

Family Seeks Upward Of \$20 Million In Wake Of Defendants' Alleged Failure To Follow Concussion Protocol

The family of a high school football player in Montana has sued a group of defendants—including the school district, its insurers, the employer of an athletic trainer and multiple individual defendants— after the player was inserted into a game before he had been given medical clearance to return to play from a concussion he had suffered a week earlier.

The player suffered a head injury during a football game Sept. 5, 2014. He was taken to the hospital's emergency room where he was diagnosed with a minor concussion.

The football player rested at home for a couple of days, bypassing both the classroom and the practice field. He then went to see a doctor at a local clinic who evaluated him and affirmed the diagnosis of a concussion. The doctor told him he was not to resume practice until Sept. 15, 2014. The athlete reportedly delivered the note from the clinic on Sept. 10, 2014 to his head coach.

The head coach, allegedly, exchanged text messages about the player's symptoms with the athletic trainer, who was employed by the hospital system. The athletic trainer allegedly told the head coach that the athlete could possibly have the flu. She also allegedly told the head coach that an ImpACT test may help determine the athlete's readiness to return to play. The head coach had the player take an ImpACT test. According to the lawsuit, the athletic trainer reviewed the results of the test Sept. 11, 2014, and determined that he had passed the test, allegedly without reviewing the medical records at the hospital. The player was allowed to return that day to a noncontact practice.

Just before the game Friday, Sept. 12, 2014, the head coach and/or the athletic trainer verbally cleared the athlete to play, according to the lawsuit, even though he had not been medically cleared. While he did not suffer any major collisions during the game, the damage was apparently done. While standing on the sideline at halftime, the player collapsed. Unconscious and unresponsive, he was taken by ambulance to the hospital, where he underwent an emergency craniotomy. As a result of the incident, the athlete has severe neurological and brain deficits. He is a quadriplegic, who cannot speak, requiring 24-hour care.

The attorney representing the plaintiffs said the athlete and his family have incurred more than \$1 million in medical bills. "Absent a miraculous recovery, this is the way he's going to be," the attorney told the media. "[His] future medical care is extensive. That burden should not fall upon the family."

The attorney has named the school district, head football coach, hospital system, the athletic trainer, and three insurance companies as defendants in the lawsuit.

The complaint alleges that the head coach and the athletic trainer failed to follow the established return-to-play concussion protocol by permitting the player to return to the field without medical clearance. The protocol is based on the Dylan Steigers Protection of Youth Athletes Act, which was passed by the 63rd Montana Legislature in 2013. It specifically requires that a youth athlete who exhibits signs, symptoms or behaviors consistent with a concussion be removed from participation until medical clearance is obtained.

The plaintiffs also challenged, on Constitutional grounds, Montana Code Ann. § 2-9-108, Montana Code Ann. § 25-9-4, and Montana Code Ann. § 25-9-411.

The first challenge is to "limitation on governmental liability for damages in tort" or

The first challenge is to "Limitation on governmental liability for damages in tort," or <http://leg.mt.gov/bills/mca/2/9/2-9-108.htm>

The second challenge is to "Amount of interest," or <http://leg.mt.gov/bills/mca/25/9/25-9-205.htm>

The third challenge is to "Medical malpractice non-economic damages limitation," or <http://leg.mt.gov/bills/mca/25/9/25-9-411.htm>

Some Similarities with Another Concussion Lawsuit in Montana

The latest lawsuit comes on the heels of another legal action of the state of Montana that was just resolved involving a football player and the school district. A settlement calls for the athlete and his parents to receive \$300,000 as well as lifetime medical care up to \$5 million through a catastrophic insurer.

The parents of the injured football player filed the lawsuit against the school district, claiming that their son suffered a life-altering traumatic brain injury as a result of his participation in the school's football program.

The complaint, filed in district court, alleged that the player's coaches were negligent when they sent him back on to the field to practice with the team, in spite of a doctor's recommendation.

According to the lawsuit, the athlete and another player suffered concussions and were vomiting on the field after being involved in a head-to-head tackle during practice Aug. 21, 2009. It was the second such head collision the athlete in the lawsuit had experienced that day.

A doctor later diagnosed the player with a concussion and ordered that he not play for 11 days. When the coaches were notified of his limitations, they "indicated that if [the player] wanted stay on the team, he would have to show up for practices, but that he would not be asked to play football until medically cleared," the court document states.

However, the parents claimed that six days after his initial injury, the coaches told the athlete "to get out and hit bags, stating it wouldn't be considered contact play." They "also told [the athlete] that if he wanted to play varsity, he would have to get off the bench and run some plays," which he did, according to the suit. During these plays, a shoulder-to-helmet hit with the team's largest linebacker knocked the athlete unconscious and "he woke to find himself being carried off the field."

"Despite being knocked unconscious and receiving an obvious second concussion, the coaches did not call 911, did not contact the school nurse and did not contact [the athlete's] parents," in violation of school policy, the lawsuit alleged. Instead, "they merely sat him on the sidelines and sent him home after practice."

RELATED RESOURCES

- NATA Position Statement: Management of Sport Concussion
- Inter-Association Consensus Statement on Best Practices for Sports Medicine Management for Secondary Schools and Colleges
- Concussion Care Requires Communication
- Concussion Handout
- Parents and the New Concussion Paradigm
- Concussion: Differentiating from concern and paranoia
- Concussion Baseline Testing: Preexisting Factors, Symptoms, and Neurocognitive Performance
- Cervical Injury Assessments for Concussion Evaluation: A Review
- Concussion-Like Symptoms in Child and Youth Athletes at Baseline: What Is "Typical"?
- Epidemiologic Measures for Quantifying the Incidence of Concussion in National Collegiate Athletic Association Sports

- “Playing Through It”: Delayed Reporting and Removal From Athletic Activity After Concussion Predicts Prolonged Recovery
- High Baseline Postconcussion Symptom Scores and Concussion Outcomes in Athletes