

LIABILITY IN CONCUSSION CARE 101

**Learn how you may be
able to protect yourself
and your organization
from concussion lawsuits.**

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WHY DOES LIABILITY IN CONCUSSION CARE MATTER?



Why does my organization need to be concerned about legal liability in concussion care?

Anyone who works with patients with concussions needs to be aware of best practices in concussion care to help prevent major concussion lawsuits. There are many examples of concussion mismanagement leading to multi-million-dollar lawsuits.

As concussion research and awareness grows, you are responsible for knowing the legal requirements for managing concussion. Follow best practices in concussion care. It is the best way to ensure your organization is not liable in the event of a lawsuit.

Visit ConcussionManagement.com/Liability for more concussion care liability resources.

Why is objective data so important in concussion care?

Objective data is crucial in concussion management because it provides irrefutable evidence of a patient's status. Reviewing signs and symptoms of concussion is an important piece of post-concussion health care. However, it cannot be the only assessment used to diagnose or manage concussions.

Some patients may have extra incentive to return to physical activities sooner than is recommended. This may be especially true for athletes who don't want to wait days or weeks to return to activity. It is very important that these individuals know that concussion is a traumatic brain injury. They must know that following healthcare provider instructions is crucial to their recovery.

Objective data helps communicate the seriousness of a head injury. It also helps healthcare providers make accurate concussion diagnosis and management decisions. Healthcare providers use data to determine when a patient is ready to return to school and activity. Objective data should be utilized in every return-to-play protocol.

What can we learn from recent concussion lawsuits?

Healthcare providers can take valuable lessons from other organizations that have been involved in concussion lawsuits. Here are a few notable examples and some ways you can learn from them.

NCAA Student Athlete Class Action Settlement

The National Collegiate Athletic Association (NCAA) is involved in a multi-million-dollar class-action lawsuit involving college athletes. The NCAA was accused of being negligent and breaching its duty to protect student athletes. Healthcare providers failed to adopt appropriate rules and manage risks from concussions leading to many concussions going unreported or mismanaged.

As a result, student athletes are seeking medical monitoring over the next 50 years.

Lesson: *Concussion safety is the ultimate responsibility of the healthcare provider overseeing the athletes. It's critical that all healthcare providers know their role in concussion recognition and management.*

USA Water Polo Class Action Lawsuit

A negligence lawsuit was filed against USA Water Polo. In this case, a goalie was severely injured after she was allowed to return to play in a youth water polo tournament after she sustained a concussion. She later developed severe concussion symptoms and was unable to attend school.

USA Water Polo had created a concussion policy that included all the recommended components, however, the policy wasn't implemented. Officials failed to ensure the policy was being properly followed, so the organization was liable.

Lesson: *Creating a concussion policy isn't enough; you must ensure that the policy is implemented at all levels.*

Council vs Monte Vista School District

This lawsuit alleged that an athlete sustained permanent brain damage because his coaching staff did not recognize the athlete's concussion signs and symptoms after a game. Other players told the coaches that something was wrong, but the coaches kept the athlete in the game. The coaches had received concussion education, but the education was neither documented nor tested. The school paid a \$7.1 million settlement to the athlete.

Lesson: *Make sure all stakeholders understand what's expected of them. Coaches and other sports officials need to be able to recognize concussion signs and remove potentially affected athletes from play. Be sure that everyone on your team is properly educated.*

BUILDING A CONCUSSION PROGRAM



What's the first step to manage liability from concussion lawsuits?

The first step to managing liability from concussion lawsuits is to research local, state, and national concussion laws. If applicable laws require that you have a concussion policy, create one. Be sure that it's implemented at all levels. Many lawsuits result from an organization having a policy, but not following it.

Educate stakeholders so everyone knows their role and responsibilities within the policy framework. You can find recommendations for developing a concussion policy in a later section in this guide.

Once you have researched your local, state, and national laws, review the most recent concussion consensus statement.

This statement comes from concussion experts around the world. They provide evidence-based recommendations on concussion care. The statement is revised every few years with new research. It's a good resource to ensure your organization is up to date with best practices in concussion care.

Visit ConcussionManagement.com/Liability
for more concussion care liability resources.

What tools does my organization need to provide the best care to our patients?

Concussion is a complex injury that requires multiple tools to manage properly. There is no one tool that can be used to treat concussions. There is widespread agreement on the tools that should be included in a concussion evaluation. Most importantly, the tools used should be evidence-based, validated by regulatory clearances, and put into practice by properly trained healthcare providers.

The tools that a concussion clinic should use include, but are not limited to:

- Neurocognitive testing: ImPACT, ImPACT Quick Test, and ImPACT Pediatric
- Balance screening: the Balance Error Scoring System (BESS)
- Vestibular ocular exam: The Vestibular Ocular Motor Screening (VOMS) assessment
- A full clinical interview: including a standardized symptom questionnaire
- Medical evaluation: including a full medical and injury history

Visit ConcussionManagement.com/Tools to find the best fit for your organization.

What is a concussion protocol?

