

## WORKSHOP V

### **Concussions and Medicine: Implications, Lessons and Minimizing Risk**

Dr. Kutcher will describe the scientific foundations of concussion, post-concussion syndrome, and the long-term effects of brain trauma from playing sports. He will provide clear and relatable explanations for these complex diagnoses and present a comprehensive neurological framework for approaching management. He will also focus on common patient and societal expectations, assumptions, and misunderstandings.

#### **Presenter:**

**Jeffrey Kutcher, MD**  
**Executive Director - Sports Neurology Clinic**  
**Team Neurologist - United States Ski and Snowboard Association**  
**University of Michigan**

Dr. Kutcher is a global leader in sports neurology. He is Executive Director of The Sports Neurology Clinic, headquartered in Southeast Michigan and President of the Institute for Sports Neurology Research and Education. He established the nation's first academic program in sports neurology in 2005, a program that he directed for ten years. He also founded the Sports Neurology section of the American Academy of Neurology (AAN) and worked as co-lead of the AAN's effort to redefine neurological practice guidelines for sports concussion management. Dr. Kutcher also created the first sports neurology fellowship program in the United States.

Clinically, Dr. Kutcher has been an intercollegiate athletics team physician since 2005. He is the Team Neurologist for the United States Ski and Snowboard Association and served as neurologist for Team USA at the 2014 Winter Olympics in Sochi, Russia. He is the Director of the National Basketball Association Concussion Program and serves as a consultant to the National Hockey League Players' Association and the National Football League Players' Association.

Dr. Kutcher has helped create concussion policies for all levels of sport, from youth to professional and was a lead author of the 2008 Concussion in Sport Group 4<sup>th</sup> International Consensus Statement on Concussion in Sport. His research interests and efforts span the entire spectrum of athlete brain health. He understands the positive effects sports provides in people's lives and in our society. Dr. Kutcher's clinical, research, education, and advocacy efforts all focus on the one goal of improving the neurological health of athletes at all levels.

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## **Concussions and the Law: Implications, Lessons and Minimizing Risk**

As reported concussions continue to increase at all levels, plaintiffs are bringing more and more lawsuits against organizations and individuals for alleged failures to meet the appropriate standard of care. The popularity of these actions is attributable not only to the increasing knowledge surrounding the dangers of concussions, but also because plaintiffs' attorneys are now specifically targeting these so-called "concussion" cases.

In what is becoming a terrifying trend, today's reality is that following a catastrophic head injury in the sports' context, the first question becomes who – **other** than the injured athlete – is responsible for that catastrophic outcome. That question quickly then becomes who must ultimately *pay* the injured athlete (or the surviving family in a death case) to compensate for that injury.

For nearly 10 years now, I have defended individuals, schools, and other entities in concussion cases, including several high-profile lawsuits. I also have advised potential defendants on the legal issues that can be anticipated in this context if litigation is commenced. This advice is crucial, because once a lawsuit is filed, an unlimited universe of questions may arise, including:

- Was the athlete properly educated about the signs and symptoms of concussions?
- Should an individual, such as an athletic trainer, have conducted additional testing on an injured athlete prior to returning the athlete to game play?
- Was a physician supervising the return-to-play process?
- Was the school's or organization's concussion policy adequate?
- Should pre-season neuropsychological baseline testing have been implemented as part of the policy?
- Did a coach unduly influence an athletic trainer's best judgment?

The key, of course, is to have properly addressed these issues *before* a lawsuit is filed.

During this session, I will focus on 1) lessons learned in the courtroom defending concussion cases, 2) suggest ways in which future litigation risk may be minimized, and 3) provide an update on recent guideline changes and additions that affect individuals and institutions in a space where the standard of care continues to evolve.

**Presenter:**

**Steven Pachman, Esq.**  
**Partner**  
**Montgomery McCracken**

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Steve Pachman is a Partner in the Litigation Department of the Philadelphia, Pennsylvania-based law firm, Montgomery McCracken. He represents a number of multi-national companies and other major corporations in complex commercial litigation matters and organizations and individuals in catastrophic personal injury cases.

As part of Steve's personal injury defense practice, he regularly advises schools and other organizations, coaches, athletic directors, and other school officials, as well as athletic trainers, physicians, and other health care professionals on institutional liability issues concerning sport-related concussions and other sports' injuries, and has represented individuals and school systems in multiple catastrophic injury lawsuits arising out of alleged premature return-to-play decisions. Steve is a frequent speaker on legal matters concerning the proper management of concussions and other sport-related injuries, and has authored a number of articles on the topic of how schools and other organizations, athletic trainers, and other health care professionals can minimize their risk of legal liability for sport-related injuries. Steve's comments and opinions on related issues have been published in various journals, news magazines, and newspapers across the country.

Steve has been recognized as a Pennsylvania "Super Lawyer" by *Super Lawyers* (published annually by Thomson Reuters) in 2012, 2013, 2014, and 2015. He is licensed to practice law in state and federal courts in Pennsylvania, New York, and New Jersey and also is licensed to practice in the U.S. Court of International Trade. Steve received his law degree from Temple University School of Law in 1996, where he was an editor of the *Temple Law Review* and graduated *cum laude*. He is a Phi Beta Kappa graduate of the University of Maryland, College Park, where he was a Dean's Scholar and graduated *summa cum laude* with a B.A. degree in 1993.