

Medico-legal Considerations, Part 1

2

00:00:12.820 --> 00:00:19.299

Tamara McLeod: Hello, and welcome to Week one where we're discussing medical legal considerations of concussion policy.

3

00:00:19.610 --> 00:00:30.540

Tamara McLeod: I've got 2 short narrated presentations that will hit on some important topics about concussion law, concussion policy, and how all of these different elements relate.

4

00:00:31.490 --> 00:00:50.240

Tamara McLeod: So our objectives for these presentations are to discuss the need for concussion policy. The levels of policy identify areas where athletic trainers can improve their own concussion policy and apply best practices to ensure appropriate documentation and policy development.

5

00:00:51.490 --> 00:01:10.270

Tamara McLeod: When we think about concussion policy, I think it's important to consider that there are a number of levels or layers of policy that one might have as outlined. Here we have State laws. That typically apply for apply to high schools, and in some cases use sports

6

00:01:10.290 --> 00:01:29.119

Tamara McLeod: association policy. This could be inner scholastic association policy. This could be an AI policy and Ca policy. We might have school district or school level policies that can be a little bit more specific. And then we have standing orders between the athletic trainer and their directing position.

7

00:01:29.590 --> 00:01:49.859

Tamara McLeod: Now, our State laws are typically difficult to amend, and because of that they are usually somewhat vague. If anyone's been involved in a legislative process. You really get a sense that it can be very difficult to open up existing legislation to amend it in any way. So in some cases

8

00:01:49.860 --> 00:02:12.410

Tamara McLeod: a State concussion law might be as vague as the the law directs the Department of Education to develop a policy, and that leaves that policy level at the Department of Education, or perhaps the Interscholastic Association to change when specifics about policy may change, and to provide all of the details about what goes into that policy.

9

00:02:13.450 --> 00:02:32.479

Tamara McLeod: Now, our Association school district school and standing orders may may change and should change hopefully between last June, when all of the Amsterdam statements came out. And now. You've looked at your concussion policy and you've decided on. You know what areas really need to be updated.

10

00:02:32.670 --> 00:02:49.249

Tamara McLeod: These policies are usually under the direction of the many best practice recommendation documents that we have, including those put out by the International Concussion and Sport Group, the National Athletic Trainers Association, or other professional and medical organizations.

11

00:02:49.460 --> 00:02:53.089

Tamara McLeod: As we kind of work our way down these levels of policy.

12

00:02:53.290 --> 00:03:03.910

Tamara McLeod: the details can become much more specific to fit the local situation. I'm going to run and come run through a couple of examples that highlights this to some degree.

13

00:03:04.480 --> 00:03:13.990

Tamara McLeod: So if we think about at the at the far end of the spectrum. Our State laws, most of these have 4 key components, including education.

14

00:03:14.240 --> 00:03:28.280

Tamara McLeod: Although who is educated, may vary state by State. In some States it is athletes only. In some States there are parent and coach requirements for preseason education, and in some States there are even requirements for healthcare providers.

15

00:03:28.420 --> 00:03:40.019

Tamara McLeod: There's also elements of parental informed consent that they have been provided information that talks about concussion, and what may happen if a concussion is not reported.

16

00:03:40.660 --> 00:03:50.450

Tamara McLeod: all of the State laws have some provision for removal of play and clearance to return, and there are some significant variations in the clearance. To return to component.

17

00:03:50.450 --> 00:04:16.550

Tamara McLeod: In some states it may list a licensed healthcare provider that could be anyone in that State who has a healthcare license under certain statutes. In other States. It might be Md. Or do. Only some states include neural psychologists. Some states include athletic trainers. And so really, there's a lot of variation in scope of practice in some ways based on how these State laws are written.

18

00:04:17.209 --> 00:04:24.220

Tamara McLeod: Furthermore, there are differences in some other areas, how elements of the State law are verified.

19

00:04:24.220 --> 00:04:43.909

Tamara McLeod: The target population. All of these cover high school sports. But some do have provisions for you sports, and some are a little a little wacky. So, for example, in Arizona, you sports are covered under the State concussion law, if those activities take place on public lands.

20

00:04:43.910 --> 00:04:54.969

Tamara McLeod: So, for example, if the Use Soccer Club participates at the local high school and pools their practices and their games there. Then they are required to to follow the State law.

21

00:04:55.000 --> 00:05:25.050

Tamara McLeod: If a private soccer club has their own facility. They don't necessarily have to. They're not bound by the State law. Now, I will say that having 2 children who participate in sports and did sports camps over breaks. Many of the non-covered entities are, including concussion, education and and policies into what they're doing. So it's not that people are sneaking out under the law. It just really depends on how that law was crafted.

