

**2013 HOUSE EDUCATION**

**HB 1028**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

HB 1028  
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Conference Committee

Committee Clerk Signature



## Minutes:

**Rep. Nathe: We will open the hearing on HB 1028.**

**L. Anita Thomas, Legislative Council: Concussion legislation is getting to be kind of an old friend. It made an appearance during the 2011 session and stayed through until the 72<sup>nd</sup> day; it was the primary effort of the Interim Education Committee and it is back for another session. I served as the legal counsel to the Interim committee; in my role I will touch briefly on the bill's legislative history and review the Interim Committee's recommendation. In 2006, Zachary Livestead was a middle school student in the state of Washington, when late in the first half of a football game, his head hit the ground, and he struggled to get up. He made it to the sidelines, sat out for about 15 minutes and then went back in for the remainder of the game. Late in the 4<sup>th</sup> quarter, he forced a fumble at the goal line, he was unsteady on his feet and approximately 60 seconds later he collapsed. He had suffered a concussion on the first hit, and the second hit caused a brain hemorrhage. Five hours later he had emergency surgery; he spent three months in a coma, nine months being unable to speak and years in therapy. He remains in a wheelchair today. It's Zachary's name that is found in the title of the Washington state's concussion law. It is legislation that has served as the model for almost every state in the union. The last holdouts I found were Arkansas, Tennessee and Michigan. All of the enacted legislation targets public schools or school districts. Some state legislators extended the requirements to non-public schools and others even included various private clubs, leagues and organizations. While most of the legislation is very similar in intent and purpose, there are significant differences in detail and clarity. This is most noticeable with respect to directives that a student be removed from practice or play. Much of the legislation does not indicate who has the duty to remove a student and who has the power, who must and who may. ND's law requires school districts and non-public schools to be subject to a concussion management program. The law is silent with respect to how that program is developed, but it is very specific with respect to the content. The program must set forth in clear and readily comprehensible language the signs and symptoms of a concussion; with respect to the removal of an injured student, our law places specific obligations on specific individuals. An official has a duty to remove a student from competition and a coach or an athletic trainer has a duty to remove a student from practice training or competition under the following circumstances: 1) if the student reports any sign or symptom of a concussion; 2) if the official coach or athletic trainer determines that**

**the student exhibits any sign or symptom of a concussion; or 3) if the official coach or athletic trainer is notified that the student has reported or exhibited any sign or symptom of a concussion, by a health care provider whose scope of practice includes the recognition of concussion signs and symptoms. Once the student is removed, the law requires that the student be evaluated by a health care provider whose scope of practice includes the diagnosis and treatment of concussion. This individual must have a much higher level of training than the individual who is mentioned above and whose scope of practice includes only the recognition of concussion symptoms. Now a student may not return to practice training or competition unless the student, or the student's parent, obtains written authorization from a health care provider whose scope of practice includes the diagnosis and treatment of concussion, and provides that authorization to the student's coach or trainer. The concussion management program must also require that each official, coach, and athletic trainer receive biennial training regarding the nature and risk of concussion. The final component of the 2011 legislation provides that the student's school district or non-public school must ensure that before a student is allowed to participate in a defined athletic activity, both the student and the student's parent document that they have viewed information regarding concussions incurred by student's participating in athletic activities. This information must be provided to the student's school district or non-public school, and may be in printed form or in a verifiable electronic format. During the course of the 2011 legislative session, it was suggested that the reach of SB 2281 should be extended to include other entities involved in youth athletics; political subdivisions such as municipalities, park districts, non-profit organizations such as YMCA and even private for-profit establishments such as martial arts studios or dance studios. It was ultimately decided that the desirability and feasibility of such an expansion should be fully examined within the interim study structure. Before the Interim Education Committee was willing to address an expansion of the 2011 legislation, it wanted to settle a more pressing issue. The legislation required the removal of a student from practice, training, or competition under a variety of circumstances, including notification that the student has reported or exhibited any sign or symptom of a concussion by a health care provider whose scope of practice includes the recognition of concussion signs and symptoms. However, under current law, the authorization to return could only be given by a health care provider whose scope of practice included the diagnosis and treatment of concussion. Under ND law, the physician's scope of practice includes the diagnosis or treatment of diseases, or injuries of human beings. So while it was clear that a physician could provide a requisite authorization, it was not clear whether this privilege extended to other health care providers, such as advanced practice nurses, physician assistants, athletic trainers, physical therapists. The committee received testimony from various health care providers regarding their scopes of practice and the role that they believe they were able to play in the diagnosis and treatment of concussion. The committee received a great deal of testimony on the word diagnosis and what it meant. Physicians suggested that by virtue of diagnosing a concussion, one is determining that a student does not have a subdural hematoma, an epidural hematoma, a skull fracture, or any number of other injuries, some of which can be life-threatening or fatal. They indicated that those determinations could not be made on the sidelines. Other groups suggested that they had reviewed their scopes of**

practice and concluded that they could, in fact, diagnose a concussion. It was also suggested that it was not necessary to diagnose a concussion in order to treat or manage it, and a statutory reference to the evaluation and treatment, or management of concussion would be sufficient. The Interim Committee first considered a bill draft that attempted to clarify the scope of practice by listing six providers who were capable, by training and experience, of evaluating a student that had been removed and ultimately authorizing that student's return. Now the six providers were physicians, neuropsychologists, nurse practitioners, physician assistants, athletic trainers and physical therapists. The bill draft suggested that the latter two providers would have to work in consultation with a physician. Ultimately, it was recommended that the bill exclude the list of providers and instead just reference scopes of practice. As it sits right now, HB 1028, like current law, requires each school district and non-public school that is involved in various athletic activities be subject to a concussion management program; page 1, subsection 1. Subsection 3, as in current law, the program must require that a student be removed from practice, training or competition. If the student reports or exhibits any sign or symptom of a concussion, or if a licensed, registered, or certified health care provider, whose scope of practice includes the recognition of concussion signs and symptoms, determines after observing the student that the student may have a concussion. At the top of page 2, the duty to pull a student has been changed a bit from current law. HB 1028 would require removal of a student by an official, and by the coach of a student. Committee members did not want the possibility of an opposing team's coach being able to require the removal of a rival team's star player in the final 2 minutes of a big game by claiming that the student exhibited a sign or a symptom of a concussion. Now the duty to pull a student was also placed on each individual having direct responsibility for the student during practice, training or competition. This was inserted because a coach or athletic trainer is not always present with the students. You might have student teachers or university students working on drills with high school students. Once a student is removed, subsection 4 requires that the student be evaluated by a licensed health care provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion. A student who has been evaluated for a concussion can return only after receiving written authorization from a provider qualified to perform that evaluation. Now current law had required that the written authorization be presented to the student's coach or athletic trainer, subsection 5b, requires that the authorization be presented to the individual designated by the school district or non-public school, and that it be retained for a period of 7 years. The superintendent said that was the length of time that they kept educational records. The Interim Committee viewed the authorization as an important record for a variety of reasons and didn't want it to just to be thrown in someone's desk drawer. The Interim Committee was told that while a first concussion is a significant concern, multiple concussions increase the concern level exponentially. While we know what happens if a student goes to a clinic or a hospital and a medical record is generated, the discussion was less clear on what kind of a record is generated if a student is evaluated by a school district employee or a contractor. In subsection 6, on page 2, biennial training is still required of officials and coaches and now individuals having direct responsibility for the student during practice, training, or competition. You will see on line 27, that athletic trainers were removed from this requirement. The

reason is that their licensure already imposes continuing education requirements. I mentioned earlier that one purpose of the Interim Study was to determine whether there should be an expansion of this legislation to include entities other than school districts and non-public schools. The Interim Committee was told that there had been a great deal of effort to promote concussion awareness and to institute programs and requirements to minimize injuries among the participants and to obtain desired outcomes when injuries did occur. Therefore, the Interim Committee elected not to recommend any further expansion. That concludes the summary the Interim Committee's efforts and the bill as recommended.

**Rep. J. Kelsh:** As far as the continuing education, is there a possibility that someone came out of college, got hired in a smaller school district and are directly involved in the coaching process and they didn't require that year of continuing education that he/her would go a year without having training; in that section the way it is worded, under subsection 6.

**L. Anita Thomas:** My recollection is that the High School Activities Association was very involved in ensuring that coaches starting out had the requisite level of training and I'm sure there are others in the audience that would be able to address that question.

**Rep. Hunskor:** During the Interim Education meetings, just citing one issue that came up, a student had a concussion and was taken to the emergency room and the doctor saw the student and when it came time to go back to practice again, the doctor said no, and the family didn't agree. So the family went to their family doctor and he said the kid's okay. So you have two doctors, with two different opinions. The student did go back and, as a result of that, had some serious issues because he had gone back to practice too early. In subsection 4, where it says "who is acting within the provider's scope of practice and trained in the evaluation and management of a concussion, who is that. Is that a doctor, a physical therapist? It seems like this is saying, it doesn't identify who is the person who is qualified to say that student, who has a concussion can go back to practice. Isn't it open-ended?

**L. Anita Thomas:** That was the point of the Interim discussion. There was a thought at first that it would be nice to have in statute a list of professionals that were so qualified in order that school officials, parents and anybody else interested, would know where their choices lie. That was ultimately not the recommendation of the Interim Committee. The way it works now is that there are a variety of licensing boards that govern the activities of their members. They decide as a professional group, whether their members have been duly trained, that's both academically and with continuing education in order to perform these functions. That's not listed in statute or in the Code.

**Rep. Hunskor:** I understand what you're saying, but it seems like if this bill were to pass, it should be more specific in what I talked about earlier. Who is a person who is qualified just to pass the bill with the wording in the bill now? It doesn't seem to be a good thing, in my opinion. The second question is where it talks about biennial training and there again, it doesn't identify what that training is. That's open-ended.

**One superintendent could say, well you can do two hours of something, and another one says six, and it is, "are these people going to get adequate training" who are in charge in students and activities with the wording the way it is.**

**L. Anita Thomas: On both counts, those issues were in front of the Interim Committee, the Interim Committee elected not to pursue them. If this committee felt the need to do so, it would be quite appropriate to introduce amendments to that effect.**

**Rep. Meier: In the situation where the coach or official is negligent and does not assess the situation correctly; such as the student has a concussion and has issues, does that then make the school liable.**

**L. Anita Thomas: Language was introduced last year and added to the bill that provided, in subsection 8, on page 3, that the section does not create any liability for or create a cause of action against a school district if the officers or its employees, or in non-public schools, it's officers or employees. That's assuming that everybody functions in their normal roles. If there is a matter of negligence and, you have a state employee or governmental employee, you could be personally charged for that.**

**Rep. Rust: I would assume that section is also in there if someone is removed because they would say that a coach or official feels that someone has suffered a concussion and somebody else, namely a parent, from the sidelines wants that kid to go on to the next play, that they couldn't be held liable for having that kid out of play. Isn't that also part of this, when you talk about that liability because you have two issues: 1) somebody doesn't take someone out and something happens to the kid and you're liable, and 2) someone does take a kid out and there is a disagreement over that and someone wants that person in to play and they could also be held accountable and liable for that as well. I'm certain that hopefully that covers both of them.**

**L. Anita Thomas: My profession would find a way to sue in that instance. You have to remember that the point of this legislation was to err on the side of protecting the child. As in many instances if you have a coach and a parent disagreeing, there is a chain of command and the parent might not always like that chain of command.**

**Rep. Nathe: In regard to Rep. Hunsdor's question about the biennial training. Did the Interim Committee just leave that out because the terms of the concussion management program would make them define what that biennial training is; to leave it up to each program what the definition might be?**

**L. Anita Thomas: This was thought of in terms of the High School Activities Association and they literally direct what the training is for their officials. We were told that it was a fairly complex organization and has a fairly high degree of involvement with all of the high school athletics. The Committee didn't get into it beyond that.**

**Rep. Hunsakor:** Just for information, I believe that Dr. Dawn Mattern, from Minot, is very much up on this and she had indicated that there is an on-line program that didn't take too many hours that would qualify folks to be involved in this determining if there is a concussion and all of the things that follow that. There is a program out there which she thought would qualify people to meet what's in this bill.

**Rep. Nathe:** Thank you. Further testimony in support of HB 1028.

**Damian Schlinger, Employer Relations Director at Sanford Health:** Support (see attached). My statement is on behalf of the ND Athletic Trainers' Association.

**Rep. Schatz:** Have you talked to any football coaches in Bismarck/Mandan about the current bill and if you have, what were their comments.

**Damian Schlinger:** We speak with all kinds of coaches, parents, athletes, anybody that is impacted by the bill and their concerns. There have been certain concerns that were expressed and corrected through the process we went through previously on who can remove an athlete from play, whose decision is it, how does that chain of command work out. After explanation, most of them are very comfortable with it. I think it also places at the forefront of their mind, protecting the athlete and I think that is probably the best thing that has come out of it.

**Rep. Schatz:** The student is always first, but we can't kill the game either. If it's going to be a game that's not going to be able to function because of the language, that's also an issue; a lesser issue than the student's health, but there has to be a balance. I know that there was some discomfort with what we passed on 2011, because it made a lot of change and they weren't used to them yet. How have the head football coaches been dealing with this?

**Damian Schlinger:** I've talked to some of those coaches, not all but there is a question that a lot of people participate in sports and love to go to them and want to see the athletes perform. None of that goes before their health. There has to be someone on the sideline making determinations whether a person is healthy to go back in or is not.

**Rep. J. Kelsh:** In one of your statements it says that it should be the training experience that qualifies the medical profession to return an athlete to participate again, not just the credentials of the medical profession. I'm a little confused, do you mean that they don't need the credentials or that they need to have that plus experience before they can return someone to the game.

**Damian Schlinger:** It is in the bill what we are talking about in regard to biennial training. Before I worked in my current role, I worked in a walk-in clinic, and also worked as a manager of some surgical clinics. While the people that are there do a good job within their scope of what they are doing; say a general surgeon who has been doing gallbladders and appendix for the last 25 years may be very good at that, but they may not have received the training relative to concussions that is important; that's where we want to make sure that the person has the requisite training. We

want people who are up-to-date on what is going on in concussion assessment and evaluation.

