

# Reason & Risk

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## HEADS UP

Clearly stated and well-publicized concussion management policies can help institutions keep student athletes safe and prevent costly claims. | 4



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## *Letter From the President*

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*Dear Owner,*

I recently joined the Whitman College Board of Trustees and am thrilled to be part of this hardworking and thoughtful group. Although the long trips to Walla Walla, Wash., aren't heading my list of favorite things, I am honored and excited to add another perspective to my work with educational institutions. I am reminded of the quote I heard so often when I worked at Cornell University, from Frank Rhodes, president emeritus: "Board members should have their noses in and fingers out." I hope I never forget this aphorism and respect my role on the board.

While I learn to be a good board member, I am also focused on what administrators should do this fall to help manage risks at their schools and campuses. Here is my to-do list for the new school year:

1. Confirm that the athletic department has a neurocognitive testing program and clear return-to-play guidelines for student athletes who experience head injuries. If not, expect coaches, players, teachers, and parents to question concussion management decisions. See page 4 for more information on this critical topic.
2. Encourage student affairs staff to roll out UE's first online course for students, "Lasting Choices: Protecting Our Campus From Sexual Assault." This course responds to guidance from the U.S. Education Department's Office for Civil Rights that higher education administrators train students on preventing and reporting sexual assault. The Title IX compliant course can help students understand their role and responsibilities in staying safe. It directly tackles the issue of drinking and sexual assault, which, from our claims data, is exactly the right focus. The course is free to UE members and has been thoroughly reviewed by a team of students and student affairs staff. For more information on this and other online courses, visit the **Learn@UE** section of [www.ue.org](http://www.ue.org).
3. Conduct motor vehicle record checks on all staff, faculty, and students who drive on institutional business, especially those who use your vehicles. And, enforce your policies to remove drivers with bad driving records. UE is aware of claims in which employees with bad driving records ran down pedestrians. From a moral and practical sense, those can be indefensible.
4. Train all staff and faculty to recognize the dangers of sexual molestation. Set clear boundaries for those who work with children, and take immediate action when boundaries are crossed. Too many people deny what they observe and don't react appropriately to "red flag" behavior.
5. Train the president and senior administrators on crisis response. Establish a relationship with a crisis communications firm before a crisis so you will be ready if a catastrophe occurs. A natural disaster, act of violence, or allegation of misconduct is a crisis; make sure your response does not make it worse. See the **"Manage My Account"** section of [www.ue.org](http://www.ue.org) for a list of expert crisis communication firms to contact now. An immediate, effective response will go far in alleviating concerns of parents, students, staff, and faculty, and preserve your school's reputation.

Based on my recent review of some of UE's most challenging claims and looking ahead at some trends, if every campus would complete these action items, our campuses would be much safer, and when things go wrong, recovery would be faster.

Have a great year and never hesitate to call or email me. I love to hear from you.

**Janice M. Abraham**

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# DEFAMATION CLAIMS

## Falsehoods Can Damage Individuals and Institutions

*A university and a nontenured professor reached a settlement agreement in a civil lawsuit in which the professor accused the school of fraud and defamation. He said a mentor plagiarized his research in grant reports to federal funding agencies and that he was removed from projects. The school denied the professor's accusations but posted a public apology on its website.*

*A graduate student claimed defamation when a university employee allegedly made false and defamatory statements to a potential employer who called to verify the student's completion of a medical fellowship.*

*A male student sued a university for defamation after a female student reported that he had sexually assaulted her. He claimed that the institution falsely accused him and spread the accusations. In addition, the lawsuit said the school's expulsion of him for those false accusations caused him to lose his scholarships. He also sued the accusing student and a witness. Their actions tarnished his reputation with his professors and the college community and prevented him from transferring to another college, the student claimed.*


Defamation claims arise when someone makes a false and derogatory statement about another person that causes harm—usually reputational—to that person. Truth is a defense to a defamation action, as is “privilege,” such as statements that witnesses, lawyers, and judges make in court and that legislators make in session, even if those statements are false. The U.S. and state constitutions may also provide important privileges when statements involve matters of public interest concerning public officials or celebrities.