22

00:05:25.050 --> 00:05:34.219

Tamara McLeod: and anytime we talk about a law. You've got lobbyists, and you've got multiple sides that want to get kind of their voice heard in the development of that law.

23

00:05:34.660 --> 00:06:02.289

Tamara McLeod: Some State laws have very specific removal and return protocols. And that can be somewhat problematic. Because if we look at the change from the Berlin International statement, return to sports strategy to the Amsterdam. There are some significant differences in there, and if the Berlin type statement type return protocol is in a State law. That really needs to be amended to be up to date with best practices. Currently

24

00:06:02.290 --> 00:06:25.340

Tamara McLeod: the definitions of healthcare professionals. Whether or not those professionals have to have concussion training. Some State laws actually have provisions for race baseline or pre-season assessments. And we'll talk a little bit about how that can be problematic when there's really a reduction in the reliance on preseason baselines and then liability waivers, and who might actually be waived from liability.

25

00:06:25.690 --> 00:06:54.829

Tamara McLeod: Now we know that the State laws have been somewhat impactful. All of them require concussion education. And from that we've actually seen an increase in concussion reporting and healthcare utilization. And it's not that more concussions are happening. But I think it's that more people are aware more are recognizing suspected concussions, removing athletes and following proper protocols. Which is exactly what we want this type of law to do.

26

00:06:55.040 --> 00:07:07.989

Tamara McLeod: However, we've also noted that many State law components are not necessarily built into school concussion policies, and the implementation of these laws and policies do face some barriers.

27

00:07:09.200 --> 00:07:25.669

Tamara McLeod: So why are we even starting off this course? Talking about medical legal implications? Well, concussion is is certainly an area that is ripe with the potential for catastrophic results in any time. In healthcare there is some type of catastrophic outcome. There is usually a lawsuit.

28

00:07:25.670 --> 00:07:49.430

Tamara McLeod: and with respect to concussion litigation, it is heightened by a number of different reasons. The first is that it's a hot topic. You've got the Nfl. You've got concerns with Cte. You've got lawsuits against the Ncaa, and for personal injury attorneys. This is kind of an area that that they can make some money in just for kicks. If you Google

29

00:07:49.430 --> 00:07:59.249

Tamara McLeod: concussion personal injury. Attorney, you will see that some attorneys are now building their practices around concussion as a key injury.

30

00:07:59.730 --> 00:08:00.970

Tamara McLeod: and

31

00:08:01.170 --> 00:08:24.480

Tamara McLeod: part of the the litigation really stems from. You know, we don't

have gold standards for diagnosis. We don't have gold standards of of when someone is recovering. So there is a lot of gray area and the management of concussion from the diagnosis through the return is really based on the the expert opinions of the healthcare providers that are managing that particular patient.

32

00:08:24.530 --> 00:08:43.730

Tamara McLeod: Back in the day we had graphing scales that would grade the severity of a concussion primarily based off length, the loss of consciousness and post traumatic amnesia. You know, we know that those are irrelevant. They don't really assist with anything from a clinical management standpoint.

33

00:08:43.789 --> 00:08:55.649

Tamara McLeod: We don't have the magic dipstick test that tells us when an individual has fully recovered and when it is safe to return, or when an individual should continue to participate.

34

00:08:56.740 --> 00:09:17.489

Tamara McLeod: So there's a lot of risks within sports medicine and specifically with concussion for litigation. And in the cases that I've been involved with as well as those that I've read about. These are some of the main reasons. The first is, either the assessment or lack of assessment of the patient being a thorough multi factorial assessment.

35

00:09:17.490 --> 00:09:30.270

Tamara McLeod: Documentation is critical. If you are not documenting, it did not happen. And documentation, as we'll see, needs to be very, very detailed. With respect to concussion.

36

00:09:30.510 --> 00:09:41.140

Tamara McLeod: I'm not following the return to play for progression. A lack of communication with the patient and parent. If they're a minor or directing physician about the management.

37

00:09:41.140 --> 00:10:07.409

Tamara McLeod: And then some cases have really kind of used this terminology of failure to warn the lack of educating the patient or the parent before the injury happens, that playing football comes with a risk of injury. And in some cases that has really led to some institutions, you know, saying we should be reading the disclaimers on all of the equipment out loud, so that everyone knows that a football helmet is not going to prevent a concussion.