**Rep. Rust:** Section 4 of this bill says they must be evaluated by a licensed healthcare professional. Since athletic trainers are licensed by the State of North Dakota, then they are included in that group of people who can do this.

**Damian Schlinger:** Yes, correct.

**Rep. Rohr:** Can you give me a little information on who's responsible for keeping track of who has received the training and is there a list we can go to; who's accountable for that information.

**Damian Schlinger:** I am a member of the ND Athletic Trainers Board and also from the school district or non-public school district, there needs to be assurances that they have received that training and also on the individual themselves, that they are licensed within the state and if this becomes statute, they would have some responsibility there as well.

**Rep. Nathe:** Are these concussion management programs overseen by anybody, any department that looks them over and makes sure that all the bases are covered. Every school has their own management program. Do they come up with a management program and then kick it up to someone at DPI or somebody that says you meet all the requirements.

**Damian Schlinger:** I don't know if I can comment on exactly how they do that.

**Rep. Nathe:** Okay.

**Rep. Hunsakor:** I go back to what it says, "trained and experienced in concussion evaluation", those are good words but it doesn't say who those individuals are. If we had a lawsuit from a parent because one medical person said the kid can go back to practice, then it goes into the courts and whether he was trained and experienced. What does that mean? Does that mean 6 hours of an online course? This seems to be very open-ended. It seems that before this bill is passed out, we need to be more specific on what does "training and experience in concussion management" mean. Who is it; otherwise we are just throwing it out there for whomever.

**Damian Schlinger:** I understand your concern there and I think what you are looking for is to put a number on that; something that you can hang your hat on. With the athletic trainers, in our education and educational competencies that is overseen by a committee, we have that implanted in our education as you are going through schooling. We have continuing education credits and also with this bill, it would add an additional focus on making sure that we are up to date on concussion assessment. There are also other professionals though; they have different requirements for being up to date on what they are assessing out there in the field. I think what it does is it allows some room for those folks to be able to determine what



**they need to assess concussions. I can only speak as far as athletic trainers are concerned.**

**Rep. Hunsakor: As the wording is here in the bill, you don't see a problem with my concern. You feel that we're covering the bases okay here.**

**Damian Schlinger: I speak on behalf of the Athletic Trainers and because this is something that is so core to our practice, I feel so confident in it. The other representatives from the different associations, as far as different medical professions came forward, and spoke of training in their fields and it leaves it open-ended to them, satisfying that requirement. I do feel confident that we have taken a good step in requiring that training on a biennial basis. You know exactly what it means and how it occurs is to be determined yet, but I'm very glad it is in there and it is a starting point.**

**Rep. B. Koppelman: Is it safe to say that different medical professions might have different amounts of training to bring them up to the requirement of this legislation, i.e. a trainer vs. a physician; maybe a family health care physician might have different amounts of training to where they and their association and licensing groups felt that they are adequate. Is that what you're saying?**

**Damian Schlinger: Yes, that is exactly what I am saying. Whether it's the physician group or nurse practitioner group, they may have different sets of guidelines that they operate by and it is not my position to impose those on those folks. I can only talk about what the ND Athletic Trainers Association and what we see as biennial training to satisfy that requirement from our perspective.**

**Rep. Nathe: Thank you. Further testimony in support of HB 1028.**

**Tom Balzer: I am a hockey official in Mandan and I will tell you that when I was in high school, that the issue of concussion management has changed significantly. I specifically remember a high school football game between St. Mary's and Bismarck High, in which I could only see a blur in front of me. My trainer told me that if it's maroon, hit it; if it's white, don't. We've come a long way in our management of concussion issues. Our concern stems back to when this piece of legislation was passed last session, in that an official is an independent contractor; we are not employees of any school district. So in subsection 8, if I may make a suggestion of adding another subsection (c) that just says officials on it, so that we are exempt from liability. I know that this is a concern of the official community. A lot of people are concerned that they are going to be brought in because when you look at the legal requirements of who has to take someone out of play, and who's exempt from liability and who always gets questioned about their decisions, its officials. There is a lot of concern in the official community that we would be brought into some sort of litigation because we are not specifically exempt nor are we professional medical individuals. We have had that biennial training that the High School Activities Association requires and we go through that, and they are very diligent about making sure that we have that in there. But when it comes to liability, there is a**

**concern. I think if the committee would make that amendment, then the officials community would feel a lot better about what we do.**

**Rep. Nathe: Thank you. Further testimony in support.**

**Cheryl Rising, Family Nurse Practitioner, and ND Nurse Practitioner Association: We are in support of this bill; but I wanted to answer a couple of questions that have arisen from previous discussion. We are in total support of the provider neutral language that is in the bill. I was part of the committee that worked on this bill and it was very difficult to list out each provider that might be available to do that. We are in support of the provider neutral language. There is an online training program that as they develop and look at what they are going to be doing, that was highly recommended and that is upgraded every year. I just wanted to reinforce that that was brought up to the committee.**

**Rep. Hunskor: So my question is, where it talks about biennial training, should that online course be mentioned in this bill, "biennial training which includes..."**

**Cheryl Rising: I think that was discussed at length. They thought if they left it open, that if for some reason that online training ended up being deleted or it wasn't available any longer, that it would leave it open so that we would be able to have developed, a program that we would choose to have in this state.**

**Rep. Hunskor: So to continue, are you looking at a program to be developed which would say "receive biennial training" or whatever that program might be, that should be included in here, rather than just open-ended biennial training. What does that mean? It isn't specific.**

**Cheryl Rising: I hear your question. I might have to defer to someone else that might be able to answer that better. What I understood from being a member of the committee, was that they wanted it open so that we could specifically put parameters on it and it would not limit us to just the on-line or a course that someone had to take. It is the responsibility of each school district to keep the records. I just wanted to say that the Nurse Practitioner training, also when we have our education and then additional contact hours, that everything is included in neuro as well as concussion; we spend a significant amount of time.**

**Rep. Nathe: Thank you. Further testimony in support.**

**Rebecca Quinn, Medical School, Center for Rural Health, and contracted by the Head Injury Association of ND: Support. I wanted to address Rep. Hunskor's question about section 4. This idea of who can evaluate and really make that call and what training they should be required. To answer the question regarding it, it is really within the bill, it says "by a licensed healthcare provider", the biggest point is that it is by licensed. A health care provider's license, whether it be an athletic trainer, whether it be nurse practitioners, physicians, their license is their regulating body. So rather than legislation with this, going into place as to what training is involved, or what requirement the legislation is going to have, by putting that word in there,**

**"by a licensed" we are basically putting the onus on that health care provider and their licensing body. By that way, it is providing that level of protection. So where you set the example of, if somebody were to see maybe a physician and didn't get the answer they wanted, and then they went and saw another physician and got a different answer, who is liable in that. It would be on the license on those health care providers.**

**Rep. Hunskor: I understand that you can have a licensed health care provider, but that doesn't say that the person has been trained in the diagnosis and evaluation of management of a concussion.**

**Rebecca Quinn: No it does not. That is one piece where there may be a concern. To me, I think about how we would get into regulating that. One of the things I know where larger or urban center schools and health care providers maybe have a lot more training in this area vs. what about a smaller rural school that doesn't have athletic trainers. They may only have their small rural physician or nurse practitioner in their community. What is their level of training? I don't know that the legislative intent is to get into that level of oversight and management of this. Obviously, I myself provide concussion training. I just did the training for the Grand Forks Park District this last week. They are not legislatively mandated to do it. They wanted the training even though they didn't have to get it. I am now working with them to set up their concussion management protocol. Where is the oversight to be able to say how we're going to be keeping track of providers as to whether or not we feel their training is sufficient, when they already have a licensing board that has set it? To me, the legislation really puts the onus on that health care provider. By signing off on that student's return, they themselves have said, "yes I meet these requirements". If something were to happen, they would be liable in the fact that yes, they've said that they are licensed and they've said that they meet these requirements.**

**Rep. Nathe: Thank you. Further testimony in support.**

**Jack McDonald, ND Physical Therapy Examining Committee: They are the licensing board for physical therapists. We strongly support this bill and go along with the changes that were made. We worked long and hard with the interim committee in working through these changes. Any professional licensed person puts his or her license on the line any time you go beyond what you believe is your scope of practice. If I was a licensed pediatrician and I decided to do a little bit of neurosurgery, I would be putting my license in danger. If I, as a licensed attorney, but not skilled in Medicaid planning, and I decided to try and do some Medicaid planning for a client, and I botch it up, and it costs him a lot of money, I am going to get sued because I went beyond what is my scope of practice was in that area. That was the intent of this law. We had some testimony from a person who is a physician, physical therapist and an athletic trainer, Dr. Martin in Minot. She strongly supported the provisions of the law the way they are right now. The law does state, there is no question about it, on page 2, lines 9, 10 and 11; it says the health care provider is acting within the provider's scope of practice and is trained in the evaluation and management of concussion. You have to be trained in the evaluation**

**and management of concussion or else you can't be doing this. It is in state law. If you're not trained, you are violating state law. I think the language is pretty clear. We strongly support this. We believe it is a good move forward. It makes the concussion bill much more manageable by the school districts.**

**Rep. Schatz: I'm looking at this from the small school perspective. It looks like we are going to have to have a health care provider at every event; junior high, varsity, etc. We're going to need someone there to evaluate in case a concussion would happen. If that were to happen, it looks to me like we need to put some dollars into this bill in order to help people out. What is your opinion on this?**

**Jack McDonald: There are two provisions of this law. The way the law reads now, it is in the state law now. There are two occurrences, 1) is that you diagnose or say that it appears that this person might have suffered a concussion; he or she is taken out of the game. The person removed from the game was done so by an official, a coach, or an individual having direct responsibility for the student during the game. That's not unnecessarily a health care professional. That could be the referee, umpire, asst. coach, school principal sitting on the bench and he says that the kid looks pretty woozy to me Coach, he or she could take that student out of the game. Because the law requires that they be evaluated by a trained health care professional and a written response be provided, 99.9% of the time that person isn't going to go back into that game that day or night. You're not necessarily going to have the health care trained professional at every single game. You're going to have someone there who is trained, a coach, referee, or other school official yes, at every single game, any game, that is under state law now. But then you are going to have to have the availability of getting a health care provider to okay the return. The way the law is written now, it is purposely designed to assist the rural areas and the small towns by saying that even though you may not have a physician there, but you probably have one of these other health care trained professionals; the athletic trainers for instance are available in practically every school district in the state. By the time the student is ready to go back in, they have been reviewed by one of these health care professionals. It is important to try and keep that health care professional open so that you didn't necessarily have to see a neurosurgeon. You didn't necessarily have to see a physician. A specifically trained person, such as the athletic trainer or a physical therapist, it could be an LPN or nurse practitioner, if they have the training. I think the rural areas are addressed very specifically in the current law.**

**Rep. Nathe: Thank you. Further testimony in support of HB 1028.**

**Lorall Jungling, Certified Athletic Administrator, and Athletic Director of Mandan High School: I have been pretty involved with this legislation for the last three or four years, monitoring it. I was part of the study group during the interim. I strongly believe this language would be in the best interest of our schools and our students. It gives us some flexibility and I want to go back to that part 4, in this current legislation, where it doesn't specifically name all of the health care providers. I believe, as it's been said a few times, that they have to be licensed, a health care provider and they have to work within their scope of practice. I think that's the most**

**important thing. Scope of practice is the training that they have. If they are working within that scope of practice in the training, not to take someone out of play, because we can all do that; it's to put them back in the game. I believe that the trust that athletic trainers and my sports medicine provider in Mandan, is actually a physical therapist. The trust that they can get with their athletes is so important. Concussions are scary for kids. They need to be honest with our health care providers. I think it's very important that we have this wording in the state law, so it can give us some flexibility, but yet we have credibility with our providers who serve our kids.**

**Rep. Nathe: Is the concussion management program something you review every year, going into the school year.**

**Lorall Jungling: Yes, we have a pretty extensive program. We put together a committee with our sports medicine provider, a few coaches, and me, and we put together our concussion management procedure. We do review it probably about every other month basis. It's pretty extensive.**

**Rep. Hunskor: I appreciate your comments on section 4. Going down to section 6, the biennial training. In your opinion, is there any need to be more specific on that? Is it 1 hour, 6 hours; in some schools they may be irresponsible and train very little. Is it best to leave it as is, what are your thoughts?**

**Lorall Jungling: It is difficult to put a time on it. I do know that through the certification process that all coaches have to go through by the beginning of next school year, through the High School Activity Association, one part of that certification is concussion management or concussion education. If you go to a website, [nfhslearn.com](http://nfhslearn.com), you could actually take that 25-30 minute concussion course, that all of our coaches are required to take. To take that course probably won't teach you everything, but at least it is going to give you a good basis for that and then it is going to be up to the schools to go on from there. In our school district, we have had about three different educational opportunities for our coaches in concussion care. Our sports medicine provider, who actually teaches at the Univ. of Mary, has directed those courses. It's going to be interesting down the road to come up with different ways of teaching concussion management to our coaches other than just to keep reiterating, and sometimes that's okay too, for the signs to look for our kids. Let's keep in mind, as has been stated before, we just have to teach our coaches how to pick up symptoms of concussion. So then we sit them down and then we let someone else who is trained in that scope of practice, to put them back in. That's the important thing, is to put them back in. We have to teach our coaches to take them out if there's any question at all.**

**Rep. Nathe: Does Mandan run their coaches through this program every year; the training.**

**Lorall Jungling: We require them to take it the first time and then after that they have to go online and take the course; then you get a certificate of completion which they**

**give to me and then after that, then it's going to be some face to face training with our sports medicine provider.**

**Rep. Nathe: So it's more than just an online course.**

**Lorall Jungling: That's correct.**

**Rep. Nathe: Thank you. Further testimony in support. Testimony in opposition to HB 1028. We will close the hearing.**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

HB 1028  
January 21, 2013  
17457

Conference Committee

Committee Clerk Signature



## Minutes:

**Ch. Nathe:** We will take a look at HB 1028. What are the committee's wishes. We have a number of amendments to talk about. This bill relates to concussion management. Rep. Hunskor was working on amendments. The handout shows the amendments on page 2, in the green color.