As indicated in the examples above, these cases often arise from other claims, investigations, and procedures, and could be levied against or by anyone on campus. A student may sue an administrator for saying he cheated on an exam; a staff member may sue a supervisor for distributing a harsh performance review; a research subject may sue a professor over negative research conclusions; a professor may sue a student who files a sexual harassment charge; and a student may sue another student who accuses him or her of sexual assault. Such lawsuits often name the institution and its deeper pockets as a defendant, along with the person who started or repeated the falsehoods.

Administrators and risk managers should be aware of the risk for defamation claims, the potential costs, and strategies for preventing defamation and limiting liability.

## Reduce Your Risk

Institutions can take the following steps to reduce the risk of liability from defamation claims:

- When incidents or complaints occur, follow your institution's investigation and disciplinary process.
- Remind investigation participants—including investigators and witnesses—of the importance of making truthful statements and sharing sensitive information only with those who need to know. Explain the risk of defamation claims and remind participants that maintaining truth and confidentiality offers some protections in a thorough investigation.
- Train supervisors and investigators to maintain appropriate confidentiality to avoid claims of “excessive publication” of case-related details.
- Attempt to verify new allegations that arise before repeating them.
- Limit the audience and the details shared with each witness. Investigators should repeat to witnesses only relevant statements.
- Ensure that investigators and decision makers have no perceived bias and no personal or institutional stake in the outcome.
- Remind investigators, supervisors, employees, and witnesses that making careless or intentionally malicious statements can make them and the institution liable.
- Avoid extreme or inflammatory characterizations and conclusions.
- Limit the distribution of negative employee evaluations or tenure reviews to those with a need to know.
- Recognize that emails and oral statements can also lead to defamation claims. 



# HEADS UP

CONCUSSION MANAGEMENT CAN PROTECT  
STUDENT ATHLETES AND INSTITUTIONS



*By Julie Britt*

**When coaches, teams, and institutions put winning first, they may be tempted to put a student athlete back on the field shortly after a head injury if he or she seems OK. Injured students themselves may clamor to get back into the game or event. Sometimes parents pressure coaches to put their kids back in the game. Increasingly, however, state laws are dictating when and if a student can return to play or practice.**



These conflicting attitudes and rules can put uncomfortable pressure on institutions that want to make—and enforce—the right decisions. Putting clearly stated and well-publicized concussion management policies and procedures in place, even if the state doesn't require it, could help schools, colleges, and universities keep student athletes safe and protect institutions from costly claims.

At least 37 states and the District of Columbia have passed concussion management legislation, and several other states are considering such measures. NFL Commissioner Roger Goodell and NCAA President Mark Emmert have urged states across the country to help raise awareness of the risks and the importance of proper treatment. Meanwhile, national news stories focus attention on the risk of severe and repetitive head injuries to student and professional athletes in a wide range of sports.

The push for concussion prevention and treatment policies stemmed in part from the 2006 Zackery Lystedt case. The Washington state middle school student returned to a football game after a concussion and sustained brain damage (<http://tinyurl.com/Zackery-Lystedt>). In 2009, Washington passed the Lystedt Law, on which many other states' laws are based. Typically, these laws require schools to educate athletes and their parents about concussions and remove injured athletes from play or practice until a licensed health care professional examines and clears the student for activity. (See "The Lystedt Law" on page 5.)

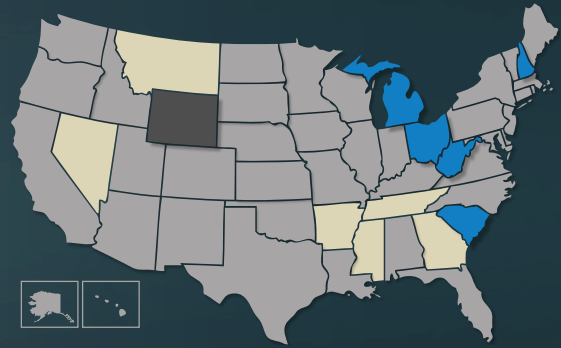
Some UE members, including three highlighted here, have recently initiated or enhanced concussion management programs in response to new research or legislative mandates.

# The Lystedt Law

Named after a student who sustained brain damage in a football game, the law requires schools to educate athletes and their parents about concussions and remove injured athletes from the activity pending an examination and clearance by a health care professional.

