



## Pediatricians and the Law

# How to avoid potential liability headaches from state concussion laws

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In 2006, 13-year-old Zack Lystedt suffered multiple concussions in a football game, which resulted in serious long-term brain injuries. Zack's case inspired patient advocates, who successfully lobbied the Washington State Legislature to adopt the nation's first "concussion law" in 2009.

Since then, more than 40 state legislatures have enacted concussion laws. These laws typically require removing players who suffer suspected sports-related concussions from sports activities until a health care professional clears them to return to play. While these laws are well-intentioned, and have strong popular and physician appeal, they may inadvertently pose new liability risks to pediatricians and other health care professionals.

### Legislating medical care

State legislation has been used as a tool to improve children's health by influencing individual behavior (e.g., seatbelt use, immunizations) and the physical and social environment (e.g., regulating exposure to lead and mandating smoke-free environments). However, lawmakers traditionally have stopped short of legislating specific medical treatments and medical care standards.

Rather, practice guidelines, peer review organizations and potential medical malpractice liability motivate medical professionals to offer treatment consistent with prevailing medical standards. Lawmakers long have preserved the autonomy of patients (and parents of pediatric patients) to balance the risks and benefits of medical treatment and to decide what medical treatment will be administered.

With the advent of concussion laws, state legislatures have taken the innovative step of mandating medical care related to children's sports-related head injuries. These concussion laws specify medical evaluation of children suspected of suffering sports-related head injuries and require written medical clearance from a physician or other health care professional before the child may return to sports.

Historically, parents have had the legal responsibility and authority to make health and lifestyle decisions for their children using medical information provided by their physicians. Parents, not physicians, balance the risks and benefits of medical interventions and decide on children's future activities. However, these new concussion laws now mandate that physicians (or other licensed professionals) determine when a child may return to sports activity.

### Unintended consequences

Concussion laws were proposed to protect child athletes from the complications of traumatic head injuries. It remains unclear whether

these new laws will improve outcomes or whether they may produce unintended adverse effects. For example, as medical screening and clearance are mandated for all suspected concussions, the new laws might result in increased exposure of children to radiation from medically unnecessary head computed tomography (CT) scans. The laws also may lead to increased and unnecessary use of emergency departments, producing longer waiting times and using health care resources that might be allocated elsewhere.

Furthermore, greater concerns by schools and coaches regarding legal liabilities might result in children unnecessarily being denied access to exercise programs. Parents of children who lack health insurance and who have limited financial resources may incur burdensome additional expenses.

For pediatricians who will be asked to provide written clearance before a child may resume participation in a sporting event, these concussion laws also may pose new liability risks. Written clearance has no uniformly accepted definition in the medical or legal literature. Moreover, parents may have a different interpretation of the term than do pediatricians.

Despite appropriate medical evaluations and treatment, sports participants may suffer additional concussions or other complications. In those instances, parents, plaintiffs' attorneys, courts and juries in future medical malpractice cases may well interpret the written clearance as a guarantee that the child would suffer no future adverse events. By directing physicians to provide written clearance, the concussion laws may effectively make those pediatricians responsible for outcomes over which they have little control and for choices traditionally delegated to parents. In addition, these concussion laws may imply that pediatricians can guarantee good outcomes.

### Reducing liability risks

Further research is indicated to assess concussion laws' effects on health and health care delivery, and whether they increase pediatrician liability. In the meantime, pediatricians might reduce their potential liability risks and provide high-quality care by taking the following steps:

- Establish and follow a defined concussion protocol, with evidence-based processes for return-to-play clearance, clear discharge instructions and careful return precautions (see AAP clinical report, *Sport-Related Concussion in Children and Adolescents*, *Pediatrics*. 2010;126:597-615, <http://pediatrics.aappublications.org/content/126/3/597.abstract>).
- Clarify in the chart and in conversations with the parents that clearance to return to play means reasonable medical standards indicate the child may return to play. However, the parents must consider the child's individual risks and benefits of returning to play, and

clearance is not a guarantee against adverse outcomes.

- Firmly resist pressure from parents and coaches to clear a child to return to play when relevant medical evidence and practice guidelines indicate that additional treatment or evaluations are indicated first (e.g., a follow-up examination in several days).
- Facilitate follow-up with appropriate subspecialty providers for patients who cannot be cleared under the usual concussion protocol (e.g., persistent symptoms or deficits).



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