



# CONCUSSION IN PROFESSIONAL SPORT - LEGAL CONSEQUENCES

## Introduction

The recent case of Cillian Willis, a rugby union player forced to retire after suffering concussion and now taking legal action against his former club Sale Sharks for allowing him to play on after a head injury in a match three years ago, has once again brought to the fore the issue of professional sports clubs running the risk of being sued by players if they do not follow guidelines around managing concussion injuries.

While it may be the club that is named on the court papers it is almost inevitable that the actions and decision making of the club medical staff will also be called into question. Those medical staff can be brought into any litigation including the club joining the doctor in the claim and it is therefore vital that all health professionals ensure that their indemnity will cover 3<sup>rd</sup> party claims but also review their practice on managing concussion as well as that of their club.

## Legal Background

Clubs owe a duty of care to look after the health and wellbeing of their employees under health and safety legislation. At the same time a doctor treating a professional sports man or woman on the pitch owes a professional duty of care to act in the player's best

interest in accordance with practice considered appropriate by a responsible body of medical opinion. This is set against a background of potential competing interests and pressure from the club management, not to mention fans. Furthermore the player may be reluctant to come off the pitch or even tell the doctor all the information needed to make an accurate assessment or decision. In an era of high financial reward in professional sport the pressure on players and their managers is greater than ever in what has been described as a "must win / must perform" high speed, high contact environment. Through all this it remains incumbent on the medical team to do what is in the best interests of their patient i.e. the player.

It is likely that we will see more litigation in years to come around concussion related injury in sport. One only needs to look to the USA where in 2015 the NFL concluded a \$1 billion collective settlement of about 250 lawsuits by 5000 former NFL players alleging that over decades the NFL had hidden from players what it knew about the acute and chronic impact of concussion on NFL players with head injuries. On this side of the pond we have already had litigation around head injury in sport. The British Board of Boxing Control were successfully sued by the former professional boxer Michael Watson after he suffered

brain injury following inadequate medical ringside care.

## Key Points

So what can be done? Any doctor working in such an environment must consider:

1. That there are up to date local protocols and guidelines in the club and these reflect current national best practice or those of the professional sports body. These should deal not only with management of any incident but also post injury recuperation. It is these documents that are invariably the first things to be asked for by any lawyers if a claim is made.
2. The doctor must accurately and fully record their on pitch assessment and any subsequent examinations in the player's medical records. Exercise extreme caution whatever answers a player may give to your questions on the pitch.
3. Decision making around return to play must also be carefully documented and where there is any departure from national / local guidelines the reasons for this need to be clearly set out.
4. Disclosure of risk is now a two way process and information on short term and long term consequences both on and off the pitch must be given to any player in a comprehensible manner. Again medical records must clearly document conversations with players including what subjectively the individual player considers a material risk.
5. Where available the medical team should review any camera footage e.g. Hawkeye to make a further assessment if a player has continued to play after an injury. If possible consult with any tunnel doctor to ensure a player's safety is not jeopardised by allowing him or her to play on.
6. Make sure they have appropriate indemnity that will cover claims against them by the club.

## Conclusion

The long term impact of concussion injury is well documented. The central issue is not just if players are being warned of the dangers posed by concussion at or immediately after a game but also whether concussion protocols are sufficiently cautious and caring of long term player welfare. In time the introduction of video referees or an additional substitute in some sports may help combat inconsistencies in the approach to managing head injuries in sport but until then it is the health professional who bears ultimate responsibility for the decisions made.

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