**Rep. Hunskor:** To remind the committee, all of the interested parties did sit down and work on this particular bill to come up with the final product prior to the amendments. I think it's an excellent bill. In Section 1 (1), there must be a program, 1 (2) it must be easy to understand, 1 (3) under what condition is a student to be removed from practice. It goes step by step through all of the necessary requirements. Going to the amendments now, on page 2, line 5, replace "each" with "any other". The reason is obvious. It says that the duty to remove the student under the conditions set forth in this subsection extends to each official, the coach and then it makes it much more grammatically correct to say "any other" rather than "each". It makes it clearer.

**Ch. Nathe:** On that same line, "any other individual" and then added "designated by the school district".

**Rep. Hunskor:** Page 2, line 5, after "individual", insert "designated by the school district or non-public school as...". This defines who that individual is. Before it was an individual, well who is that "individual", Grandma up in the bleachers; now we know who it is, it is the same designated by the school district or non-public school.

**Rep. Schatz:** On each official, what do you mean. Do you mean school official or the referee.

**Rep. Hunskor:** If you go to the very end on page 3, line 17, last sentence.

**Rep. Schatz:** Good.

**Rep. Hunskor:** On page 2, line 12, after concussion insert "as determined by the provider's licensing board". The concern here was that the health care provider is trained in the evaluation and management of concussions and what training does

**that involve. Who decides what that is and this explains that. That was my concern that the individual is licensed to do this as determined by that provider's licensing board, whether he be a medical doctor, physical therapist, etc.**

**Rep. Heller: I had a question on the previous amendment, page 2, line 5, when you said that it sounds better to have "any other", is that LC's telling you that, or do you just think it sounds better.**

**Rep. Hunskor: We heard this from the interested parties, LC and I believe the final impetus came from LC, Anita Thomas felt this was better language.**

**Rep. Rohr: On line 12, "as determined by the provider's licensing board". So the entities that were represented here during the hearing, are they all familiar with this and all in agreement with that. I'm not sure how many them do or do not have licensing boards. I know the physicians and the advanced practice providers, but I'm not sure about athletic trainers, physical therapists, or anyone else who might be within that type of context.**

**Rep. Hunskor: I do not believe that all of those entities have been contacted and said this is good language. I think this whole issue came up, and I was one of those who raised the question, if a doctor signs on, has that doctor had the necessary training in the evaluation of concussions. I had a concern over that. How do we know that, how are we going to determine that, and the best answer that we could come up with in working with LC and others was, that who's going to determine if that doctor has that credential; that expertise. It would be licensing board of that doctor or of that therapist. That was the best we could do.**

**Ch. Nathe: Many of the interested parties that worked on this during last session and in the interim and now have seen this language and are comfortable with this, correct.**

**Rep. Hunskor: Yes. On page 2, line 28. That's new language. It would say "any health care provider who signs an authorization in accordance with this section is acknowledging that the provider is acting within the provider's scope of practice and is training in the evaluation and management of concussions as determined by the provider's licensing board". In other words, this was one of our concerns when we met earlier. By his signature, that doctor, physical therapist, etc. by his/her signature the health care provider is acknowledging that he/she is trained in the evaluation and management of concussions as determined by that licensing board. When they sign the paper, they're saying, "I understand concussions, I have been trained in it, and I am qualified". It puts the burden on the person signing.**

**Ch. Nathe: They are verifying their expertise.**

**Rep. Hunskor: Yes.**

**Rep. Rohr: Just to clarify that, this is an extra step for them. They have to sign this authorization with the school or with the athletic function, because they will be**



getting a certification when they take the online course or wherever they take the education. This is in addition to that.

**Rep. Hunskor:** When someone, doctor or whoever, has to sign the paper that says this student can go back to practice, and when he/she does that, he/she is saying that I am trained to understand concussions and I am qualified to say this student can go back to practice again.

**Ch. Nathe:** But the mere presence of their signature on the returning form says that.

**Rep. Hunskor:** Yes.

**Rep. J. Kelsh:** Is there anyone else other than a licensed physician that would be able to say it's alright to put your name on there. It said a health care provider, what all does that include.

**Rep. Hunskor:** I'm not sure.

**Ch. Nathe:** As far as I understand it, it would be anybody as far as physical therapist, physician assistant, anybody with a professional medical legal license.

**Rep. Rohr:** Yes, we talked about this time. Any advanced practice providers, physician assistants, DO's, nurse practitioners, athletic trainers, physical therapists, but they do have licensing boards.

**Rep. J. Kelsh:** It does answer my question. My next question is, are we opening the door if something would go wrong for some people that sign their name that it's alright to go back to practice, opening them up for lawsuits, that they could lose their license because of this, or is it going to make them send the person on to someone that specifically deals with concussion management.

**Ch. Nathe:** If I remember right, there is a hold harmless section. Page 3, line 11.

**Rep. J. Kelsh:** That is just the school district, its officers, employees or non-public schools. I am talking about the health care professional that signs that. If they sign it and something goes wrong at the next practice, which can happen, then they would be liable I assume. Legally liable and open the lawsuits.

**Ch. Nathe:** When they sign off on forms like that, that is part of their license, part of their scope of practice of what they do. I think that comes with the territory. I guess legally, yes.

**Rep. Hunskor:** I think that is partially covered by that addition of "as determined by the provider's licensing board". So that person or doctor, whoever signs the form, is working within his own licensing board.

**Rep. Rust:** The way I view this is much the way that if you take a school bus driver. The school bus driver must go in and have a physical. The protection for the school

district is that this person has been inspected by a licensed professional and they have deemed that individual competent to drive a bus. If that person goes out and has an accident, and somebody comes up with the finding that this person was not diagnosed properly. I think the school district is probably off the hook, because they did what they were supposed to do. My guess is that the doctor is going to be seen in court. That goes with the territory. In looking at this, these individuals are going to be a little hesitant to sign off on those people going back to play, because they aren't going to want to be hung out to dry, as far as they put the kid in a little too soon and the kid drops over and has some serious problems. They know they are going to be the ones that are going to be on the hook, and again, their attorney is going to be in touch.

Ch. Nathe: I think the medical providers face that already, when people come in right now.

Rep. J. Kelsh: In Oakes, ND, if there's not a medical professional that feels they are trained well enough, somebody is going to send that kid to Fargo. That was kind of the point I was making, how far does this go. When can it stop.

Rep. Schatz: I've got many questions about this. I did talk to some coaches. I talked to athletic trainers here in Bismarck and they seemed to be pretty on board with this, but that's Bismarck. Oakes, New England, little schools, it is a different situation. The first thing I'm questioning, the official sends a player out, in the first play of the game, doesn't look right and he's out for the game, is that correct. Here's what happens, 30 seconds later he is climbing all over the coach to get back in the game. He's fine. Okay, well that's it, he's the best player. This game is over for us. I see this as a problem, especially in the smaller schools.

Rep. Rust: In my opinion, that's the whole point of the concussion management, is to protect kids. Whether we like it or not, the underlying tone is to prevent coaches and parents who want the kid to get back into the game too soon to play. I don't know if they are done for the game. I think you could have an athletic trainer, or nurse practitioner or PA that could be in the stands that could do an evaluation and probably say I think this person is okay to go back in. We may be seeing more of those at games in the future with these laws as they are being passed.

Rep. Schatz: That's the point I am trying to make; determining if the student is hurt. As a coach, I would never send a player back in if I think he is hurt, there's no way. But sometimes these things happen and he's perfectly fine. But what other damage has been done if you don't let him go back in. He's the star, you lose the game. He's mad at the coach and the world because he didn't get to play in the big game and he can't understand why, he was perfectly fine, there was nothing wrong with him.

Rep. Hunsakor: It is not the scoreboard that makes a difference. That's not the issue. It's not the kid who's mad at you, the issue is the health of the kid; the potential concussion whenever it happens, the coach or the health care provider takes a look at that student and he has to determine at that point because he has had this minimum training. Does that kid have a possibility of a concussion. As a coach, if

that answer is yes, he doesn't play. I don't care if he's mad or if he is the best player. The coach makes that decision and sticks with it. If he decides, at that point, that there isn't a concussion, let him go. But he's had the training and he makes the decision and that's it.

Rep. Schatz: I agree with you except one of the problems in sports is very important to kids. You remember every game you ever played in, in school. These matters are very important to players often times. If they are denied the right to play and they were fine, I'm asking how the re-entry would happen during a game and if it's possible.

Rep. J. Kelsh: I did not mean to question how far this would go. The kids are very important. In the rural areas, it is hard to find health care providers that are going to know what to do. They will probably have to go to Fargo to get the child cleared, or another large city nearby.

Rep. Rust: Could Damien Schlinger expound on this, is this something that a health care provider or athletic trainer is there and they are trained to make these evaluations, could that be done in a game and that person be allowed back in. Is this something that can happen within the confines of the game or do you think that this is not workable.

Shane Goettle, ND Athletic Trainers Association: I was part of the working group this summer that worked through this. One of the questions we had, suppose a kid is taken out and it turns out that the wind was knocked out of him. They had expressed some concussion symptoms, but in the end it was just the wind knocked out of him. We dealt with that in Section 4, where it says "a concussion management program must require that a student be removed in accordance with subsection 3, must be evaluated as soon as practicable by a licensed healthcare provider who is acting within the provider's scope of practice. If there is an athletic trainer sitting in the stands, he comes down and determines that they were not concussed, then certainly they can be sent back into the game.

Rep. Rohr: On the last page, line 7, it also indicates the student and the student's parents have also reviewed the information regarding concussions. So they are aware of when and why these people are taking the player out from the game. They are part of the process and educated as well.

Shane Goettle: Was that language removed.

Rep. Rohr: No, it is still in there. On page 3, line 5, subsection 7.

Ch. Nathe: That would be current law now.

Shane Goettle: Yes, it is current law now. The way it reads, a student and a student's parents shall document that they viewed information regarding concussions ...". If the evaluation determines that there has not been a concussion,

then this section would not apply. But if the athlete were concussed, then indeed this would be triggered where the parents would be involved.

Rep. B. Koppelman: I think the question I have, this language suggests that as soon as practicable, if when they are supposed to be evaluated. Where I see the instance coming in, do we get a little bit gun-shy to the point where, we take the kid out once they show or we suspect something. So an official says, take that kid to the sidelines, I am worried about him. He comes to the sidelines, if they are immediately checked out by an athletic trainer on the sidelines, and are able to evaluate that, then if they're saying there might be a problem, and then the athletic trainer isn't comfortable sending him back in if there are signs of a concussion, the kid is out for the game. However, if the kid is taken out on suspicion by an official, and they say sit down for a minute, they give him a minute to collect himself, which often times happens after being hit, it's probably a little easier at that time to determine whether or not the kid has concussion symptoms or not. But if we're jumping the gun, as soon as they get to the sidelines, we must evaluate them and flag them, and if they are flagged, they're not coming back in. Is there any protection against the rush to judgment as soon as they hit the sidelines.

Ch. Nathe: Chances are that they are going to have someone on the sidelines, who has been part of this concussion management program who has been trained to take a look at it. If they have a health care provider there, they will sign off and send him back in there. I'd rather err on the safe side and keep him out.

Rep. Rust: Make no mistake about it, this whole bill became a law because of a concern that kids were being put back into the game too soon. It came about because coaches were not doing their job or probably officials not doing their job. I really think that is why it came into existence. There was a general feeling that kids were put back in the game when they should not be. While I don't like that implication, that is the main reason I think this bill ever became a law, because the kids were being put back into the game when they shouldn't be. It is a protection for the kid from whomever wants them to play too soon. It may not just be a coach, it could be the parents or the kid.

Rep. Hunskor: I think we have to maintain trust in the coaches, the athletic trainers, those who have had this minimum amount of training to make that call. We can't possibly cover every little situation. We're at the point where they are trained, they make the call, they stick with the call, the kid plays or he doesn't play until he is properly evaluated. I think we have to leave it at that.

Rep. J. Kelsh: During the last session, there was a concussion management group that met in the Brynhild Haugland room and I attended that. There were players and others there that were really warning against some of the things that happened. They wanted to err on the side of safety for the kids. I move the Hunskor amendments.

Rep. Mock: Second the motion.

**11 YES 0 NO 2 ABSENT THE HUNSKOR AMENDMENT PASSES**

**Ch. Nathe: Rep. Rohr, please explain your amendments.**

**Rep. Rohr: At the hearing two weeks ago, Tom Balzer, who is an official at sports events, was here and asked that we add, on page 3 of the original bill, line 13, it says a non-public school, its officers, or its employees, and then this amendment would say, letter c) an official. This section does not create any liability for or create a cause of harm against a), b) and c).**

**Rep. Hunskor: I was also approached with this by an official, and I was told that the word official does not have to be here because they are already covered under ND High School Activities rules. We may need to check that out. That's why I was told that it didn't need to be there.**

**Ch. Nathe: Would it hurt to put it in there anyway.**

**Rep. Hunskor: I would assume not.**

**Rep. Rust: Do we need the word "contracted" in there, because that was what he was alluding to, is that if they are employees they are okay, but it's the contracted people, and most officials are contracted. Is that word "contracted" necessary.**

**Ch. Nathe: Rep. Rohr, please get a clarification on that as well. We will take this up again this afternoon.**

**(Opened after the Floor Session)**

**Ch. Nathe: Let's take up HB 1028.**

**Rep. Rohr: I was unable to get a hold of Tom Balzer.**

**Rep. Hunskor: I spoke with Anita Thomas, LC, and she indicated that the High School Activities Association does take care of the officials. I didn't call Valley City, that's what she stated in the hall.**

**Rep. Rohr: But a point that was made by Rep. Rust was that he felt that maybe Tom was a contracted official. So would that still follow.**

**Rep. Mock: If it's a contracted referee, are they hired through the school, in which case, would that fall under the employees of the school district section that we're referring to.**

**Rep. Rust: In my experience as an administrator, when you went out to hire officials, is that you signed a contract with them. They were a contracted official, so they are not an employee of the school.**

**Rep. Hunskor:** Would it help to have Anita come down. She may have the official word and then we're done with it.

**Rep. Schatz:** As far as officials go, when you go to the state playoffs, those aren't contracted by the school, they are contracted by the NDHSAA.