38

00:10:08.910 --> 00:10:21.359

Tamara McLeod: Now. when a lawsuit is filed, the plaintiff's attorney typically

files for negligence and negligence is is a wrongdoing that could either be

39

00:10:21.360 --> 00:10:46.229

Tamara McLeod: something that is is intentional or unintentional. And these are kind of the sub categories of negligence. Malfeasance is intentional conduct that is wrongful or or unlawful. This would be gross mismanagement of a patient not removing an individual from play, who, you know, has a number of observable signs of concussion.

40

00:10:46.620 --> 00:10:48.100

Tamara McLeod: Non-feasants

41

00:10:48.110 --> 00:10:58.419

Tamara McLeod: is failure to act when there was a duty to act, and that is more of failing to provide care when you had a duty based on your employment contract.

42

00:10:58.460 --> 00:11:12.039

Tamara McLeod: and then Miss Feasance is a conduct that is lawful but inappropriate. And this might be not following best practice recommendations, for example, doing baseline assessments and not

43

00:11:12.040 --> 00:11:33.669

Tamara McLeod: looking at the results to determine whether or not individuals had invalid tests doing the the baseline assessment. Is, is, there's there's nothing in the law that says you have to, or you don't have to, or that you even have to look at it. But we know from best practices with neuro cognitive testing that we should be reviewing for invalid baselines.

44

00:11:34.510 --> 00:11:57.339

Tamara McLeod: Now it's all on the plaintiff to actually prove that negligence happened. And to do this. There are 4 elements. That there is. A duty of care. They have to tie that athletic trainer to that patient, that there is some duty based on a Prn contract, an employment contract, or something else, that they had a duty to take care of that individual.

45

00:11:57.340 --> 00:12:07.110

Tamara McLeod: that there was a breach of care. Something was done. Incorrectly, inappropriately or not done. That caused harm.

46

00:12:07.110 --> 00:12:23.560

Tamara McLeod: There has to be that linkage between the act of breach and causing harm, and then there has to be actual harm in the case where an individual has

passed away, or has long term disability, that harm is very easy for a jury to see.

47

00:12:23.800 --> 00:12:44.409

Tamara McLeod: In other cases. Again, those connections have to be made that there is some kind of long term issue happening? And in some cases, you know, they they can argue that it might be that this individual cannot get the employment that they had initially hoped for. Because of elements of the brain injury.

48

00:12:44.580 --> 00:12:47.680

Tamara McLeod: The plaintiff needs to prove all 4.

49

00:12:47.780 --> 00:12:57.560

Tamara McLeod: Your defense attorney just needs to disprove one. So how do we do that? How do we determine duty, breach, and cause all of them?

50

00:12:57.970 --> 00:13:22.139

Tamara McLeod: It's through our understanding of the standard of care. And this is the legal definition from the Ray management text. It's the legal duty to provide healthcare services consistent with what other healthcare practitioners of the same training, same education, and same credentialing would provide under the circumstances.

51

00:13:22.240 --> 00:13:46.039

Tamara McLeod: And this is where it can get a little bit difficult to really determine whether or not the standard of care was met because you could look at something like the Nfl that has multiple athletic trainers, multiple physicians, every health care at their element at their disposal. You could also look at a rural secondary school athletic trainer that might have 2 high schools that they're covering, and they visit every other day.

52

00:13:46.180 --> 00:13:57.829

Tamara McLeod: so their circumstances, and what they would be held to is very different than what an Nfl athletic trainer would be held to, because those healthcare circumstances are very different.

53

00:13:57.870 --> 00:14:16.639

Tamara McLeod: And so you kind of have to put you know somebody else's hat on to to really get a sense of whether or not that happens, and that's done by expert witnesses that are hired by both the defendant and the plaintiff, and they kind of battle over. What is this standard of care. And how do we determine what that is?

54

00:14:16.790 --> 00:14:23.840

Tamara McLeod: Is it from our position statements that actually discreetly say they are not standard of care documents?

55

00:14:24.020 --> 00:14:35.219

Tamara McLeod: Are they from other professional organizations, such as the American Academy of Pediatrics, the American Academy and Neurology, or the International Concussion and Support Group.

56

00:14:35.640 --> 00:14:44.760

Tamara McLeod: Now, what can be somewhat problematic is, these documents are not all congruent. They don't all say the same thing.

57

00:14:45.120 --> 00:15:03.540

Tamara McLeod: Some are updated more frequently than others, and some have had very particular areas of focus. So with the concussion standard of care, there is some ambiguity between understanding what is a diagnosis and recovery.

58

00:15:04.010 --> 00:15:07.669

Tamara McLeod: and there are a lot of different guidelines and recommendations.

