appropriate response in case of a suspected concussion or other medical emergencies. This plan should include contact information for emergency medical services and procedures for accessing necessary medical care.

- **Continuous Evaluation and Improvement:** Trainers should continually assess and improve their concussion management practices based on feedback, research findings, and advancements in the field. Staying proactive and adaptable is key to providing the best care for athletes.

Whenever there is a concussion during practice or a game, the athletic director, trainer, and coach must be ready for a possible liability action. Of all injuries that happen in sports that generate law suits it is a concussion – so be ready. When facing a negligence claim related to sports injuries, several defenses and risk management strategies can be utilized. These defenses may include, but not limited to:

- **Assumption of risk:** This defense asserts that the injured party willingly participated in the sport or activity, understanding and accepting the inherent risks involved. To establish this defense, it must be shown that the plaintiff had knowledge of the risks and voluntarily chose to engage in the activity despite those risks.
- **Waivers and releases:** Properly drafted and executed waivers or release forms can help protect against liability by obtaining the participant's agreement to assume the risks and waive their right to sue for injuries arising from ordinary negligence. However, it is important to note that waivers may not protect against gross negligence or intentional misconduct claims.
- **Comparative negligence:** In some jurisdictions, the defense of comparative negligence may apply. This means that if the injured party is found to have contributed to their own injuries through their own negligence or failure to exercise reasonable care, their recovery of damages may be reduced in proportion to their level of fault.
- **Statute of limitations:** Each jurisdiction has a specific time limit within which a lawsuit must be filed. If the injured party

fails to initiate legal action within this timeframe, their claim against athletic trainers and government agencies may be barred by the applicable statute of limitations.

- **Proper supervision and coaching:** Employing qualified and experienced coaches and providing proper supervision during sports activities can demonstrate that reasonable care was exercised in preventing injuries. Adequate training, certification, and adherence to industry standards can bolster this defense.
- **Emergency response and medical care:** Ensuring that appropriate emergency response protocols are in place, including having qualified medical personnel available and providing prompt and proper medical care following an injury, can support the defense that reasonable and timely actions were taken to address the situation.
- **Compliance with regulations and safety standards:** Demonstrating compliance with applicable laws, regulations, and safety standards specific to sports and athletics can help establish a strong defense against negligence claims.

Finally, it is important to consult with legal counsel familiar with sports injury cases to assess the specific circumstances and jurisdictional laws applicable to your situation. They can provide tailored guidance on the defenses and risk management strategies most relevant to your case. In particular, head injuries are a big deal, and they can end people's careers before they start.