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“When in Doubt, Sit Them Out”: Chapter 173 Effectively Supplements California Concussion Law and Raises Awareness Among Coaches

Josh Hunsucker

Code Section Affected

Education Code § 35179.1 (amended).

AB 1451 (Hayashi); 2012 STAT. Ch. 173.

I. INTRODUCTION

Jaquan Waller was a star high-school football player from North Carolina.¹ During a practice in 2008, Waller suffered an undiagnosed concussion.² Because coaches and first responders never received training on concussions, they did not properly remove Waller from practice.³ Despite demonstrating signs and symptoms of a concussion, Waller played in a game less than forty-eight hours later and suffered a second concussion.⁴ He died less than twenty-four hours after suffering the second hit.⁵

Each year, doctors estimate that roughly 300,000 people in America will suffer from sports-related concussions.⁶ While injuries in professional sports make headlines, “[f]or every concussion . . . occurring at the professional sports level, there are tens of thousands of injuries at the high school level and below.”⁷

1. BIG HITS, BROKEN DREAMS (CNN 2011), available at <http://www.sportconcussionlibrary.com/content/big-hits-broken-dreams> (on file with the *McGeorge Law Review*).

2. *Id.*

3. *Id.* at 2:24–3:12.

4. *Id.* at 4:09–4:44.

5. Stephanie Cary, *Tackling the Danger of Concussions: Documentary Raises Severity of Injury, How to Prevent It*, L.A. DAILY NEWS, Jan. 26, 2012, at L1, available at http://www.dailynews.com/lalife/ci_19820561 (on file with the *McGeorge Law Review*); see also BIG HITS, BROKEN DREAMS, *supra* note 1 (explaining that Waller’s death was from bleeding and swelling of the brain called a subdural hematoma, and linked directly to second impact syndrome). Second impact syndrome is a rare but fatal complication that happens when a person sustains a second head injury before the first injury heals. Erika A. Diehl, *What’s All the Headache?: Reform Needed to Cope with the Effects of Concussions in Football*, 23 J.L. & HEALTH 83, 92 (2010).

6. Marie-France Wilson, *Young Athletes at Risk: Preventing and Managing Consequences of Sports Concussions in Young Athletes and Related Legal Issues*, 21 MARQ. SPORTS L. REV. 241, 244 (2010) (citing Sergio R. Russo & Kevin M. Guskiewicz, *Sport-Related Concussion in the Young Athlete*, 18 CURRENT OPINION IN PEDIATRICS 376, 376 (2006)); see also *Concussion and Mild TBI*, CTRS. FOR DISEASE CONTROL & PREVENTION (July 27, 2012), <http://www.cdc.gov/Concussion/> (on file with the *McGeorge Law Review*) (“[A] type of traumatic brain injury, or TBI, caused by a bump, blow, or jolt to the head that can change the way your brain normally works.”); CAL. INTERSCHOLASTIC FED’N, CONCUSSION: A FACT SHEET FOR COACHES (2011), available at http://www.cifstate.org/images/PDF/Coaches_Fact_Sheet.PDF (on file with the *McGeorge Law Review*) (explaining that young athletes are particularly vulnerable to severe or fatal injury from a concussion, specifically if they sustain a second concussion prior to the initial injury fully healing).

7. Diehl, *supra* note 5, at 85 (quoting Dr. Micky Collins, the Director of the Sports Medical Concussion

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The issue of concussions in sports has risen to the forefront of national debate over the past five years because of lawsuits, high profile suicides, and rule changes involving the National Football League (NFL).⁸ In 2011, California passed a concussion return-to-play⁹ law that requires coaches to adopt the policy of “when in doubt, sit them out.”¹⁰ Current law requires all coaches to take CPR and first-aid courses.¹¹ Although some of the CPR and first-aid courses include training on concussions, concussion training is not mandatory and the law “assumes that . . . coaches . . . are properly educated and informed.”¹² In an effort to provide “state-wide uniformity” in concussion training that promotes a greater awareness of the signs and symptoms of concussions, Assembly Member Mary Hayashi introduced Chapter 173.¹³ Hayashi believes that Chapter 173 clarifies

