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Parents, coaches need to consider concussion risks

Head injuries – particularly concussions – are on the rise at every level of athletic competition, from preschool all the way to professional sports. And these injuries are being taken much more seriously than in the past, as a growing body of scientific literature and testing has shown that, over the long term, sports-related head trauma can lead to degenerative brain disease.

As a result, parents and coaches of young athletes need to be vigilant about making sure their kids' leagues are enforcing sensible measures to minimize the risk of concussions.

The problem received national attention recently when Dave Duerson, a star defensive back who played for the Chicago Bears in the 1985 Super Bowl, committed suicide by shooting himself in the chest. Duerson suffered from memory loss, depression and difficulty controlling his impulses, all of which he associated with repeated head-impact trauma during his 11-year NFL career.

Duerson earned an economics degree with honors at Notre Dame, and had a successful business career after his playing days.

But he began to show symptoms of chronic traumatic encephalopathy once he turned 40. In his suicide note, he requested that his brain be

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examined by specialists for evidence of the disorder, and later testing confirmed his suspicions.

Duerson's family claims the NFL concealed the potential long-term impact of head trauma from its players for years, and has sued to hold the league – as well as the company that manufactured the helmets used at the time – responsible.

Meanwhile, more than 3,000 former NFL players who say they've suffered neurological symptoms due to head-impact injuries have filed a class action suit against the league based on similar accusations.

And it's not just the pros who are seeking to hold their athletic organizers accountable. A group of former college athletes in a variety of sports has sued the NCAA, claiming the association wasn't careful enough in setting standards for dealing with concussions and brain trauma, even though it knew the danger of such injuries.

And a high school football player in Montana who was repeatedly ordered to return to the game after suffering concussion symptoms – and was later ordered back to practice after six days, despite a doctor's recommendation that he avoid football for 11 days – has sued his school. He claimed he suffers confusion, severe headaches, vision impairment, seizures, and emotional difficulties as a result.

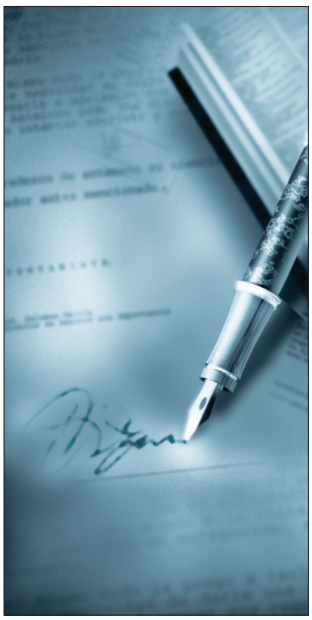
A growing body of scientific literature has shown that, over the long term, sports-related head trauma can lead to brain disease.

The risks go far beyond football. College wrestlers have sued their universities after being ordered to continue wrestling after suffering concussions. And while suburban parents have always assumed that soccer is a safe, contact-free game for their children, studies have reported a high incidence of concussions among youth players.

Recently, there has been a controversial effort to require youth soccer players to wear helmets. Though this initiative has been ridiculed in some quarters, the numbers suggest that perhaps it should be taken more seriously.

The bottom line is that head trauma is a very serious issue at every level of organized sports. And it's critical that parents and coaches of young athletes make sure their kids' programs have head-injury and concussion policies in place, make sure those policies are being enforced, and hold accountable any program that doesn't do so.

A 'release' doesn't always prevent compensation



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Increasingly, people are being asked to sign a "release" or a "waiver" before they engage in any activity where they could get hurt. This document says that if you do get hurt, you can't sue the operator of the activity.

Such documents sound official, and they can be binding – but they aren't *always* binding, and you should consult a lawyer before you assume that you can't be compensated for injuries that are someone else's fault.

For example, a Maryland man signed a release in order that his five-year-old son could use a playspace while he shopped at a BJ's Wholesale Club store. More than a year later, the child was injured at the playspace. The store said it couldn't be held responsible because of the release.

But a state court of appeals disagreed. The court said that while people could sign a release of their *own* claims, it wouldn't be fair to allow a parent to sign away claims for a future injury to someone else – namely, the child.

The court also said that if the business could simply eliminate all legal claims in this way, it wouldn't have a proper incentive to take safety precautions and to maintain insurance to protect injured minors.

In another case, the Pennsylvania Supreme Court rejected a release that a ski resort had required its customers to sign.

The lawsuit was brought by a snow tuber who suffered injuries when a fellow tuber struck her at the bottom of a slope. She claimed that the resort employee in charge of the slope didn't allow enough time for those who had completed their runs to get out of the way of those who followed.

The court said that while the release might protect the resort from claims over the natural dangers of skiing or snow tubing, the resort couldn't use the release to shield itself from complaints over an employee's reckless behavior that made those dangers worse and caused an injury.