**Rep. Rust:** The procedure is that school district where the contest is being held, will contract for officials until you get to the regional and state level competitions. Those are contracted by the Association. The district level competition is generally done through the district schools. They have a district chairman and you generally have one school involved in that. It's generally the home school that would contract. Anything regional or above is done by the Association.

**Rep. J. Kelsh:** My understanding of contracting, you pay the salary, and you don't take out any taxes, etc. They have to do that themselves. But I think if you were a general contractor, you contracted with someone else and they fouled up, the general contractor would still have some liability. I would bet it was the same with the school. The biggest difference is that you don't take out the taxes, etc. You send them a 1099 at the end of the year.

**Rep. B. Koppelman:** I talked with Mr. Balzer and had actually requested a similar amendment that Rep. Rohr requested. At the time, in talking with him, he had suggested simply having the language "an official hired to officiate the game". Then it puts a broad definition that covers a W2 employee or a contracted employee, subcontractor. Everybody knows who the official hired to officiate the game is. Unless we have an issue with volunteer officials in some districts, if not, if they are all paid something, that was the language he suggested and that might kind of sidestep that issue.

**Ch. Nathe:** Anita, we have a couple of questions on the amendment having to do with the official, page 3, subsection 8, would be adding c) under that section.

**Rep. Rohr:** Tom Balzer testified that he officiated at games and he wanted to add a subsection c) for official. It was later brought up that he was a contracted employee, or contracted official, and so there is a question about if they are under the auspices of the NDHSAA, are they covered or not, and if not, would we need to add this.

**Anita Thomas, LC:** We were told that the officials, if they are operating under the auspices of the NDHSAA are covered by their insurance. If a school district goes out and contracts with an individual to referee intermural volleyball or something similar, that individual would be an employee/contractor of the school, and then covered under this.

**Rep. B. Koppelman:** If that's the case, this section clearly is trying to waive any liability from those individuals and the school district as a collective. If that's true, and they may be covered under their insurance, but I think the purpose of this was to somewhat indemnify or hold them harmless for any liability for this and the officials, particularly Mr. Balzer in talking to him after his testimony, had said that his concern

was if they pull a student out and that results in the student being sat down, and because suspecting a concussion and then the parents want to sue the official for ruining their career or the big game. So I think he wanted that put in there so that they know that officials, even contracted ones, are covered under that waiving liability. He suggested language "an official hired to officiate the game" as c), although we do have another amendment that's been submitted that says an official.

Rep. Rohr: Tom Balzer is here now. Maybe he can clear up what he was wanting added to the bill.

Tom Balzer: We are insured yes. The insurance primarily covers bodily injury to me. So that insurance is only for that. The school district is insured, but they are exempted. The coaches are insured under the school district, but they are exempted. The athletic directors insured under the school district, but they are exempted in this law. If the issue is we're insured, so are all the other entities that are exempted in the law. We're asking that we can be exempted as well, because as all of you know, insurance has limits. If you have a player who just got a scholarship to Harvard, and is going to be the next president of the United States, and you don't make that call, or you don't see what they think they thought you should have seen, and you don't set that player out and it turns out that the player has a major concussion and dies that night, those parents are coming after everyone, guns ablazing for every stitch of money that's out there. I don't blame them. That's what it is for, for that protection to make sure that we are still covered, even though we have insurance. Everyone is covered the same way. It's not going to prevent us from making those calls, because we're now exempt, we're still going to make the same amount of calls, do the same amount of training, and take it as seriously as before. I sit kids out almost routinely, because I would much rather be cautious. It's one game, not the rest of their life. That's the purpose of it, that protection that's afforded everyone else is also afforded to us.

Rep. Rohr: So the language you wanted to see on there.

Ch. Nathe: Anita, Rep. Rohr's amendment, under subsection 8 would be adding c) then. Would that achieve what Mr. Balzer is talking about.

Anita Thomas: I think when you solidify the concept that you're working on, I would be happy to put the final touches to the language at that point; to clarify whether it's an official that is hired or working under the auspices of the HSAA or any other arrangement that you have there. You might also want to think if there were any other individuals, other than officials, who might also be contracted, bus drivers, etc. When you open up the door, you could potentially get a list.

Ch. Nathe: Anita, if we put them under section 8, would that make them exempt along with the other district officials and non-public school officers.

Anita Thomas: Yes.

Ch. Nathe: Tom, would that be satisfactory.

**Tom Balzer: Yes.**

**Ch. Nathe: Putting them in with the other officials. Your amendment does do that.**

**Rep. Rohr: Yes.**

**Rep. Mock: Considering the definition of official is listed in subsection 10, page 3, line 17, after the Hunskor amendments, I will move Rep. Rohr's amendment, to add the subsection c) after line 13 on page 3.**

**Rep. Meier: Second the motion.**

**Rep. J. Kelsh: Ms. Thomas brought up something that kind of made me think of something else. After the game, the kids are getting on the bus and the driver notices a little stumble in the kid and doesn't get him to a doctor right away. Would he also be liable.**

**Ch. Nathe: I guess it comes to the point about where do you draw the line.**

**Rep. Mock: The bus driver in this case would have no requirement to remove the player from the game. This bill is talking about removing the player from the field of play. That would be the same case as if a child was showing signs of a heart attack or going into diabetic shock. I think that would be the same scope as any bus driver, hired by the school district is undertaken daily.**

**Ch. Nathe: The clerk will call the roll on the Rohr amendment.**

**11 YES 0 NO 2 ABSENT THE MOTION PASSES, AMENDMENT ADDED**

**Ch. Nathe: We now have the amended bill before us. What are the committee's wishes.**

**Rep. Schatz: I am just curious for the coach's sake, can they put a player back in if he has the wind knocked out of him and is removed by an official. I think coaches need to know if they can or cannot put them back in. That's my concern.**

**Ch. Nathe: As far as I understand it, he could put them back in as long as he is cleared by the athletic trainer. He can remove him, but the athletic trainer would make the call to put him back in.**

**Rep. Schatz: What if there isn't an athletic trainer...**

**Ch. Nathe: Or anybody else that is within their scope of practice.**

**Rep. Rust: That would be my understanding also. It takes written authorization from one of those people, signed, sealed and delivered before that person can go back in, is the way I see it.**



**Ch. Nathe:** I think Rep. Schatz is thinking about the example, somebody comes out because the wind was knocked out of them, and the coach says I think he may be a little iffy, they bring him to the athletic trainer and the trainer says that he doesn't have a concussion, he's suffering from getting the wind knocked out of them.

**Rep. Rust:** This bill says it has to be in writing.

**Rep. Schatz:** That's how I read it too.

**Rep. Rust:** I think it's clear. If you read item 5a, it says may not be allowed to return to practice, training, or competition until the authorization required must be in writing. I think it's clear that if some coach says I think this person may be suffering from a concussion, that until you get something in writing, he's not going back in.

**Ch. Nathe:** I think that pertains to subsection 4, the concussion management program must require that any student who is removed....

**John Vaasag, Executive Director for the Health Policy Consortium:** The way the bill is intended, if an individual is brought out of the game, but it is not until they have been suspected of having a concussion, that they cannot go back in. So if they pass the tests on the sidelines and there is no suspicion that they have a concussion at all, the coach can put them back in. Once there is a suspicion that they have a concussion, then section 5 applies, and they cannot go back in. So, if they get the wind knocked out of them and the coach or whoever is the designated person on the sidelines, takes them through the series of tests and he looks okay, and everything is okay, he knows the score, he knows what quarters he's in, he knows who he is playing, all the questions that are asked and there is no sign, he's fine. The rule of thumb we always used is when in doubt, pull him out. Certainly the coaches can have that responsibility to put them back into the game.

**Ch. Nathe:** Some flexibility there.

**John Vaasag:** Absolutely, yes.

**Rep. Schatz:** When the official sends the player out because they are weaving, when you have the wind knocked out of you, and then I as the coach tests the kid, and says that only the wind was knocked out of them and I put them back in the game and the official says no, I sent him out because he needs to be checked over. Now what is going to happen.

**John Vaasag:** As the coach you have done that. You have checked him over, so you should be able to reply to the official, yes I've sent him through this series of tests, checked him over, he had the wind knocked out of him, he does not have any signs of concussion, he is good to go.

**Ch. Nathe:** He's been cleared to play at that point.

**Rep. J. Kelsh:** I move a Do Pass as amended.

**Rep. Mock:** Second the motion.

**Rep. B. Koppelman:** Under subsection 4, where it says that a concussion management program must require that any student who is accordance with subsection 3 must be evaluated as soon as practicable by a licensed health care provider. Now, if you go up to subsection 3, each official is one of the groups that have the duty to remove. So if one of the "each official" people remove him, then we go down to subsection 4. I don't see any place in there about the coach, unless the coach happens to double as a licensed health care provider, such as a trainer who has that training. Absent of that, where does it say that a coach can put him back in, even if the coach says I see no symptoms of a concussion, but the official already sent him out of the game.

**John Vaasag:** As I look at the way the bill is currently written, if an official sends them out on the suspicion that he has a concussion, if there isn't an athletic trainer or licensed health care professional available, it is the coach's duty to test him, that's part of their responsibility. If the coach looks at that and sends him through all the testing that the coach has learned in his training and indicates that the student got the wind knocked out of him, but he has no signs of concussion, as I interpret that, he can certainly send him back in to play. The official did his job when he made the assumption that it could be, that's a proper step. The next step is that you have to go through and evaluate the athlete on the sidelines. Somebody has to do that evaluation.

**Ch. Nathe:** The official isn't making a diagnosis. He just has a suspicion. He is basically kicking it up to the next level, either the coach or the trainer to confirm or not if the player is concussed.

**John Vaasag:** Correct.

**Ch. Nathe:** If those tests on the sidelines say that he just got the wind knocked out of him and he's not concussed, he can let him come back in.

**Rep. B. Koppelman:** That first piece on the official is under subsection 3; I just don't see anything under subsection 4 that would then lead into subsection 5, that gives the coach any of that authority unless he's a licensed health care provider. I'm not saying that that is a reason not to support the bill, but that we need to be aware of that, that's how it appears to be written.

**Ch. Nathe:** If an official pulls a player and he suspects it, he brings them to the sidelines. The coach has the trainer look at him, run him through the battery of tests, if he is not concussed, if he doesn't show any signs, he can put the player back on the field. The coach does not do those tests. He moves it on to the health care provider that is trained to do those tests. The coach is kind of in the same category as the official as far as recognizing the signs of concussion and then

**moving it on to the medical provider. I wanted to clear that up. That's how LC sees it.**

**Rep. Rust: And if no health care provider is there.**

**Ch. Nathe: Then he is out until he sees a health care provider. When in doubt, keep him out. The clerk will call the roll.**

**10 YES 1 NO 2 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Rohr**

January 21, 2013

1/22/13  
STJ

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1028

Page 2, line 5, replace "Each" with "Any other"

Page 2, line 5, after "individual" insert "designated by the school district or nonpublic school as"

Page 2, line 11, after "concussion" insert ", as determined by the provider's licensing board"

Page 2, after line 25, insert:

"c. Any health care provider who signs an authorization in accordance with this section is acknowledging that the provider is acting within the provider's scope of practice and is trained in the evaluation and management of concussion, as determined by the provider's licensing board."

Page 3, line 6, after "employees" insert "; or

c. An official"

Renumber accordingly

Date: 1/21/13

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1028

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Hunskor Amendment

Action Taken:  Do Pass  Amended  Rerefer to Appropriations  
 Do Not Pass  Adopt Amendment

Motion Made By Rep. Kelsh Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Mike Nathe	✓		Rep. Bob Hunskor	✓	
Rep. Mike Schatz	✓		Rep. Jerry Kelsh	✓	
Rep. Joe Heilman	✓		Rep. Corey Mock	✓	
Rep. Brenda Heller	✓				
Rep. Dennis Johnson					
Rep. Ben Koppelman	✓				
Rep. Lisa Meier	✓				
Rep. Karen Rohr	✓				
Rep. David Rust	✓				
Rep. John Wall					

TOTAL (YES) 11 (NO) 0 (ABSENT) 2

FLOOR ASSIGNMENT \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion Carried.*

Date: 1/21/13

Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1028

House \_\_\_\_\_ **EDUCATION** \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment Number Rohr Amendment

Action Taken:  Do Pass  Amended  Rerefer to Appropriations  
 Do Not Pass  Adopt Amendment

Motion Made By Rep. Kelsh Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Mike Nathe	✓		Rep. Bob Hunsakor	✓	
Rep. Mike Schatz	✓		Rep. Jerry Kelsh	✓	
Rep. Joe Heilman	✓		Rep. Corey Mock	✓	
Rep. Brenda Heller	✓				
Rep. Dennis Johnson					
Rep. Ben Koppelman	✓				
Rep. Lisa Meier	✓				
Rep. Karen Rohr	✓				
Rep. David Rust	✓				
Rep. John Wall					

TOTAL (YES) 11 (NO) 0 (ABSENT) 2

FLOOR ASSIGNMENT \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion carried.*

Date: 1/21/13

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1028

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0146.05002 06000

Action Taken:  Do Pass  Amended  Rerefer to Appropriations

Do Not Pass  Adopt Amendment

Motion Made By Rep. Kelsh Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Mike Nathe	✓		Rep. Bob Hunsakor		
Rep. Mike Schatz		✓	Rep. Jerry Kelsh		
Rep. Joe Heilman	✓		Rep. Corey Mock		
Rep. Brenda Heller	✓				
Rep. Dennis Johnson					
Rep. Ben Koppelman	✓				
Rep. Lisa Meier	✓				
Rep. Karen Rohr	✓				
Rep. David Rust	✓				
Rep. John Wall					

TOTAL (YES) 10 (NO) 1 (ABSENT) 2

FLOOR ASSIGNMENT Rep. Rohr

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1028: Education Committee (Rep. Nathe, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1028 was placed on the Sixth order on the calendar.