Program at University of Pittsburgh Medical Center (UMPC), which has the largest sports medical concussion program and is an international leader in concussion research and treatment). Although football accounts for the most concussions in youth sports, girls’ soccer ranks second. See Kate Snow et al., *Concussion Crisis Growing in Girls’ Soccer*, ROCK CENTER (May 9, 2012, 9:50 AM), http://rockcenter.nbcnews.com/_news/2012/05/09/11604307-concussion-crisis-growing-in-girls-soccer?lite (on file with the *McGeorge Law Review*) (detailing the prevalence of concussions in girls soccer and the rising safety concerns about the sport).

8. See Bill Patterson, *Concussion Care Now Priority in Prep Sports*, SACRAMENTO BEE, Nov. 28, 2011, at 1A, available at <http://www.sacbee.com/2011/11/28/4083456/concussion-care-now-priority-in.html> (on file with the *McGeorge Law Review*) (attributing increased awareness to the NFL’s recognition of the serious nature of head trauma); see also Associated Press, *Concussion Lawsuits Are Next Big U.S. Litigation*, USA TODAY (June 30, 2012 8:08 PM), <http://www.usatoday.com/sports/football/nfl/story/2012-06-30/concussion-lawsuits-are-next-big-US-litigation/55948928/1> (on file with the *McGeorge Law Review*) (detailing pending NFL concussion litigation); Mark Fainaru-Wada & Steve Fainaru, *CTE Identifier Involved in Autopsy*, ESPN (May 4, 2012, 12:26 AM), http://espn.go.com/nfl/story/_id/7888497/sources-forensic-pathologist-credited-identifying-cte-involved-junior-seau-autopsy (on file with the *McGeorge Law Review*) (detailing the suicide of former NFL player Junior Seau); Jacquelyn Martin, *New NFL Rules Designed to Limit Head Injuries*, NFL (Aug. 6, 2010, 5:33 PM), <http://www.nfl.com/news/story/09000d5d81990bdf/article/new-nfl-rules-designed-to-limit-head-injuries> (on file with *McGeorge Law Review*) (describing rules designed to protect “defenseless” players and improve player safety); Alan Schwarz, *Duerson’s Brain Trauma Diagnosed*, N.Y. TIMES, May 2, 2011, at B11, available at <http://www.nytimes.com/2011/05/03/sports/football/03duerson.html> (on file with the *McGeorge Law Review*) (explaining how an autopsy on former NFL player Dave Duerson, who committed suicide, found brain damage linked to repeated concussions).

9. *Lystedt Law Overview*, NFLEVOLUTION.COM (Aug. 9, 2012), <http://www.nflevolution.com/article/The-Zackery-Lystedt-Law?ref=270> (on file with the *McGeorge Law Review*) (illustrating that if an athlete demonstrates signs or symptoms of a concussion, he or she “must be removed from a game or practice and not be permitted to return to play,” and may only return to play after a doctor clears the athlete to play).

10. Richard H. Adler, *Youth Sports and Concussions: Preventing Preventable Brain Injuries. One Client, One Cause, and a New Law*, 22 PHYSICAL MED. & REHAB. CLINICS OF N. AM. 721, 726 (2011) [hereinafter *Preventing Preventable Brain Injuries*]; Cary, *supra* note 5 (explaining that when coaches are unsure of whether a concussion has occurred, they should sit the student athlete out). In response to the growing concern about concussions in sports, the state of Washington passed the nation’s first comprehensive concussion law, named the Zackery Lystedt Law, in 2009. WASH. REV. CODE § 28A.600.190 (West Supp. 2012); see also *Lystedt Law Overview*, *supra* note 9 (explaining that Washington named the law after Zackery Lystedt, a middle-school football player who suffered a debilitating brain injury when he returned to a football game after sustaining an undiagnosed concussion in 2006). Of the forty states that have passed concussion legislation, thirty-nine modeled their law after Washington’s, including California. *Id.*

11. CAL. EDUC. CODE § 35179.1(c)(2)–(6) (West 2012).

12. *Preventing Preventable Brain Injuries*, *supra* note 10, at 722.