If a company could use a release to protect itself legally from an employee's recklessness, then businesses would have no incentive to observe even minimal safety standards, the court said.

Product maker sued although fault is hard to prove

Generally, in order to hold someone liable for an injury in court, you have to show that they were careless or irresponsible in some way. If somebody ran a red light, that might not be hard to prove.

But if a complex piece of machinery fails, it might be difficult to say exactly what went wrong, or what should have been done differently.

Fortunately, the court system recognizes this problem, and has made it easier for injured people to be compensated in many cases.

For instance, a man in Maine suffered severe abdominal pain after eating a hot turkey sandwich at a truck stop. Doctors discovered a small perforation of his esophagus, and evidence that it was caused by a turkey bone.

The man sued the manufacturer of the turkey product used in the sandwich, which was supposed to be "boneless."

The manufacturer argued that bones are naturally found in turkey. It claimed that it did everything it could to remove the bones, that it wasn't careless or irresponsible, and that the man couldn't point to anything specific that the company did wrong.

But the Maine Supreme Court sided with the man. It said that the question wasn't what specific thing the company did wrong, but whether the product lived up to the reasonable expectations that consumers would have for it.

According to the court, if a jury decides that a consumer wouldn't reasonably expect to find a bone fragment in a boneless turkey product that was large and sharp enough to perforate a person's esophagus, then the company could be liable.

In the law, this is sometimes known as "strict liability."

The law varies from state to state and case to case, but there are many instances where the courts have ruled that the real issue isn't what exact thing a manufacturer did wrong, but simply whether a product is safe enough to be sold to consumers – regardless of how careful the manufacturing process was.

Safety rules should protect us, even if we misbehave

The reason our society has complex safety standards is to protect *everyone* – even people who aren't paying careful attention to safety.

Think of a guardrail on a narrow, winding road. If everyone were an expert driver with a car in perfect condition and 100% of their attention on the road at all times, the guardrail probably wouldn't be necessary. But we all know that's not true. Some drivers are inexperienced, and even the best drivers sometimes allow themselves to be momentarily distracted.

We don't build guardrails to protect the hypercautious. We build guardrails because our society wants to protect everyone, even – in fact, especially – people who sometimes aren't on their very best behavior.

That's why the law insists that safety standards be maintained, and authorities be responsible for doing so, even if the people who might get hurt aren't always watching out for themselves.

Here's a good example: A 26-year-old man fell from the balcony of his California motel room after a night of partying. The man was very drunk, stumbled, and suffered severe injuries from the fall.

It turned out, though, that the balcony railing was lower than required by the California safety codes. These codes had been in place for decades, but the motel owner had never fixed the railing, even though it was too low by several inches and wouldn't keep a normal-sized man from falling over it.

The motel owner argued that it wasn't responsible for the accident because the man was drinking – and if he hadn't gotten drunk, he wouldn't have stumbled.

But a jury found that the motel owner was primarily responsible for the injury. While no one should ever get falling-down drunk, the jury decided that the building codes exist precisely to protect people who stumble – *whatever* the reason. Had the railing been up to code, the man might have skinned his knee, but he wouldn't have fallen 12 feet and suffered devastating injuries.

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Can injured people sue if they were doing something dangerous?

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Sometimes people choose to engage in activities that are somewhat dangerous. If they get hurt, they might not be able to be compensated for their injuries, because they knew they were taking a risk.

But that's not always true – and if you or someone you know was injured in a dangerous activity, you should still talk with an attorney. For instance, it might turn out that an activity was risky, but that someone else did something careless that increased the danger.

Here's an example: A spectator was hit by a golf ball at a tournament in Wyoming. The spectator had been watching his son putt on the first hole, when he was struck on the side of the head by a pro golfer's tee shot on the same hole.

A judge threw out the man's lawsuit against the tournament organizers, saying that getting hit by a ball is an inherent risk of golf.

But the Wyoming Supreme Court disagreed, and allowed the man to sue. It turned out that the pro golfer had expressed concern to a tournament official about people on the green, but the official told him to tee off anyway.

So even though golf is dangerous, the organizers could be held responsible if the tournament official carelessly *increased* the danger by ordering the man to hit a tee shot.

In another case in Omaha, two sisters went sledding on a hill in a municipal park. Both girls were injured when their saucer-style sled struck a tree bordering the slope. Tragically, the younger girl suffered a severe spinal fracture that left her paralyzed.

The girls' parents sued the city, claiming it was negligent in planting trees in the area shortly before the accident, despite warnings by local residents that it was a popular sledding hill.

The city argued that sledding was naturally dangerous. But the Nebraska Supreme Court said the city could be sued anyway, if its actions had carelessly increased the level of danger.