You may think a “concussion protocol” implies a static policy that instructs healthcare providers to treat every concussion uniformly. However, trained healthcare providers know that a concussion requires an individualized care approach. A concussion protocol is an organization’s set of policies, tools, and assessments for caring for concussions. It outlines how the concussion care team prepares for, identifies, and responds to this injury.

What should be included in a concussion protocol?

While concussion protocols differ by setting, most healthcare providers agree on the key elements that should be included. Its requirements can also differ depending on country, state, or local laws. A concussion protocol / policy should include:

1. Concussion definition
2. Concussion education
3. Pre-season baseline testing (if possible)
4. Sideline assessment procedures
5. Removal from activity criteria
6. Clinical evaluation procedures
7. Return to cognitive activity guidelines
8. Return to activity procedures and guidelines (including sport-specific exercises)

Who should be on my multidisciplinary concussion care team?

It's critical that a multidisciplinary team of individuals cares for concussion patients. Everyone should work within their scope of practice and communicate with other team members. Evaluate the scopes of practice each professional to ensure there are no gaps in your team:

- **Point Person:** a qualified healthcare provider who serves as the lead on the concussion care team and makes return-to-activity decisions;
- **Athletic Trainer:** recognizes signs and symptoms of concussion at the point of injury. Serves as the liaison between family members, school, and practice;

- **Physical Therapist:** works in vestibular therapy, active rehabilitation, or target-specific deficits identified by the point person;
- **Physiotherapist (outside the US):** involved in concussion assessment, treatment, and rehabilitation. Scope of practice depends on country-specific laws.
- **Occupational Therapist / Optometrist:** helps with activities of daily living and vision therapy;
- **School Nurse:** helps students return to school safely and engage in appropriate activities; monitors appropriate academic workload;
- **Multidisciplinary team members, such as speech language pathologists and school psychologists:** may participate in return-to-school, anxiety/mood issues during recovery, and/or other areas as needed.

Find concussion specialists for your team at
ConcussionCareProviders.com.

DOCUMENTING CONCUSSION CARE



How should I document concussion care?

Consistency is key in concussion documentation. The general rule with concussion documentation is that you cannot over-document the concussion patient care and the services you provide. All aspects of concussion treatment and assessment should be documented from recognition to final clearance. After implementing concussion care best practices, thorough documentation is one of the best ways you may be able to protect your organization from concussion liability.

Documentation begins well before a concussion occurs. Many states in the US require concussion education to be documented.

Be sure to emphasize the importance of knowing concussion signs and symptoms. Coaches, students, and parents may not be as familiar with the dangers of concussion. It's your job to educate them to reduce the short-and long-term risks to athletes.

Sports concussions receive a lot of media attention, and there are many lawsuits involving athletes. Athletic trainers and sideline professionals at youth sports and adult sporting events need to have a method of documenting the injuries that happen. If the athlete experienced loss of consciousness, it's cause for immediate transfer to an emergency department.

Document your concussion assessment. Write down your clinical reasoning that led to the decision to remove the athlete or return them to play. Document if you recommended a short (24 hours to 48 hours) period of cognitive and physical rest. Record if you referred them to a sports medicine center or a concussion clinic and why.

Once a patient comes to clinic, every aspect of the evaluation, recommendations, and communication with the patient/family should be documented. Standardized tools allow you to record concussion symptoms and neurocognitive status. Document your clinical interview: the questions you ask, the patient's responses, and their behavior during that time. Keep track of any questions the patient or their family asks you and your answers.

After your initial assessment, document any clinical reasoning. Explain how you came to conclusions about concussion diagnosis, treatment and rehabilitation decisions. If you need to look something up or consult a colleague, document that research and the sources you consulted.

Record phone consultations, daily treatment, or clinical reasoning. Record every check-in with the patient and family, whether it's a simple symptom check or a complete re-evaluation.

If you refer a patient to a specialist for rehabilitation, document who you contacted, when, and why. Document communication with other specialists. Document your interactions with the patient and family when explaining the referral.

When a patient is ready for clearance, document each phase of the return to activity clearance process. Document each step and your rationale for progressing the patient to the next phase. Explain how you decided to progress the patient both in physical and cognitive exertion.

Document any discharge education you provide to the patient/family. Ensure that every member of the concussion care team and others within your organization understand the importance of documentation. Provide the tools required to document their activity adequately and consistently.

If you don't document your decision-making, you leave yourself and your organization vulnerable to liability from negative patient outcomes. Too much documentation won't be a bad thing if you are ever required to testify for a concussion lawsuit. It's well worth your time to ensure you don't miss any details. You'll be glad you took good notes if you are ever involved in a concussion lawsuit.

Legal liability is a major concern for organizations who participate in concussion care. With the right policies, tools, and team members, you can feel confident that you're making the right decisions for your patients. Have peace of mind knowing that you're doing all you can to shield your organization from concussion lawsuits.

Visit ConcussionManagement.com/Liability
for more concussion care liability resources.

TAKE ACTION



How can I take action?

Concerned about legal liability in concussion care, but not sure how to get your organization up to speed? Get peace of mind knowing you're following best practices and using objective tools to protect your organization from concussion lawsuits:

Visit ConcussionManagement.com/Tools to find the best fit for your organization.