59

00:15:07.900 --> 00:15:13.180

Tamara McLeod: So, for example, just even looking at the international Concussion and Sport group alone.

60

00:15:13.600 --> 00:15:25.409

Tamara McLeod: the first statement came out in 2,001 from Vienna, the most recent in this past June, and with these the newer version replaces the old version.

61

00:15:25.610 --> 00:15:47.749

Tamara McLeod: They've done Updated systematic reviews of the literature, they modify the recommendations that come from it. A great example is even between Berlin and Amsterdam, with regards to early aerobic exercise and getting patients active. You know the there's some significant changes that have happened.

62

00:15:47.980 --> 00:16:05.849

Tamara McLeod: To both the return to sports strategy and kind of that post injury management that it's okay to put a patient on a stationary bike or a treadmill on day 2 post injury, even if they have symptoms. And that's a big change. But that is something that we now need to start thinking about in our our own policies and our own practices.

63

00:16:06.240 --> 00:16:22.930

Tamara McLeod: We also have recommendations from a number of professional organizations, including the NATA. But also including the American Medical Society for Sports Medicine. This is the membership group for primary care sports, medicine physicians. Many of you probably have directing physicians

64

00:16:23.170 --> 00:16:33.729

Tamara McLeod: who are am Ssm members. So I think it's good practice to really understand. What do these other statements say, because if you if you're butting heads with your directing physician about a patient.

65

00:16:33.890 --> 00:16:58.779

Tamara McLeod: maybe it's not that you're right. They're wrong, or vice versa. Maybe your statements are just seeing something very different, and that is something that that you need to reconcile. I will say that the Nita is publishing a bridge statement to kind of bridge the gap between the 2,014 statement and current recommendations from Amsterdam that has been accepted by the journal of Athletic Training, and hopefully should be out soon.

66

00:17:00.230 --> 00:17:19.650

Tamara McLeod: Now the statements are similar in a number of key areas which I think is important. The fact that this is a clinical diagnosis based off of mechanism, of injury, signs and symptoms. Imaging is not very helpful. Clinically, to either diagnose, cover concussion or determine recovery.

67

00:17:19.910 --> 00:17:32.929

Tamara McLeod: We need to use multi-factorial assessments. We cannot put all of our eggs in the cognitive neuro psych testing basket or the balance basket. We need to be assessing multiple domains.

68

00:17:33.660 --> 00:17:47.820

Tamara McLeod: Athletes with suspected concussions should not return on the same day. We need to monitor our patients serially over time to look for any red flags or progressing, and then, throughout recovery.

69

00:17:48.560 --> 00:17:53.650

Tamara McLeod: our patient should follow a graduated return to play or return to sport progression.

70

00:17:54.520 --> 00:18:01.910

Tamara McLeod: Now statements differ in a number of different areas. Probably the the biggest one is rest versus activity.

71

00:18:02.380 --> 00:18:26.139

Tamara McLeod: Older statements typically recommend a longer rest period. And in fact, the 2014 Nita statement said patients should rest until they're asymptomatic before beginning the return to sports strategy or the return to play progression. That is no longer best practices. We certainly do not want to rest until asymptomatic. We want to get patients moving through treatment.

72

00:18:26.150 --> 00:18:32.279

Tamara McLeod: And the more recent statements really take an active approach on treatment. Specifically, the Amsterdam statement.

73

00:18:32.650 --> 00:19:02.200

Tamara McLeod: the specifics of the graduated return to play or return to sport protocol are also different. The Amsterdam statement uses return to sport strategy and it literally starts 24 to 48 h after the injury, with returning to activities of daily living and then moving into light and moderate aerobic exercise as a concussion treatment, strategy, before even diving into any of the other elements.

74

00:19:02.700 --> 00:19:22.819

Tamara McLeod: and then the other area that the statements often differ on is neurocognitive testing or neurocognitive assessments, and whether or not baselines are needed. In fact, the only statement that suggests anything about baselines needed is the 2014 and N. Ata. Statement. And it is really just for high risk athletes.

75

00:19:23.050 --> 00:19:25.850

Tamara McLeod: So let's look at that in a little bit more detail.

76

00:19:26.340 --> 00:19:45.130

Tamara McLeod: So if we think historically over time, the the focus or the attention on neural cognitive assessment has really declined. Back in Vienna it was labeled as the cornerstone of Concussion Evaluation at Prague. It was noted as an aid to clinical decision making

77

00:19:45.150 --> 00:19:54.189

Tamara McLeod: in Zurich both Zurich meetings it was identified as not the sole basis, and it's important to have consultation with neuropologists.