13. Telephone Interview with Ross Warren, Chief Consultant, Cal. Assembly Bus. & Professions

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existing concussion law by requiring coaches to “receive [critical] training that will help them better respond to head injuries.”¹⁴

II. LEGAL BACKGROUND

The California State Legislature enacted the California High School Coaching Education and Training Program (Program) in 1998, intending that local school districts emphasize eight specific and evolving areas in coaching.¹⁵ The Program codified existing rules and training requirements for coaches established by the California Interscholastic Federation (CIF), the state’s governing body for high-school athletics.¹⁶ The growing social concern about concussions in sports contributed to the enactment of California’s return-to-play concussion law in 2011, and was a driving factor in further expanding training requirements for coaches.¹⁷

A. *The Changing Nature of Law Governing Coaches’ Training*

The legislature enacted the Program in direct response to “many concerns about safety, training, . . . and general management in coaching.”¹⁸ After signing the Program into law, then-Governor Pete Wilson stated, “we need to ensure that [coaches] are trained in adequate coaching philosophies and practices to protect the well-being of our students.”¹⁹ In order to accomplish this, the Program established eight components of coaching that the legislature intended school districts to emphasize and develop over time.²⁰ The first component embodies the evolving nature of the Program, highlighting the legislature’s intent of

Comm. (June 6, 2012) [hereinafter Warren Interview] (notes on file with the *McGeorge Law Review*) (Mr. Warren is staff member for Assembly Member Hayashi, who chairs the Assembly Committee for Business and Professions.); Press Release, Mary Hayashi, Cal. State Assembly Mem., Assembly Member Mary Hayashi Introduces Legislation to Provide Concussion Training for High School Coaches (Jan. 30, 2012), available at <http://asmdc.org/members/18a/news-room/press-release/item/3088-assemblymember-mary-hayashi-introduces-legislation-to-provide-concussion-training-for-high-school-coaches.htm> [hereinafter Hayashi Press Release] (on file with the *McGeorge Law Review*).

14. Hayashi Press Release, *supra* note 13.

15. EDUC. § 35179.1.

16. *Id.*; see also CAL. INTERSCHOLASTIC FED’N CONST., BYLAWS, & STATE CHAMPIONSHIP REGULATIONS 2011–2012 (2011), available at http://205.214.168.16/governance/constitution_bylaws/pdf/CIF%20CONSC%20BYLAW%20BOOK%201011.pdf [hereinafter CIF CONST.] (on file with the *McGeorge Law Review*) (“[CIF] retains its original responsibility to enforce the rules, but has expanded its duties to include much more,” including educational programs for coaches and parents.).

17. See Warren Interview, *supra* note 13 (explaining how national awareness of concussion helped pass existing California concussion law and may have helped with the passage of Chapter 173).

18. EDUC. § 35179.1.

19. Nancy LaCasse, *Governor Signs CIF’s \$1 Million High School Coaching Education Bill*, 18 FISCAL REP.: AN INFORMATIONAL UPDATE 19 (1998), available at <http://www.sscal.com/fiscal/0925prss.htm> (on file with the *McGeorge Law Review*).

20. EDUC. § 35179.1.

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“develop[ing] . . . coaching philosophies consistent with school, school district, and school board goals.”²¹ The succeeding five components encompass specific training areas to apply the legislature’s intent: sport psychology, pedagogy, management, and training, specifically CPR and first-aid.²² The Program reinforces CIF regulations by requiring coaches to have “[k]nowledge of, and adherence to, statewide rules and regulations”²³ The legislature’s final component reemphasizes the evolutionary nature of the Program by requiring “[s]ound planning and goal setting” in coaches’ training, which inherently changes as new issues, like concussions, become a priority in high-school sports.²⁴

B. Current California Law Governing Concussion Management

Existing concussion law in California, passed in 2011, requires coaches to immediately remove an athlete participating in an after-school game or practice if the coach “suspect[s] [the athlete] of sustaining a concussion or head injury.”²⁵ Furthermore, an athlete cannot return-to-play until cleared, in writing, by a healthcare provider.²⁶ The law codified the existing standard of care for concussion management and return-to-play under CIF Bylaw 313.²⁷

III. CHAPTER 173

Chapter 173 requires CPR and first-aid training for all high-school coaches “to include a basic understanding of the signs and symptoms of concussions and

21. *Id.* § 35179.1(c)(1).