Page 2, line 5, replace "Each" with "Any other"

Page 2, line 5, after "individual" insert "designated by the school district or nonpublic school as"

Page 2, line 11, after "concussion" insert ", as determined by the provider's licensing board"

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Page 3, line 6, after "employees" insert "; or

c. An official"

Renumber accordingly



**2013 SENATE EDUCATION**

**HB 1028**

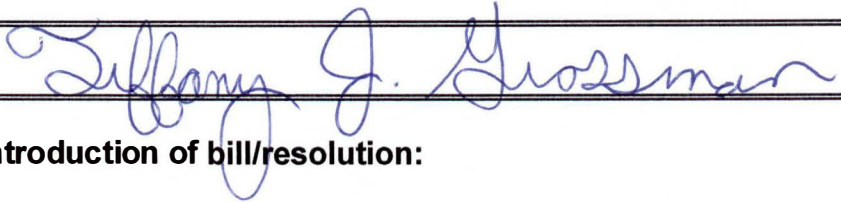
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

HB 1028  
2-19-13  
19155

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to concussion management program requirements

## Minutes:

You may make reference to "attached testimony."

**Chairman Flakoll** opened the hearing on HB 1028

**Anita Thomas, Legal Counsel for Interim Education Committee:** I wish to give information on HB 1028 and give you a summary of the bill and interim study. (Written Testimony #1 attached)

**Vice Chairman Schaible:** There liability if they don't pull them out if the player has no signs or symptoms but could have a concussion?

**Anita Thomas:** If the individual is not negligent there wouldn't be liability.

**Chairman Flakoll:** So they could pull them to the sidelines and determine if they should be pulled?

**Anita Thomas:** Yes.

**Senator Luick:** Each official would be trained to identify concussion symptoms?

**Anita Thomas:** That is correct.

**Senator Luick:** At what level are they able to identify this? I'm concerned the officials may not be able to identify this.

**Anita Thomas:** The groups behind me can walk through the signs and symptoms. Many people began to realize it wasn't difficult to detect the signs and symptoms. There is a simple basic checklist.

**Senator Poolman:** What happens if the healthcare provider gives permission to go back and something is still wrong? Is the healthcare provider liable?

**Anita Thomas:** Either the provider is an employee of the school district or the individual carries their own malpractice insurance.

**Shane Goettle, North Dakota Athletic Trainer's Association:** I would like to introduce Ray Hall, the clinical education coordinator for athletic training at the University of Mary. He has a lot of experience. I was also a part of the working group that presented the bill to the interim committee. Getting the healthcare providers on the same page was a very nice thing to see and I think you have a good bill before you to consider.

**Ray Hall, Government Affairs Chairperson for the North Dakota Athletic Trainer's Association, Clinical Education Coordinator for the University of Mary:** I am here on behalf of the North Dakota's Athletic Trainer's Association. We support the changes being proposed. (Written testimony #2 attached)

**Senator Marcellais:** How long is the continuing education?

**Ray Hall:** It can be an hour or two hour course. A worldwide committee gets together every two years to set the stipulations on what to look for with concussion training. That is our responsibility to update with that, however long it takes.

**Senator Marcellais:** Does this training provide a certificate?

**Ray Hall:** Yes. We have to document our education and if we attend a conference or do online registration we have a certificate that can be printed.

**Senator Heckaman:** Would you state about what happens with schools that don't have athletic trainers?

**Ray Hall:** Responsibility falls on the coaches and officials to decide whether someone may have a concussion. That happens in rural areas of the state. The coaches need to be educated as well as the officials in order for this to take full effect.

**Senator Heckaman:** How would a school or parent know if someone completed the training?

**Ray Hall:** There should be documentation. The BPS has the coaches get a certificate and send it to their Athletic Director.

**Chairman Flakoll:** How many students were pulled from the games? Is there anecdotal evidence of this being effective?

**Ray Hall:** I don't have data but I know the awareness is out there more so more students are pulled because of a possible concussion. More understand the seriousness. The intent is to protect the child. I don't have concrete data but I believe more are getting pulled out.

**Chairman Flakoll:** Have there been complaints because someone was pulled?

**Ray Hall:** There are always complaints but the intent is to have the best interest of the athlete. It may be in a high stress situation but we have to take those considerations into account.

**Senator Marcellais:** You mentioned the possibility of concussions. Do we have a number of how many concussions?

**Ray Hall:** I do not have any data. With it not being a year yet it is early to collect that data?

**Chairman Flakoll:** Do you think school districts will keep aggregate data by year?

**Ray Hall:** I would hope the schools would. That data can become helpful with further research. That is up to the individual school district to do that but it could be looked at by the athletic trainers

**Annette Bendish North Dakota School Board's association:** I have the amendment (#3 attached)

**Chairman Flakoll:** Was that amendment offered up on the house side?

**Annette Bendish:** It wasn't adopted by the House Education Committee for some reason.

**Senator Marcellais:** Should we have continued reporting of concussions?

**Annette Bendish:** I will defer to Mr. Auch.

**Ben Auch: Board of Directors for the North Dakota High School Activities Association:** The NDHSAA does support this bill. We appreciate the clarity it brings to the healthcare provider section. We also appreciate the officials being in the hold harmless. I don't have the numbers for the concussions but we have been tracking the concussions since the bill was made a law.

**Senator Marcellais:** Do you think there should be reporting of the concussions?

**Ben Auch:** We do that now so we can continue to keep you updated.

**Senator Heckaman:** Do you know of a provision right now that there are a certain number of concussions before a student or athlete should not participate? Does the training focus on that?

**Ben Auch:** The training focuses on the recognition of the symptoms. As part of our certification program all coaches are required to go through the national federation coaches' concussion seminar.

**Vice Chairman Schaible:** What is the criterion of the levels? Elementary aren't required to be trained.

**Ben Auch:** That would fall on the school yes. We encourage schools to train their coaches. All districts had to adopt a program for concussion management which included training for coaches.

**Chairman Flakoll:** A parent could take their child's records if they wish to have them made?

**Ben Auch:** Yes, they own those.

**Chairman Flakoll:** Can a medical provider get those in the event a child has a condition? Are they able to get those for the purpose of diagnosis?

**Ben Auch:** I would defer that to our legal counsel, Annette Bendish

**Jack McDonald:** I am here representing the North Dakota Physical Therapy Association and the North Dakota Board of Physical Therapy Examiners. We have been working on this bill during last session and during interim and in the House Education Committee. We strongly support this bill. It really meets the objectives of everyone concerned. It will protect the students and officials in the school district at the same time. Every student has to pass a physical exam before he or she is allowed to participate in sports. That physical examination includes the past history of the student. This is a good bill. I hope you get it a do pass.

**Senator Heckaman:** When are they physicals? Are they on annual or biannual? There were some changes.

**Jack McDonald:** My understanding is they are annual.

**Chairman Flakoll:** Have the private schools embraced this?

**Jack McDonald:** They have been following. A lot of them were doing this already before the bill was introduced in the last session. They need to follow this as well as any non-public school.

**Chairman Flakoll:** How will it work in that we have some homeschoolers that participate in athletics or if there is a mixed sports team with a partnership? Who is responsible for the file and the data?

**Jack McDonald:** There are teams that get together for athletic purposes and the co-ops have a designation of who is running the co-ops. There is always a parent school involved. The student would be enrolled in some school. The school has to keep the records of its students. Homeschoolers can affiliate with a district if they want to do extracurricular activities. They have to sign on to a school district. They have to follow the rules of that school which would keep the records. The homeschoolers sometimes sign on to a school in order to get a high school degree.

**Senator Marcellais:** Is the training the individual's responsibility or the school district's?

**Jack McDonald:** The training is the responsibility of the coach or individual. It is a part of his or her responsibility for the job.

**Damian Schlinger ND Board of Athletic Trainers:** We regulate the practice of Athletic Training in the state. We also worked with the Interim Committee and the House Education Committee on the bill you see before you. We would like to offer our support of this bill. I ask you for a do pass.

**Chairman Flakoll:** Do you support the amendments?

**Damian Schlinger:** Yes we do support the amendment.

**Chairman Flakoll:** Closed hearing on HB 1028

**Senator Heckaman: Move amendments to engrossed HB 1028 as presented**

**Vice Chairman Schaible: Second**

**A roll call vote was taken to adopt the amendment: 6 yeas, 0 neas, 0 absent**

**Senator Heckaman: I move Do Pass on engrossed HB 1028 as amended**

**Vice Chairman Schaible: Second**

**Senator Heckaman:** Our grandson had a head concussion during football season and he is also hockey player. He was also concerned about it. The athletes also know these head injuries can be severe. Some did not pass their second evaluation but the health of athletes comes before the playing time. It has brought families, coaches, healthcare providers, and EMTs awareness to the situation. I don't think the training costs anything. I think it is online. There is also a 20 minute training from the CDC in Atlanta. You can get that online.

**Senator Marcellais:** I brought up the cost because my Athletic Director approached me after the last bill and we didn't put in appropriations for football helmets that cost us \$300 a piece to upgrade for the concussion policies. Our school had to eat that cost.

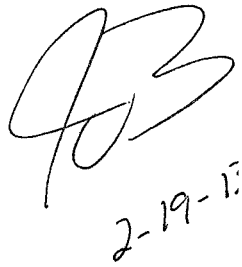
**A roll call vote was taken for a Do Pass as amended to engrossed HB 1028: 6 yeas, 0 neas, 0 absent**

**Senator Heckaman:** will carry

13.0146.06001  
Title.07000

Adopted by the Education Committee

February 19, 2013



Handwritten signature and date: 2-19-13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1028

Page 3, line 2, after "individual" insert "designated by the school district or nonpublic school as"

Renumber accordingly

HB 1028

Date: 2-19-13  
Roll Call Vote #: 13

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO.

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 13,0146,06001

Action Taken adopt amendment

Motion Made By Heckaman Seconded By Schaible

Senators	Yes	No	Senator	Yes	No
Chariman Tim Flakoll	✓		Senator Joan Heckaman	✓	
Vice Chairman Donald Schaible	✓		Senator Richard Marcellais	✓	
Senator Larry Luick	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:



HB 1028

Date: 2-19-13  
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO.

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 13,0146,06001

Action Taken do pass as amended

Motion Made By Heckaman Seconded By Schaible

Senators	Yes	No	Senator	Yes	No
Chairman Tim Flakoll	✓		Senator Joan Heckaman	✓	
Vice Chairman Donald Schaible	✓		Senator Richard Marcellais	✓	
Senator Larry Luick	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Heckaman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1028, as engrossed: Education Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1028 was placed on the Sixth order on the calendar.

Page 3, line 2, after "individual" insert "designated by the school district or nonpublic school as"

Renumber accordingly

**2013 TESTIMONY**

**HB 1028**

HB 1028 - Concussion Legislation  
Testimony of  
L. Anita Thomas, J.D., LL.M.  
Legislative Council  
January 14, 2013

Concussion legislation is getting to be kind of an old friend. It made its appearance during the 2011 legislative session and stayed through to the 72<sup>nd</sup> day. It was the primary effort of the interim education committee and it is back for another session.

I am appearing before you today because I served as the legal counsel to the interim committee. In my role, I will touch briefly on the bill's legislative history and review the interim committee's recommendation.

In 2006, Zackery Lystedt was a middle school student in the state of Washington. Playing late in the first half of a football game, his head hit the ground, and he struggled to get up. He made it to the sideline, sat out for about 15 minutes, and then went back in for the remainder of the game. Late in the fourth quarter, Zachery forced a fumble at the goal line. He was unsteady on his feet and, approximately 60 seconds later, he collapsed. He had suffered a concussion on the first hit and the second hit caused a brain hemorrhage. Five hours after the game, he had emergency surgery. He spent three months in a comma, nine months not being able to speak, and years in therapy. He remains in a wheelchair.

It is Zachery's name that is found in the title of Washington state's concussion law--legislation that has served as a model for almost every state in the union. Arkansas, Tennessee, and Michigan, were the last holdouts that I found.

All of the enacted legislation targets public schools or school districts. Some state legislatures extended requirements to nonpublic schools and others even included various private clubs, leagues, and organizations. While most of the legislation is very similar in intent and purpose, there is significant difference in detail and clarity. This is most noticeable with respect to directives that a student be removed from practice or play. Much of the legislation does not indicate who has the duty to remove a student and who has the power, i.e., who "must" and who "may" remove a student suspected of having a concussion.

North Dakota's law, requires school districts and nonpublic schools to be subject to a concussion management program. The law is silent with respect to how that program is developed, but it is very specific with respect to its content.

The program must set forth in clear and readily comprehensible language the signs and symptoms of a concussion. With respect to the removal of an injured student, North Dakota's law places specific obligations on specific individuals. An official has a duty to remove a student from competition, and a coach or an athletic trainer has a duty to remove a student from practice, training, or competition under the following circumstances:

1. If the student reports any sign or symptom of a concussion;
2. If the official, coach, or athletic trainer determines that the student exhibits any sign or symptom of a concussion; or
3. If the official, coach, or athletic trainer is notified that the student has reported or exhibited any sign or symptom of a concussion by a health care provider whose scope of practice includes the recognition of concussion signs and symptoms.

Once a student is removed, the law requires that the student be evaluated by a health care provider whose scope of practice includes the diagnosis and treatment of concussion. This individual must have a much higher level of training than the individual who is mentioned above and whose scope of practice must include only the recognition of concussion symptoms.

