An Analysis of Concussion Legislation in the United States: Is Anyone Paying Attention?

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Physically debilitating medical injuries are inevitable with any contact sport. However, a concussion is unique as it can affect a player’s mental functioning, which can alter physical abilities (Edwards & Bodle, 2014). The injury is particularly significant to football, because it is the sport with the highest concussion frequency rate per athletic exposure (Marar, McIlvain, Fields, & Comstock, 2012). Over the past several years “concussion” has become a significant legal topic, with states rushing to pass sport-related concussion legislation. Presently all 50 states, plus the District of Columbia, have a sport-related concussion law in place (Weinberger & Briskin, 2013). While some states have had legislation pertaining to head injuries in place for years others appear to be more interested in shielding themselves from potential litigation. Concussion lawsuits have been filed against the NFL (Maxwell v. NFL, 2011; Easterling v. NFL, 2011), the NCAA (Owens v. NCAA, 2011) as well as high school athletic associations and school districts (Pierscionek v Illinois High School Association, 2014; Strough v Bedford Community School District et al., 2015). However, at the high school level most state courts have expressed a reluctance to interfere judicially with the contractual relationship between a state high school athletic association and its member schools (Mitten, 2014).

One way to address the public health implications of concussion is to enact legislation; the Zackery Lystedt Law is an example. The bill is named after Zack Lystedt who suffered a life threatening brain injury in 2006 while participating on his middle school football team. The law prohibits any athlete suspected of sustaining a concussion from returning to practice or a game without a licensed health-care provider’s written approval. The law was initially implemented in the state of Washington in 2009. In less than five years all 50 states and the District of Columbia have implemented the core values of the Lystedt Law. However, the legislation can be construed as deficient since it fails to identify penalties for schools that do not comply with the legislation.

This is a five year follow-up study to a previous one conducted in 2012. At that time only 30 states possessed legislation pertaining to concussion. The present study examines all 50 states’ concussion-related legislation. It will also examine the current legislation of the thirty states possessing such legislation in 2012 to see if the legislation has changed in the ensuing five years. Finally this study answers the following six specific legal research questions:
1) What is the stated purpose of the legislation?
2) What affirmative behavior/action does the legislation require?
3) What entities are governed by the legislation?
4) How is the legislation enforced?
5) What are the penalties for non-compliance?
6) From a public policy perspective, what are the strengths and weaknesses of the legislation?

Legal research is an important tool that plays a critical role in public health law policy. The purpose of public health law policy is generally to improve the health of the general population within social and legal limits (Tietelbaum & Wilensky, 2007). The current study will provide a public health policy tool in the prevention of injury and disease, focusing on the purpose and role of the law with the goal of identifying strengths and weaknesses. Common purposes for the legislation are identified as well as common elements of the statutes. Strengths and weaknesses are identified and the implications for future litigation and risk management policies for sport managers will also be discussed.

This legal research study measures the law – as such, state legislation and proposed legislation constitute the data. The state statutes were identified using the LexisNexis legal database search engine. In examining the statutes, considerations of “precision, sensitivity, specificity, validity and reliability” were taken into account for coding each element of the law (Tremper, Thomas & Wagenaar, 2009). Categorical variables for measuring the law include: full...
legal citation, enactment date, effective date, legal provisions, populations covered, enforcement provisions, and not sure/other. The legal provisions categorical variable was multi-layered with subcategories for education, treatment, return-to-play, and other. Two researchers examined each statute independently and then compared coding. Discrepancies were reviewed until there was agreement.