22. *Id.* § 35179.1(c)(2)–(6).

23. *Id.* § 35179.1(c)(7).

24. *Id.* § 35179.1(c)(8); see also Justin J. Simpson, *Chapter 673: Addressing the Use of Steroids and Performance Enhancing Dietary Supplements by High School Athletes*, 37 MCGEORGE L. REV. 239, 250 (2006) (explaining how the 2005 amendment to the Program “represent[ed] California’s determination to protect its adolescents” from a dangerous facets of sports that came into the national conscience); NAT’L CTR. FOR INJURY PREVENTION & CONTROL, HEADS UP: CONCUSSION IN YOUTH SPORTS, ACTIVITY REPORT (2007–2008) 6–7 (2008), available at http://www.cdc.gov/concussion/pdf/heads_up_activity_report_final-a.pdf (on file with the *McGeorge Law Review*) (explaining the goals of raising concussion awareness among administrators coaches, parents, and athletes).

25. EDUC. § 49475(a)(1). The law additionally requires athletes and their parents (or legal guardians) to sign “a concussion and head injury information sheet” each year. *Id.* The California concussion law generally mirrors the state of Washington’s law, which set the standard for subsequent state concussion laws. *Lystedt Law Overview*, *supra* note 9. The purpose of return-to-play laws are to ensure that coaches remove athletes that exhibit the signs and symptoms of a concussion from play, and that athletes do not return to play until they are asymptomatic of a concussion. *Id.*

26. See EDUC. § 49475(a)(1) (athletes removed from competition cannot return to play until “a licensed healthcare provider, trained in the management of concussions, acting within the scope of his or her practice,” clears the athlete to return).

27. CIF CONST., *supra* note 16, at art. 30, § 313.

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the appropriate response to concussions.”²⁸ Coaches can complete required concussion training “through entities offering free, online, or other types of training courses.”²⁹

IV. ANALYSIS

Chapter 173 aims to add training on the “signs and symptoms . . . and the appropriate response to concussions” at a minimal cost to the state.³⁰ The success of the new law depends on the cost effectiveness and uniformity of training, which must meet the criteria of the Program and whether the law helps reduce preventable brain injuries in high-school athletes.³¹ Proponents of the new law argue that uniformity will increase awareness of the current standard of care for concussion management among coaches, which will help them mitigate the harmful effects of concussions.³²

A. Cost-Effective Training

Chapter 173 eliminates potential costs by “limiting the scope [of training] to concussions.”³³ This makes it possible for coaches to meet Chapter 173’s training requirement by completing free online training, available at websites such as: the CIF, National Federation of High School (NFHS), or Centers for Disease Control and Prevention (CDC).³⁴ Additionally, all online training provided by NFHS will

28. EDUC. § 35179.1 (amended by Chapter 173).

29. *Id.*

30. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1451, at 1 (Mar. 28, 2012); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1451, at 1 (June 28, 2012) (reflecting Senate amendments that permit concussion training to come from free sources).

31. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1451, at 3 (May 23, 2012) (training can be “offered by a [school] district, CIF, or other organizations such as the Red Cross,” CDC, and the National Federation of High School Associations); *see also* Richard Adler, *Changing the Culture of Concussion: Education Meets Legislation*, 3 AM. ACAD. PHYSICAL MED. & REHAB. S468, S469 (2011) [hereinafter *Education Meets Legislation*] (discussing how concussion education is more effectively used to supplement state concussion laws).

32. *Id.*; *see also* Interview with Richard Adler, Principal, Adler Giersch PS., in L.A., Cal. (June 22, 2012) (notes on file with the *McGeorge Law Review*) (asserting that knowledge of the standard of care will reduce the amount of injuries and claims).