A student may not return to practice, training, or competition unless the student or the student's parent obtains written authorization from a health care provider whose scope of practice includes the diagnosis and treatment of concussion and provides that authorization to the student's coach or trainer.

The concussion management program must also require that each official, coach, and athletic trainer receive biennial training regarding the nature and risk of concussion. The final component of the 2011 legislation provides that the student's school district or nonpublic school must ensure that before a student is allowed to

participate in a defined athletic activity, both the student and the student's parent must document that they have viewed information regarding concussions incurred by students participating in athletic activities. This information must be provided by the student's school district or nonpublic school and may be in printed form or in a verifiable electronic format.

#### Study

During the course of the 2011 legislative session, it was suggested that the reach of Senate Bill No. 2281 should be extended to include other entities involved in youth athletics -- e.g. political subdivisions such as municipalities and park districts, nonprofit organizations such as YMCAs, and even private for-profit establishments such as martial arts studios. It was ultimately decided that the desirability and feasibility of such an expansion should be thoroughly examined within the interim study structure.

Before the interim education committee was willing to address an expansion of the 2011 legislation, it wanted to settle a more pressing issue. The legislation required the removal of a student from practice, training, or competition under a variety of circumstances, including notification that the student has reported or exhibited any sign or symptom of a concussion by health care provider whose scope of practice includes the recognition of concussion signs and symptoms.

However, the authorization to return could be given only by a healthcare provider whose scope of practice included the diagnosis and treatment of concussion.

Under North Dakota law, a physician's scope of practice includes the "diagnosis or treatment of diseases or injuries of human beings." So, while it was clear that a physician could provide the requisite authorization, it was not clear whether this privilege extended to other healthcare providers such as advanced practice nurses, physician assistants, athletic trainers, and physical therapists.

The committee received testimony from various healthcare providers regarding their scopes of practice and the role that they believed they were able to play in the diagnosis and treatment of concussion.

The committee received a great deal of testimony on the word "diagnosis" and what it meant. Physicians suggested that by virtue of diagnosing a concussion, one is determining that a student does not have a subdural hematoma, an epidural hematoma, a skull fracture, or any number of other injuries, some of which can be life-threatening or fatal. They indicated that the determinations involved in diagnosing a concussion could not, however, be made on the sideline.

Other groups suggested that they had reviewed their scope of practice and concluded that they could diagnose a concussion. It was also suggested that it was not necessary to diagnose a concussion in order to treat or manage it and that a statutory reference to the evaluation and treatment or management of a concussion would be sufficient.

The interim committee first considered a bill draft that attempted to clarify the scope of practice issue by listing six providers who were capable, by training and experience, of evaluating a student who had been removed and ultimately authorizing that student's return. The six providers were physicians, neuropsychologists, nurse practitioners, physician assistants, athletic trainers, and physical therapists. The bill draft suggested that the latter two providers would have to work in consultation with a physician.

Ultimately, the groups recommended that the bill exclude the list of providers and instead, just reference scopes of practice.

So, as it sits right now, House Bill No. 1028, like current law, requires each school district and nonpublic school that is involved in various athletic activities to be subject to a concussion management program. That is on page 1, subsection 1.

In subsection 3, as in current law, the program must require that a student be removed from practice training, or competition if the student reports or exhibits any sign or symptom of a concussion, or if a licensed, registered, or certified health care provider whose scope of practice includes the recognition of concussion signs and

symptoms determines, after observing the student, that the student may have a concussion. (Anyone from a physician through to a first responder.)

At the top of page 2, the duty to pull a student has been changed a bit from current law. House Bill 1028 would require removal of a student by an official and by the coach of a student. Committee members did not want the possibility of an opposing team's coach being able to require the removal of a rival team's star player in the final two minutes of a big game by claiming that the student exhibited a sign or a symptom of a concussion.

The duty to pull a student was also placed on each individual having direct responsibility for the student during practice, training, or competition. This was inserted because a coach or an athletic trainer is not always present with the students. You might have student teachers or university students working on drills with the high school students.

Once a student is removed, subsection 4 requires that the student be evaluated by a licensed healthcare provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion.

A student who has been evaluated for a concussion can return only after receiving written authorization from a provider qualified to perform that evaluation.

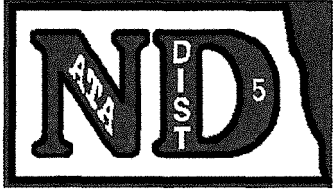
Whereas current law had required that the written authorization be presented to the student's coach or athletic trainer, subsection 5(b) requires that the authorization be presented to the individual designated by the school district or nonpublic and that it be retained for a period of seven years. Superintendents said that was the length of time they kept educational records.

The interim committee viewed the authorization as an important record for a variety of reasons and didn't want it just to be thrown in someone's desk drawer. The interim committee was told that while a first concussion is a significant concern, multiple concussions increase the concern level exponentially. While we know what happens if a student goes to a clinic or a hospital and a medical record is generated, the discussion was less clear on what kind of a record is generated if a student is evaluated by a school district employee or contractor.

In subsection 6 on page 2, biennial training is still required of officials and coaches, and now, of individuals having direct responsibility for the student during practice, training, or competition. You will see on line 27 that athletic trainers were removed from this requirement. The reason is that their licensure already imposes continuing education requirements.

I mentioned earlier that one purpose of the interim study was to determine whether there should be an expansion of this legislation to include entities other than school districts and nonpublic schools. The interim committee was told that there had been a great deal of effort to promote concussion awareness and institute programs and requirements to minimize injuries among participants, and to attain desired outcomes when injuries did occur. Therefore, the committee elected not to recommend any further expansion.

Mr. Chairman, that concludes the summary of the interim committee's effort and the bill it recommended.



Chairman Nathe and members of the House Education Committee, my name is Damian Schlinger and I am the Director of Employer Relations at Sanford Health and also an athletic trainer in Bismarck North Dakota. I am here today on behalf of the North Dakota Athletic Trainers' Association.

We support the changes that are being proposed to the Concussion Management Program Bill.

Athletic trainers are health care professionals who are licensed by the State of North Dakota. By definition, athletic trainers collaborate with physicians to optimize activity and participation of patients and clients. Athletic training encompasses the prevention, diagnosis, and intervention of emergency, acute, and chronic medical conditions involving impairment, functional limitations, and disabilities. (National Athletic Trainers Association)

The American Medical Society for Sport Medicine recently released a position statement on Concussion in Sports. (*Br J Sports Med* 2013;47:15-26) It has been endorsed by the National Athletic Trainers Association and the American College of Sports Medicine.

A couple points made in the position statement discuss the healthcare professionals that deal with athletes with concussions. "The care of athletes with sports concussion is ideally performed by healthcare professionals with specific training and experience in the assessment and management of concussion. Competence should be determined by training and experience, not dictated by specialty."

There are a variety of healthcare professionals in North Dakota that have the training and skills necessary to manage concussion. It should be the training and experience that qualify the medical professional for returning an athlete to participation again, not the just the credentials of the medical professional.

There are other state concussion management laws that specifically list all medical providers able to treat concussed athletes. Both New Mexico and Pennsylvania specifically list athletic trainers in their state laws. Other states, such as Minnesota and South Dakota, do not specify medical providers but do state that they must be "trained and experienced" in concussion evaluation, management and care. "Concussion remains a clinical diagnosis ideally made by a healthcare provider familiar with the athlete and knowledgeable in the recognition and evaluation of concussion." "A physician or other health professional trained in the evaluation and management of concussion who knows the athlete well is in the best position to correctly diagnose a concussed athlete."

Athletic Trainers are in a unique position as a health care provider. We are the medical professionals on site at practices and events. Athletic Trainers work as part of an athlete's health care team to ensure that the athlete's health is the first and foremost concern. We are there when the injury occurs and are there through the whole process as the athlete is returning to participation. In many cases, it is the athletic trainer that actually sees the mechanism of injury which aids in the recognition of the injury. Our main goal is to ensure the health and safety of athletes in North Dakota.

Working with the interim Education Committee this past summer, all parties interested in this bill were able to sit down and provide solid input. We are very pleased with the final product that you are considering today. We believe this bill, arrived at through collaboration and consensus is a good bill and the North Dakota Athletic Trainers Association asks this committee for a "do pass" recommendation.

Thank you for your time and consideration. I would be happy to address any questions.

Sixty-third  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1028**

Introduced by

Legislative Management

(Education Funding and Taxation Committee)

1 A BILL for an Act to amend and reenact section 15.1-18.2-04 of the North Dakota Century  
2 Code, relating to concussion management program requirements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 15.1-18.2-04 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **15.1-18.2-04. Student athletics - Concussion management program - Requirements.**

- 7 1. Each school district and nonpublic school that sponsors or sanctions any athletic  
8 activity in this state and requires a participating student to regularly practice or train,  
9 and compete, is subject to the terms of a concussion management program.
- 10 2. The concussion management program must set forth in clear and readily  
11 comprehensible language the signs and symptoms of a concussion.
- 12 3. a. The concussion management program must require that ~~an official remove a~~  
13 ~~student from competition and that a student's coach or a student's athletic trainer~~  
14 ~~remove the~~ student be removed from practice, training, or competition if:
- 15 a- (1) The student reports any sign or symptom of a concussion, as set forth in  
16 accordance with this section;
- 17 b- (2) ~~The official, coach, or athletic trainer determines that the student exhibits~~  
18 any sign or symptom of a concussion, as set forth in accordance with this  
19 section; or
- 20 c- (3) ~~The official, coach, or athletic trainer is notified that the student has reported~~  
21 ~~or exhibited any sign or symptom of a concussion by a~~ licensed,  
22 registered, or certified health care provider whose scope of practice includes  
23 the recognition of concussion signs and symptoms determines, after  
24 observing the student, that the student may have a concussion.



- 1           b. The duty to remove a student under the conditions set forth in this subsection  
2           extends to:  
3           (1) Each official;  
4           (2) The coach of a student; and  
5           (3) ~~Each~~Any other individual designated by the school district or nonpublic  
6           school as having direct responsibility for the student during practice,  
7           training, or competition.
- 8           4. The concussion management program must require that any student who is removed  
9           in accordance with subsection 3 must be ~~examined~~evaluated as soon as practicable  
10          by a licensed, registered, or certified health care provider ~~whose~~who is acting within  
11          the provider's scope of practice includes and trained in the diagnosis and  
12          treatment evaluation and management of concussion, as determined by the provider's  
13          licensing board.
- 14          5. a. A student who is ~~removed~~evaluated in accordance with subsection ~~3~~4 and  
15          believed to have suffered a concussion may not be allowed to return to practice,  
16          training, or competition until the ~~student or the student's parent obtains written~~  
17          ~~authorization from a licensed, registered, or certified health care provider whose~~  
18          ~~scope of practice includes the diagnosis and treatment of concussion and~~  
19          ~~provides that authorization to the student's coach or athletic trainer~~student's  
20          return is authorized by a licensed health care provider who meets the criteria set  
21          forth in subsection 4.
- 22          b. The authorization required by this subsection must be:  
23          (1) In writing;  
24          (2) Presented or forwarded to the individual designated by the student's school  
25          district or nonpublic school for receipt of such authorizations; and  
26          (3) Retained by the student's school district or school for a period of seven  
27          years after conclusion of the student's enrollment.
- 28          c. Any health care provider who signs an authorization in accordance with this  
29          section is acknowledging that the provider is acting within the provider's scope of  
30          practice and is trained in the evaluation and management of concussion, as  
31          determined by the provider's licensing board.

Sixty-third  
Legislative Assembly

- 1       6. The concussion management program must require that each official, coach, and  
2       ~~athletic trainer~~ individual having direct responsibility for the student during practice,  
3       training, or competition receive biennial training regarding the nature and risk of  
4       concussion.
- 5       7. The student's school district or nonpublic school shall ensure that before a student is  
6       allowed to participate in the athletic activity described in subsection 1, the student and  
7       the student's parent shall document that they have viewed information regarding  
8       concussions incurred by students participating in athletic activities. The required  
9       information must be provided by the student's school district or nonpublic school and  
10      must be made available in printed form or in a verifiable electronic format.
- 11      8. This section does not create any liability for, or create a cause of action against:  
12      a. A school district, its officers, or its employees; or  
13      b. A nonpublic school, its officers, or its employees.
- 14      9. A school district or a nonpublic school may contract for and accept gifts, grants, and  
15      donations from any public or nonpublic source, in order to meet the requirements of  
16      this section.
- 17      10. For the purposes of this section, "official" means an umpire, a referee, a judge, or any  
18      other individual formally officiating at an athletic event.

Rohr  
January 14, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1028

Page 3, line 6, remove "or"

Page 3, line 7, replace the period with "or"

Page 3, after line 7, insert:

"c. An official."

Renumber accordingly

HB 1028 - Concussion Legislation  
 Testimony of  
 L. Anita Thomas, J.D., LL.M.  
 Legislative Council  
 February 18, 2013

In 2006, Zackery Lystedt was a middle school student in the state of Washington. Playing late in the first half of a football game, his head hit the ground, and he struggled to get up. He made it to the sideline, sat out for about 15 minutes, and then went back in for the remainder of the game. Late in the fourth quarter, Zachery forced a fumble at the goal line. He was unsteady on his feet and approximately 60 seconds later, he collapsed. He had suffered a concussion on the first hit and the second hit caused a brain hemorrhage. Five hours after the game, he had emergency surgery. He spent three months in a comma, nine months not being able to speak, and years in therapy. He remains in a wheelchair.

It is Zachery's name that is found in the title of Washington state's concussion law--legislation that has served as a model for almost every state in the union. North Dakota enacted its concussion legislation in 2011.

Our law, like that of most states, places responsibility on certain individuals to remove a student from practice, training, or competition, if that student is suspected of having a concussion. The student is then to be evaluated and may not return until written authorization is provided by an appropriately trained healthcare provider. In 2011, we defined this person as a licensed, registered, or certified healthcare provider whose scope of practice includes the diagnosis and treatment of concussion.