78

00:19:55.270 --> 00:20:08.429

Tamara McLeod: And then, in the Berlin statement it noted it was an aid to clinical decision making not substitutes for a full neuro. Psychological evaluation and

baseline and post injury testing are not necessarily required

79

00:20:09.480 --> 00:20:16.710

Tamara McLeod: if we look across. And that was just the international statement, progression. If we look across some of the other statements.

80

00:20:17.320 --> 00:20:39.989

Tamara McLeod: The the again, the only one that really recommends anything related to baselines is the Nita statement. If you are working in the secondary school setting, you need to be doing it annually because of cognitive development. And it should also be multi factorial. We cannot just use computerized neuro cognitive assessments.

81

00:20:40.670 --> 00:20:42.740

Tamara McLeod: So what does Amsterdam say?

82

00:20:43.470 --> 00:21:07.290

Tamara McLeod: Not a lot. They did not spend a lot of time talking about this. And I think part of it is they they tended to agree with the the previous statements, and noted that comparison of reaction time, elements against patient baseline and community norms may be useful. So again, you could use normative data doesn't necessarily have to be an individual baseline.

83

00:21:07.750 --> 00:21:21.349

Tamara McLeod: With respect to Para sport athletes, the baseline may be more beneficial, due to the variable nature of their disabilities, and the potential for atypical presentation of signs and symptoms following a suspected concussion.

84

00:21:21.690 --> 00:21:34.409

Tamara McLeod: And then, in our younger age group, baseline testing is a limited use because of neural cognitive development. So again, really need to think about, where are we spending our time? And and how are we writing these into our policies?

85

00:21:35.690 --> 00:21:59.800

Tamara McLeod: I'm just gonna end this section, talking a little bit about, how do you decide? What do you do in your own policy when the information and the best practice recommendations differ? I think it's important to think about what is the focus of the statement? To whom is that statement directed? If we think about Nata position statements, they are typically directed at athletic trainers and their directing physicians as well as the institution.

86

00:22:00.140 --> 00:22:04.009

Tamara McLeod: The American Academy of Pediatrics is just focusing on the kiddos.

87

00:22:04.390 --> 00:22:25.030

Tamara McLeod: The International statement group is focusing on everyone. Those recommendations have to cut across a variety of countries a variety of healthcare providers with different educational backgrounds. They have to make the recommendations simple for your general pediatrician and also specific enough for a sports medicine specialist.

88

00:22:25.630 --> 00:22:35.760

Tamara McLeod: You also need to think about the feasibility of implementing recommendations into your setting. What does your medical direction look like? Is your directing physician an orthopedicist

89

00:22:35.940 --> 00:22:43.989

Tamara McLeod: that might not be so savvy in concussion? Is it a primary care, sports, medicine, that that has a pretty good understanding of concussion.

90

00:22:44.370 --> 00:22:54.600

Tamara McLeod: What are the equipment supplies available? What is the personnel available? I think one of the biggest barriers to appropriate baseline assessments are

91

00:22:54.690 --> 00:23:13.180

Tamara McLeod: one athletic trainer in a secondary school, with, you know, several 100 athletes. It's just not feasible to to do everyone and do it well. And that can get you in trouble legally, if you are doing things, but not necessarily doing them to the highest standard.

92

00:23:13.370 --> 00:23:19.130

Tamara McLeod: So we need to think about going way back to kind of an evidence-based practice paradigm

93

00:23:19.440 --> 00:23:43.820

Tamara McLeod: where we need to look at. Okay? Well, what does the best research evidence, say, and the recommendations in these statements are based off of the best research evidence. But then we also need to look at the healthcare resources available at your institution, your clinical state, the circumstances, your clinical experience and familiarity with different tools and assessments, as well as patient considerations.

94

00:23:44.570 --> 00:24:07.250

Tamara McLeod: So from a legal standpoint. The Nata 2,014 statements recommendations which are still valid today. include that athletic trainers should be aware of all governing bodies and their policies and procedures, you should document the athletes, understanding of concussion signs and symptoms, and their responsibility to report. This is kind of that informed consent. Element.

95

00:24:08.400 --> 00:24:30.229

Tamara McLeod: Communicate the status of patients to your directing position on a regular basis. Or if they're seeing their primary care provider, or another concussion specialist that you're having communications regularly about that patient status and that you're ensuring proper documentation of the evaluation management treatment. Return to play and position communication

96

00:24:30.330 --> 00:24:39.160

Tamara McLeod: in the next section. We'll talk a little bit more about how you can maximize patient safety and minimize risk regarding medical legal aspects.