33. Warren Interview, *supra* note 13 (explaining that limiting the scope to only cover concussions “eliminate[d] other requirements that would put a perception of costs” on the bill); *see also* ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1451, at 2–3 (Mar. 28, 2012) (estimating the fiscal effect of Chapter 173 to be between \$183,000–\$458,000 to implement the training program based on previous legislative attempts). *But see* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1451, at 3 (May 23, 2012) (asserting no fiscal effect).

34. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1451, at 3 (May 23, 2012); *see also, e.g., Coaches Concussion Resources*, CIF, http://205.214.168.16/health_safety/concussion/coaches.html (last visited Feb. 2, 2013) (on file with the *McGeorge Law Review*) (offering links to concussion information, including free concussion training).

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remain free indefinitely, ensuring cost-effective training for coaches.³⁵ Coaches can also meet the training requirement by participating in required CPR and first-aid courses that include concussion training, such as the current American Red Cross course.³⁶ Since the Red Cross course already includes concussion training, the overall cost of required training for coaches will not increase as a result of Chapter 173, remaining at approximately sixty dollars per person.³⁷

B. Establishing Uniform Concussion Training Within the Program

Although some CPR and first-aid courses already include concussion training, “of the 67,929 coaches in California, [only] 5,323 have taken the [free] online course [from CIF].”³⁸ The lack of a statewide standard in concussion training creates a gap in the law that results in only some coaches learning the standard of care for concussions, as established by California law.³⁹ The interconnectivity between CIF, NFHS, and CDC will likely provide coaches with similar and effective training on the signs and symptoms of concussions.⁴⁰ For example, NFHS and CDC collaborated to provide their current concussion training materials.⁴¹ Additionally, the free online training offered by CIF links directly to NFHS’s free online concussion training, ensuring that training pursuant to Chapter 173 is substantially similar regardless of the entity that provides it.⁴²

35. See Interview with Bob Colgate, Dir. Sports & Sports Med., NFHS, in L.A., Cal. (June 22, 2012) (notes on file with the *McGeorge Law Review*) (detailing the features of the free online concussion training). The concussion training will also be available for free on mobile applications for tablets and smart phones. *Id.*; *Free Concussion Course Now Available on Mobile Devices*, NFHS (2012), <http://www.nfhs.org/content.aspx?id=7556> (on file with the *McGeorge Law Review*). Since NFHS is an out-of-state private organization, California will not incur any hidden costs. *About Us*, NFHS, <http://www.nfhs.org/Activity3.aspx?id=3260> (last visited Feb. 22, 2013) (on file with the *McGeorge Law Review*).

36. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1451, at 3 (May 23, 2012); Letter from Dawn Lindblom, CEO, Am. Red Cross, to Julia Brownley, Chair, Assembly Educ. Comm. (Mar. 22, 2012) (on file with the *McGeorge Law Review*) (asserting that the American Red Cross currently incorporates concussion training into CPR and first-aid training).

37. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1451, at 3 (May 23, 2012).

38. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1451, at 2 (Mar. 28, 2012).

39. Warren Interview, *supra* note 13; see also *Education Meets Legislation*, *supra* note 31 (asserting that in order to have a uniform concussion policy there must be both concussion education and legislation).

40. CAL. EDUC. CODE § 35179.1(d) (amended by Chapter 173); see also *NFHS Learning Center*, NFHS, <http://nfhslearn.com/electiveDetail.aspx?courseID=15000> (last visited Feb. 2, 2013) (on file with the *McGeorge Law Review*) (explaining that NFHS and the CDC “teamed up to provide information and resources to help educate coaches, officials, parents and students on the importance of proper concussion recognition and management in high school sports”).

41. *NFHS Learning Center*, *supra* note 40.

42. *Id.*; *Coaches Concussion Resources*, CIF, http://205.214.168.16/health_safety/concussion/coaches.html (last visited Feb. 2, 2013) (on file with the *McGeorge Law Review*).