Under North Dakota law, a physician's scope of practice includes the "diagnosis or treatment of diseases or injuries of human beings." So, while it was clear that a physician could provide the requisite authorization to return, it was not clear whether this privilege extended to other healthcare providers such as advanced practice nurses, physician assistants, athletic trainers, and physical therapists.

As part of its study, the 2011-12 interim committee received testimony from the various healthcare providers regarding their scopes of practice and the role that they believed they were able to play in the diagnosis and treatment of concussion.

The committee received a great deal of testimony on the word "diagnosis" and what it meant. Physicians suggested that by virtue of diagnosing a concussion, one is determining that a patient does not have a subdural hematoma, an epidural hematoma, a skull fracture, or any number of other injuries, some of which can be life-threatening or fatal. They indicated that the determinations involved in diagnosing a concussion could not be made on the sideline.

Other groups suggested that they had reviewed their scope of practice and concluded that they could diagnose a concussion. It was also suggested that it was not necessary to diagnose a concussion in order to treat or manage it and that a statutory reference to the *evaluation and treatment or management* of a concussion would be quite sufficient.

The interim committee first considered a bill draft that attempted to clarify the scope of practice issue by listing six providers who were capable, by training and experience, of evaluating a young athlete who had been removed and ultimately authorizing that student's return. The six providers were physicians, neuropsychologists, nurse practitioners, physician assistants, athletic trainers, and physical therapists.

Ultimately, the groups recommended that the bill exclude the list of providers and instead, just reference scopes of practice. The interim committee agreed, and the House Education Committee supported that. The House Education Committee made a few minor changes to the interim recommendations and I will point those out to you as we go through the bill.

In its current form, Engrossed House Bill No. 1028, like current law, requires each school district and nonpublic school that is involved in various athletic activities to be subject to a concussion management program. That is on page 1, subsection 1.

In subsection 3, as in current law, the program must require that a student be removed from practice, training, or competition if the student reports or exhibits any sign or symptom of a concussion, or if a licensed, registered, or certified health care provider whose scope of practice includes the recognition of concussion signs and symptoms determines, after observing the student, that the student may have a concussion.

At the top of page 2, the duty to pull a student has been changed a bit from current law. House Bill 1028 would require removal of a student by an official and by the coach of a student. Interim committee members did not want the possibility of an opposing team's coach being able to require the removal of a rival team's star player in the final two minutes of a big game by claiming that the student exhibited a sign or a symptom of a concussion.

The duty to pull a student was also placed on each individual having direct responsibility for the student during practice, training, or competition. This was inserted because a coach or an athletic trainer is not always present with the students. You might have student teachers or university students working on drills with the high school students. The House Education Committee added a few words on line 5. They added that this individual must be "designated by the school district or nonpublic school" as having direct responsibility for the student . . . .

Once a student is removed, subsection 4 requires that the student be evaluated by a licensed healthcare provider who is acting within the provider's scope of practice and trained in the evaluation and management of concussion. The House Education Committee added the phrase "as determined by the provider's licensing board." The Committee wanted to make certain everyone understood that any decisions regarding training were to be made by the licensing boards and not by an activities association or a school or school district.

If a student who has been pulled is evaluated and the evaluator determines that there is not a problem, the student can return. If, however, the evaluator believes that the student may have suffered a concussion, the student will require return-to-play authorization from the evaluator or some other comparably trained provider.

The authorization is to be in writing. It is to be presented to the person designated by the school district or nonpublic school for receipt of such authorizations, and it is to be retained for 7 years after the student leaves the school. The interim committee had suggested these additions because they recognized that this was an important record and wanted to ensure that it was treated as such, and not just thrown in someone's bottom drawer. The 7 year retention period is the time that superintendents said they keep educational records.

At the bottom of page 2, in subdivision c, you will again see verbiage that was added by the House Education committee. This states that by signing the required authorization to return, the healthcare provider is acknowledging that the individual is acting within the individual's scope of practice and trained in the evaluation and management of concussion.

In subsection 6, current law requires that each official, coach, and athletic trainer receive biennial training regarding the nature and risk of concussion. The interim committee was told that athletic trainers are already required to undergo such training by virtue of their licensing and therefore did not need to be in that list. The interim committee decided that if an individual had direct responsibility for a student during practice, training, or competition, that individual should also have biennial training. This references student teachers or university students working with students and ties in with page 2, lines 5 through 7. However, when the House Education Committee added the phrase any other individual "designated by the school district or nonpublic school" as having direct responsibility, on page 2, they didn't catch the reference on page 3, line 2. You might want to consider that as a cleanup amendment.

As for the rest of the bill, just like current law, students and their parents are to view an informational video regarding concussions and provide verification that they did view it.

In subsection 8, the House Education Committee expanded the liability section to include "officials." As I understand it, the high school activities association provides insurance coverage for its officials. However, some were concerned that this might not extend to an official who pulls a student at a critical juncture in a game and the student misses a scholarship or other opportunity to advance as a result of the official's action.

The interim committee also had one other charge in connection with this concept. That was to determine whether there should be an expansion of this legislation to include entities other than school districts and nonpublic schools. The interim committee was told that there had been a great deal of effort to promote concussion awareness and institute programs and requirements to minimize injuries among participants, as well as to attain desired outcomes when injuries did occur. The committee, therefore, elected not to recommend any further expansion.

The bill was passed by the House 86-0.



#2

Chairman and members of the Senate Education Committee, my name is Ray Hall and I am the Governmental Affairs Chairperson for the North Dakota Athletic Trainers Association and also the Clinical Education Coordinator for Athletic Training at the University of Mary in Bismarck North Dakota. I am here today on behalf of the North Dakota Athletic Trainers' Association.

We support the changes that are being proposed to the Concussion Management Program Bill.

Athletic trainers are health care professionals who are licensed by the State of North Dakota. By definition, athletic trainers collaborate with physicians to optimize activity and participation of patients and clients. Athletic training encompasses the prevention, diagnosis, and intervention of emergency, acute, and chronic medical conditions involving impairment, functional limitations, and disabilities. (National Athletic Trainers Association)

The American Medical Society for Sport Medicine recently released a position statement on Concussion in Sports. (*Br J Sports Med* 2013;47:15-26) It has been endorsed by the National Athletic Trainers Association and the American College of Sports Medicine.

A couple points made in the position statement discuss the healthcare professionals that deal with athletes with concussions. "The care of athletes with sports concussion is ideally performed by healthcare professionals with specific training and experience in the assessment and management of concussion. Competence should be determined by training and experience, not dictated by specialty."

There are a variety of healthcare professionals in North Dakota that have the training and skills necessary to manage concussions. It should be the training and experience that qualify the medical professional for returning an athlete to participation again, not the just the credentials of the medical professional.

There are other state concussion management laws that specifically list all medical providers able to treat concussed athletes. Both New Mexico and Pennsylvania specifically list athletic trainers in their state laws. Other states, such as Minnesota and South Dakota, do not specify medical providers but do state that they must be "trained and experienced" in concussion evaluation, management and care. "Concussion remains a clinical diagnosis ideally made by a healthcare provider familiar with the athlete and knowledgeable in the recognition and evaluation of concussion." "A physician or other health professional trained in the evaluation and management of concussion who knows the athlete well is in the best position to correctly diagnose a concussed athlete."

Athletic Trainers are in a unique position as a health care provider. We are the medical professionals on site at practices and events. Athletic Trainers work as part of an athlete's health care team to ensure that the athlete's health is the first and foremost concern. We are there when the injury occurs and are there through the whole process as the athlete is returning to participation. In many cases, it is the athletic trainer that actually sees the mechanism of injury which aids in the recognition of the injury. Our main goal is to ensure the health and safety of athletes in North Dakota.

Working with the interim Education Committee this past summer, all parties interested in this bill were able to sit down and provide solid input. We are very pleased with the final product that you are considering today. We believe this bill, arrived at through collaboration and consensus is a good bill and the North Dakota Athletic Trainers Association asks this committee for a "do pass" recommendation.

Thank you for your time and consideration. I would be happy to address any questions.

#3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1028

Page 3, line 2, after "individual" insert "designated by the school district or nonpublic school as"

Renumber accordingly



# A New Game Plan

As new research on the dangers of concussions is uncovered, treatment on sports sidelines is



**W**hen Beth Mallon was watching her son Tommy play in his final high school lacrosse game in May of 2009, two weeks before graduation, the last thing on her mind was whether there was a certified athletic trainer at the event. But when Tommy suffered a brutal hit that left him with numbness in the back of his head, it was Sante Fe Christian's athletic trainer who insisted that he remain immobilized.

Tommy had sustained a concussion—the third of his fledgling athletic career—and a fractured neck after colliding with an opponent while pursuing a ground ball. If he had been helped off the field or even moved at all, he could have lost his life, and what began as a routine play could have turned into a tragedy.

"We were really lucky," says Mallon. "There were so many things that could've gone wrong."

But because the school's trainer, Riki Kirchhoff, was on hand to evaluate the injury and call the paramedics—who were then able to safely place Tommy on a board and transport him to the hospital—he is alive today.

Some families aren't so lucky: Over the past few years, a number of stories have made the headlines involving mismanaged injuries in young athletes that turned catastrophic. Too many times, players have been moved off the field when they shouldn't have been or cleared to return to play before they

fully recovered. Instead of heading off to college, teenagers like Matthew Newman of Cowiche, WA, are spending what would be their freshman year making trips to rehabilitation facilities. Newman suffered a traumatic brain injury (TBI) during a football game in September 2009, and has been fighting a long battle to recover ever since.

In some cases the outcomes have been even worse. Just after Newman's injury, another Washington athlete—Andrew Swank of Valley Christian High School in Spokane Valley—suffered a hit that cost him his life. In October 2010, Nathan Stiles, a high school senior from Spring Hill, KS, died of an undetected subdural hematoma which was an apparent re-bleed of a previous injury. (A subdural hematoma is a collection of blood on the brain's surface, often from a concussion.)

Although incidents like these are rare, they are not isolated. And for the families and friends of young athletes, even one fatality is too many. Fortunately, the national attention garnered by these injuries has helped bring awareness to the dangers of concussions, and has placed added emphasis on the need to improve prevention.

As a result, dangerous hits are being taken more seriously. Athletic organizations at every level—from Pop Warner football to the National Football League—are changing the rules that dictate when players can return to the field, what type of

# for Concussion

changing—from the little leagues to the professional level. BY KATE HUVANE GAMBLE

personnel must be present at sporting events, and how to determine if an athlete can suit up... or should sit down.

Additionally, a number of states have begun to adopt legislation requiring that players who are suspected to have suffered a concussion be removed from play. (See box, "Making Concussion Safety a Law.") Data from the Center for Injury Research and Policy at Nationwide Children's Hospital in Columbus, OH, show that as many as 40 percent of high school athletes who sustain concussions return to action prematurely, which raises the risk for more severe injuries.

"Letting someone continue to play when they are concussed will commonly cause a longer, more complex injury," says Jeffrey Kutcher, M.D., assistant professor of neurology at University of Michigan Health System in Ann Arbor, MI, and director of the Michigan Neurosport Program. If an athlete re-enters a game or practice, he or she faces serious risks—even if there is no further physical contact. "If they continue to exert themselves physically and mentally at high levels, the injury worsens, with more complex symptoms and a more difficult recovery," he says.

**ONE BAD HIT** Tommy Mallon was injured playing his last high school lacrosse game. If not for the response of his team's certified athletic trainer, he might have died.

Dr. Kutcher is also chair of the Sports Neurology Section of the American Academy of Neurology (AAN), which the Associated Press recently dubbed "the most authoritative medical group when it comes to concussion." The AAN drafted a position statement in November 2010 to help guide the management of athletes with suspected concussions. Although "the majority of concussions are self-limited injuries, catastrophic results can occur, and we do not yet know the long-term effects of multiple concussions," Dr. Kutcher said in the position statement, adding that the neurology community owes it to athletes to "advocate for policy measures that promote high quality, safe care for those participating in contact sports."

Although researchers have made great strides in understanding how high-impact injuries affect the brain in the short- and long-term, there is still much to be learned.

## THE NEW POSITION ON CONCUSSION

What is known is that concussions are happening far too often. According to the Centers for Disease Control and Prevention (CDC), three million concussions occur every year in the United States. Among people 15 to 24 years old, sports are second only to motor vehicle accidents as the leading cause of TBI. Concussions represent an estimated 8.9 percent of all high school athletic injuries, according to a report from the American Academy of Pediatrics (AAP).

"These injuries are happening more frequently than we ever realized," and they're not always easy to detect, says Julian Bailes, M.D., director of the Brain Injury Research Institute and professor and chairman of the department of neurosurgery at West Virginia University School of Medicine in Morgantown. "It can be very difficult to discern how serious a hit is by just seeing or hearing what happened," Dr. Bailes says.

That was one of the key drivers behind the AAN's recommendations: to take the decision of whether a player can return to the field out of the coach's hand, and to leverage the technological innovations and advances in research that have surfaced in recent months to improve the care of athletes, says Dr. Kutcher.

"Over the last few years, our clinical understanding of these injuries has reached a point where we realized that the practice parameter statement from 1997 was no longer the best way to manage concussions," he says.

The updated AAN Position Statement on Sports Concussions seeks to provide practical guidance that more accurately meets the needs of athletes, coaches, and parents, and reflects the data that have been released during the past few years.

## THE NEW RULES

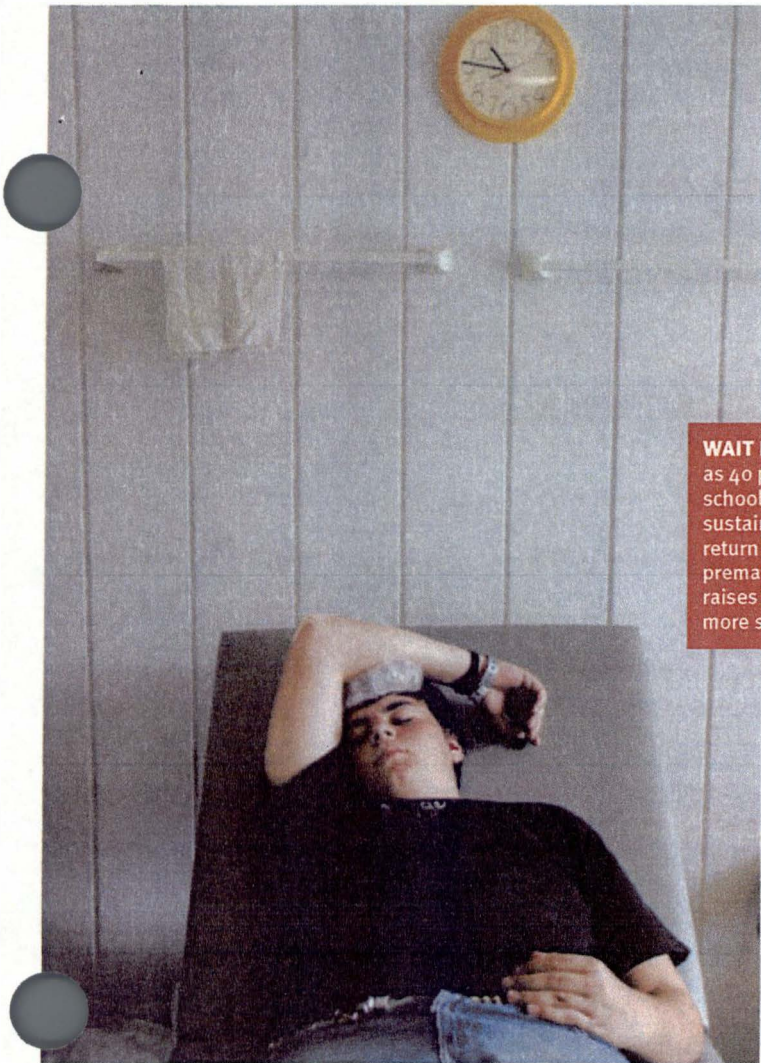
The bottom line of the new position is actually quite simple: Got a possible concussion? Get off the field.

## Concussion: The Basics

According to Mark Halstead, M.D., a concussion is "a transient alteration in mental status following a blow to the head—or to the body if it imparts a quick movement to the head. These hits are fairly common in football and occur often in sports like soccer and basketball as well, with girls seemingly more susceptible than boys."

You may also have heard the terms "traumatic brain injury" or "head injury." Traumatic brain injuries are caused by a violent blow or jolt to the head or a penetrating head injury that disrupts the normal function of the brain. Not all blows or jolts to the head result in a TBI, according to the CDC. The severity of this injury can range from "mild" (a brief change in mental status or consciousness) to "severe" (an extended period of unconsciousness or amnesia after the injury). A concussion is one kind of traumatic brain injury.

The National Institutes of Health defines a head injury as any trauma that leads to injury of the scalp, skull, or brain. The injuries can range from a minor bump on the skull to serious brain injury. Head injuries are classified as either closed or open. A closed injury occurs when an athlete receives a hard blow to the head from striking an object but the object does not break the skull. An open or penetrating head injury means an athlete was hit with an object that broke the skull and entered the brain.



**WAIT IT OUT** As many as 40 percent of high school athletes who sustain concussions return to action prematurely, which raises the risk for more severe injuries.

and talking, and they look normal.”

That’s where testing comes into play. Through a neuropsychological evaluation, physicians acquire important information about a patient’s cognitive, motor, behavioral, language, and executive functioning, which can guide them in making a diagnosis and determining when it is safe for an athlete to return to play.

According to the AAP, evaluation is based on several computerized neuropsychological tests designed to objectively evaluate an athlete’s post-injury condition and track recovery to prevent cumulative effects of concussion. A neuropsychologist may also administer a pencil-and-paper test to the patient.

“It’s really important to use neuropsychological testing,” Dr. Bailes says. “Most of the time these players don’t have any brain hemorrhage. If you get an MRI or CAT scan, they’re almost always normal.”

### GETTING BACK IN THE GAME

Determining when an athlete can resume activity can be tricky, as different individuals tend to recover at a different pace. And although the majority of athletes with a concussion will no longer exhibit symptoms within a week of the injury, studies have shown that younger athletes may require seven to 10 days or longer. Therefore, Dr. Halstead and Kevin D. Walter, M.D., co-authors of the AAP report, called “Sport-Related Concussion in Children and Adolescents,” recommend the adage, “When it doubt, sit them out.”

Whereas in the past, the decision of whether an athlete

According to Dr. Bailes, it all starts with identifying a hit that might result in a concussion and immediately removing the player for a formal evaluation. “There needs to be a culture change, and a very conservative approach toward management of these injuries,” he says.

Part of that approach means ensuring that athletes who exhibit any signs of a concussion are assessed and evaluated by physicians with specific training in this area, according to Dr. Kutcher. (See “Concussion Signs and Symptoms” in Resource Central, page 43.)

“The brain is an extremely fragile organ with complex networks that can be affected by these injuries,” Dr. Kutcher says. “Neurologists have the experience to evaluate patients from a clinical perspective and examine the brain. We know this organ, and this type of injury, better than anybody.”

While experts such as neurologists and certified athletic trainers are qualified to identify the signs of a concussion, doing so can be much more difficult for the untrained. Many people believe that concussions only occur when a player is unconscious. This assumption, says Dr. Bailes, is both incorrect and dangerous. “With the vast majority of concussions in sports—90 percent of the time, in fact—athletes don’t get knocked out,” he notes. “They’re walking around

## The AAN’s Position on Concussion

1. Any athlete who is suspected to have suffered a concussion should be removed from participation until he or she is evaluated by a physician with training in the evaluation and management of sports concussions.
2. No athlete should be allowed to participate in sports if he or she is still experiencing concussion symptoms.
3. Following a concussion, a neurologist or physician with proper training should be consulted prior to clearing the athlete for return to participation.
4. A certified athletic trainer should be present at all sporting events, including practices, where athletes are at risk for concussion.
5. Education efforts should be maximized to improve the understanding of concussion by all athletes, parents, and coaches.

STEVE BOYLE/CORBIS

**The bottom line** of the new American Academy of Neurology position on concussions is simple: Got a possible concussion? **Get off the field.**

can return to action often rested with the coaching staff, new guidelines dictate that individuals must be cleared by a medical professional. "It should not be left in the hands of a coach or parent," Dr. Halstead says.

The consequences of returning to play before a concussion is fully healed can be catastrophic; in rare cases, it can lead to death from second impact syndrome, a condition in which the brain swells, shutting down the brainstem and resulting in respiratory failure. In 2009, two high school football players from North Carolina died from second impact syndrome after returning to play within two days of sustaining a concussion.

"These less common but more devastating injuries of malignant cerebral edema or second impact syndrome are extremely rare but catastrophic," Dr. Kutcher says. "Being able to recognize those injuries upfront is key."

Pop Warner, the nation's largest youth football organization, recently established a rule that any athlete who has sustained a head injury must obtain a note from a licensed medical professional who is trained in the evaluation and management of concussions before suiting up to play (for example, a neurologist or a pediatric sports medicine specialist). This is particularly critical at the youth level, since so many coaches are parent-volunteers who lack the skills needed to decipher whether a player can safely return to the field. What's more, young athletes may not be able to accurately communicate their symptoms as articulately as older players.

The prevalence of concussions is lower in youth football, since young athletes generally "do not generate the high velocity force that it takes to cause a concussion," says Dr. Bailes, who is chairman of the Pop Warner Medical Advisory Board. However, serious injuries can occur, and "they need to be addressed seriously," he says.

### WHY TRAINERS ARE NEEDED

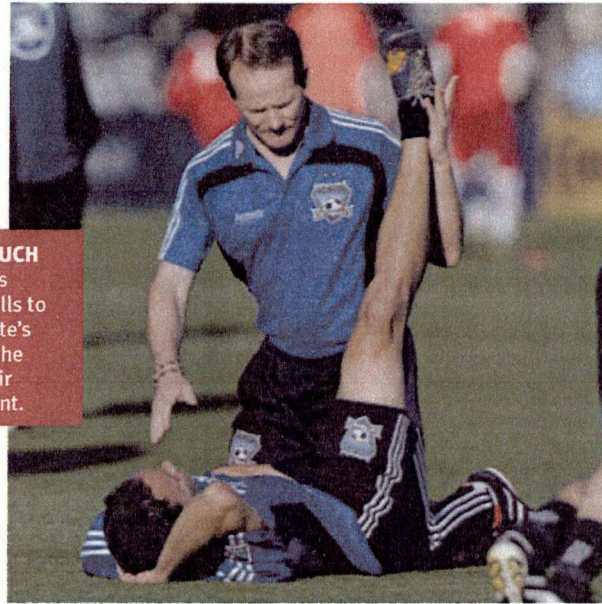
One step that can assist in identifying and assessing possible concussions is the presence of a certified athletic trainer. According to Dr. Kutcher, this is important for several reasons.

"Athletic trainers have the experience and the training to be able to block out all of the environmental distractions that exist during games and triage an injury," says Dr. Kutcher, who is also a team physician for the University of Michigan and Eastern Michigan University athletic programs. And trainers are taught to be completely objective when evaluating athletes.

"While I would love to think that all parents, coaches, and teammates can have objective viewpoints on these injuries, the

#### TRAINER'S TOUCH

Athletic trainers develop the skills to not let an athlete's importance to the team affect their clinical judgment.



truth is, that's hard to do. Athletic trainers accept that responsibility, and they've developed the skills to not let the person's position of importance to the team—for example, the starting quarterback—affect their clinical judgment."

What distinguishes certified athletic trainers from other professionals such as personal trainers is the fact that they must graduate with a bachelor's or master's degree from an accredited professional athletic training education program and pass a test administered by the Board of Certification, according to the National Athletic Trainer's Association. Once certified, they must meet ongoing continuing education requirements.

Having an onsite trainer may not be feasible for every school, Dr. Kutcher acknowledges. In today's economic environment, many school districts have either had to cut the position or never had one in the first place.

In fact, just one in three high schools in the United States have certified trainers on staff, according to a Scripps Howard News Service review. It's a sobering statistic that Beth Mallon and her son Tommy, co-founders of Advocates for Injured Athletes ([injuredathletes.org](http://injuredathletes.org)), are working to amend. The primary goal of the organization is to help schools obtain the funds needed to employ full-time trainers.

"We felt like we were so lucky in our case," Mallon says. Although her son Tommy has difficulty sleeping at times and still may have to undergo surgery, he is able to go running and play golf, and has come "a long way" since the injury.

“If injuries are **managed appropriately**, the vast majority of athletes don’t have a significant long-term risk of injury.”

—JEFFREY KUTCHER, M.D.

“In our case, we were at a private school that had a trainer on staff, but that isn’t always the case,” Mallon says. “We want to get other parents thinking about this and asking who is there to protect their kids when they are out on the field. Athletic trainers have the skills needed to handle catastrophic injuries. We spend so much money on the best equipment, the best helmets, the best sticks—we need to pay attention to this.”

### THE POWER OF EDUCATION

Mallon’s advocacy work also focuses heavily on education. Through an initiative called “Athletes Saving Athletes,” their organization aims to help athletes better understand the

**SAFETY FIRST** Former Oakland Raider Jim Otto speaking in support of a California bill that would require written medical and parental approval for a youth to return to competition after head trauma.



### Making Concussion Safety a Law

**A** number of states have passed legislation that addresses concussion management in young athletes. Named after Zackery Lystedt—who suffered a life-threatening brain injury in 2006 at 16 during a high school football game after he returned to play following a concussion—the law requires coaches to remove any athlete from play who exhibit any signs of a concussion.

Lystedt and his family first pushed to get the law passed in Washington State, where school districts are now required to work with the Washington Interscholastic Activities Association to develop a standard for educating coaches, players, and parents on the dangers of concussions and head injuries. A concussion and head injury information sheet must be signed by the athletes and their parents or guardians.

Although Washington’s law regulating when high school athletes can return to games after having sustained a concussion is the toughest, many other states have followed suit with similar legislation designed to ensure the safety of young athletes. As of December 2010, New Jersey, Texas, Oregon, Massachusetts, Pennsylvania, Connecticut, and Virginia are among the states to adopt laws, and congress is considering a Federal law.

signs and symptoms of concussions as well as the long-term effects. “We believe that if we can get kids to understand things like second impact syndrome, it can make a difference,” Mallon says. “If they notice that a teammate looks dazed, they need to encourage them to get to the sidelines. They need to know that they can play a role in this.”

Dr. Kutcher agrees that education should start with the youngest athletes—through messaging tailored specifically to them—and should include parents and coaches. “The idea is not only being able to recognize a concussion, but to understand the recovery process, the approach to safe return to play, and the vast number of variables that go into decisions about continuing to play,” he says. “How athletes respond to injuries can vary so much. People at all levels are beginning to understand that we need to take an individual approach to each person.”

For parents, all of this information can seem overwhelming, Dr. Kutcher says, but it doesn’t have to be quite so complicated. “The key is recognizing concussions when they happen and making sure that athletes are given an appropriate amount of time to rest. There needs to be a very careful and progressive return to play,” he says. The good news, he adds, is that “if injuries are managed appropriately, the vast majority of athletes don’t have a significant long-term risk of injury.”

### WHAT’S NEXT?

More research needs to be done on the long-term consequences of concussions, says Dr. Bailes. He believes that future studies will also look at the ability to make a definitive diagnosis through neuropsychological testing and imaging. “We’re also looking into the field of biomarkers [indicators that may be used to determine how well the body responds to treatment], and at genetic testing,” he said, adding that “there may be a subset of the population that is genetically predisposed to concussions.

“We’re seeing not only more research and understanding, but also an acceptance of the fact that concussions are real and need to be managed appropriately,” Dr. Bailes says. “If we do so, I think all of our sports are going to be around for every one to enjoy for many years.”

 For more information on concussion, see **RESOURCE CENTRAL** on page 43.