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C. Clarifying the Current Standard of Care for Coaches

Effective concussion prevention in youth sports “requires both education and legislation.”⁴³ While Chapter 173 does “not giv[e] coaches medical training,”⁴⁴ it does give coaches “a basic understanding of the signs and symptoms of concussions and the appropriate response to concussions.”⁴⁵ Chapter 173 equips coaches with training that will help them make effective on-field decisions to remove athletes from games or practices.⁴⁶

By detailing a fundamental base of what coaches should know about concussion symptoms, Chapter 173 clarifies the current standard of care for concussion management established in Section 49475(a)(1) of the California Education Code.⁴⁷ Although there is no scientific data that explicitly shows that Chapter 173 will lower the amount of preventable brain injuries, increasing the education level of coaches will help coaches identify potentially concussed athletes.⁴⁸ Chapter 173 makes coaches more informed on when to remove potentially concussed athletes, which will allow athletes to seek proper medical care and return-to-play without suffering an aggravating injury.⁴⁹ The educational benefits of Chapter 173 combined with California’s current concussion return-to-play law should help reduce avoidable brain injuries in student athletes.⁵⁰

V. CONCLUSION

Concussions are an inherent risk in all high-school sports.⁵¹ However, preventable tragedies, such as the death of Jaquan Waller, have no place in high-school sports.⁵² Chapter 173 effectively supplements the previous efforts of CIF

43. *Education Meets Legislation*, *supra* note 31, at S469.

44. Warren Interview, *supra* note 13.

45. EDUC. § 35179.1 (amended by Chapter 173); *see also* Warren Interview, *supra* note 13 (asserting the main goal of Chapter 173 is to give coaches more awareness about concussions).

46. Wilson, *supra* note 6, at 275 (asserting that uniform concussion guidelines will also reduce concussion litigation and the number of injuries resulting from athletes returning to play before they are fully healed).

47. EDUC. § 49475(a)(1); *see also* Cerny v. Cedar Bluffs Junior/Senior Pub. Sch., 679 N.W.2d 198, 203–04 (Neb. 2004) (discussing the first prong of the Nebraska common law standard of care of concussion management); Wilson, *supra* note 6, at 244. Note, Chapter 173 does not increase the standard of care or expose coaches to any additional liability because it does not change Section 49475(a)(1) of the Education Code; it merely educates coaches on how to meet that standard of care. EDUC. § 49475(a)(1); Warren Interview, *supra* note 13 (asserting that Chapter 173 gives coaches more awareness about concussions).

48. *See Preventing Preventable Brain Injuries*, *supra* note 10 (illustrating that the earlier anecdotal data from the state of Washington showed that in the year after the Lystedt concussion law passed, there were no reported deaths or required surgeries stemming from head injuries in youth sports).

49. *Id.*

50. *Education Meets Legislation*, *supra* note 31, at S470.

51. Wilson, *supra* note 6, at 242.

52. BIG HITS, BROKEN DREAMS, *supra* note 1.

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and the legislature by providing an affordable, uniform standard of education that spreads awareness and helps coaches “better respond to head injuries in high school sports.”⁵³ Chapter 173 is a “good advancement for concussion awareness” that will reinforce California’s concussion law and could lead to better concussion management practices within the state.⁵⁴

53. Hayashi Press Release, *supra* note 13; *see also* Wilson, *supra* note 6, at 275 (arguing that uniform concussion guidelines will also reduce concussion litigation and the number of injuries before an athlete is ready to return to play).

54. *See* Telephone Interview with Dr. Michael Collins, Dir., UPMC Sports Med. Concussion Program (June 6, 2012) (notes on file with the *McGeorge Law Review*) (describing how Chapter 173 is moving concussion management in the right direction from a scientific perspective); Dr. Collins asserts that the future goals of concussion management at the high-school level are to have baseline testing becoming part of the standard of care, with coaches increasing their awareness of concussions through regional concussion seminars, and ensuring injured athletes receive treatment from clinicians specializing in concussion management. *Id.* “A [n]eurocognitive [baseline] assessment can help to objectively evaluate the concussed athlete’s post-injury condition and track recovery for safe return to play, thus preventing the cumulative effects of concussion. . . . Neurocognitive testing has been called the ‘cornerstone’ of proper concussion management by an international panel of sports medicine experts.” *Overview and Features of the ImPACT Test*, IMPACT, <http://impacttest.com/about/background> (last visited Oct. 2, 2012) (on file with the *McGeorge Law Review*).