Source: NFL

■ Law Passed      ■ Legislation Pending  
■ Law Passed Differs From the Lystedt Law      ■ No Pending or Passed Legislation



## Safety Trumps Victory

"We have been well aware of potential problems with concussions and have used guidelines for a while now," says Donald McPhillips, head athletic trainer at John Carroll University (JCU) in University Heights, Ohio. "We have actually upgraded those even more within the last five years to try to meet the standards and needs of our students who do get a concussion."

In his 25th year at the NCAA Division III university, McPhillips oversees 21 men's and women's varsity sports, approximately 700 student athletes, and 40 coaches. "We don't offer athletic scholarships or any grants. Students don't get any money to play sports. They are here for the love of the game," he says.

McPhillips attributes the increase in concern about concussions to the rise in student participation in high contact sports such as football and soccer and advancements in medicine that help health care providers diagnose the injuries.

"[W]e are learning so much and know so much more than we did 10 years ago, and I feel confident that the same will be true in another 10 years."

— Katherine Miller, athletic trainer and teacher, Metairie Park Country Day School

"Last year, with all of our sports, we had about 27 concussions," including some that were not sports-related, such as an athlete who hit his head on a loft bedpost, McPhillips says. Most of the sports injuries—13—were football-related; three occurred in soccer, one in cross-country, and another in women's track.

JCU athletes undergo pre-season ImpACT (Immediate Post-Concussion Assessment and Cognitive Testing), which provides a neurological function baseline. If an injury occurs, the athlete is re-tested to assess damage and recovery.

If a JCU athlete appears to have a head injury, he or she must leave the game. Staff assess the student's condition, mandate a 20-minute rest period, and then retest the student. "The coaches do not like that, but we are going to wait about 20 minutes, retest, and see how they are doing before we are going to put them back in," McPhillips says. "Coaches are competitive. They want the kid to play, and the kid wants to play, but we want to make sure."

Educating the coaches and athletes about concussions and JCU's policy is a key risk management tool. "In our coaches' meeting we go over what we look for and what is going to happen if somebody comes to us with signs of a concussion. We educate them so they are not blindsided on the field or in the locker room," McPhillips says.



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**"In football, if a helmet is removed, we are telling the districts to assume there has been a concussion."**

*– Russ Olsen, director of risk management, Ventura County Schools Self-Funding Authority*

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In pre-season talks with the students, McPhillips explains the need for and purpose of the pre-concussion tests. "Most kids don't really get it until they get hurt," he says. "Then two weeks later when they're still having symptoms, they understand."

After an injury, JCU evaluates symptoms at least daily, often twice a day, with the Sport Concussion Assessment Tool 2 (SCAT 2), rating the students' answers to a series of 22 questions from zero (no symptoms) to six (severe symptoms). Warning signs include headaches or pressure, difficulty concentrating, being sad or more emotional, or "just not feeling right," McPhillips says. JCU repeats the test until the student is symptom-free. Then trainers add basic exercises, progressing from light jogging to running to weightlifting, to measure progress. "We really take our time."

Coaches and students often ask for a specific timetable, but each case is different. "We may have some kids who are fine for a couple of days and seem to be getting better. Then they have a hard test and have to concentrate. The computer screen bothers them. Their headache is back. Their fatigue is back. Sometimes it can be an ongoing problem," McPhillips says.

## A WORD FROM UE

UE recommends the following steps to reduce liability arising from concussions in student athletes:

1. Conduct baseline screening of student athletes before the first practice in baseball, basketball, diving, equestrian activities, field hockey, football, gymnastics, ice hockey, lacrosse, pole vaulting, rugby, soccer, softball, water polo, and wrestling, at a minimum. The baseline assessment should include the use of a symptoms checklist and standardized cognitive and balance assessments.
2. Annually educate student athletes, coaches, and other relevant athletics staff about the signs and symptoms of concussions and document the institution's education efforts.
3. For each athletics venue, have on file and annually update an emergency action plan to respond to catastrophic injuries and illnesses in student athletes.
4. Keep on file an appropriate health care plan that includes equitable access to athletics health care providers for each sport.
5. Establish a process for removing from athletics activities—including competition, practice, and conditioning—any student athlete who exhibits signs, symptoms, or behaviors consistent with a concussion. In addition, provide a competent medical evaluation and preclude a student diagnosed with concussion from returning to athletics activities for at least the remainder of that calendar day.
6. Require medical clearance by a physician before a student diagnosed with a concussion returns to athletics activity.
7. Document the evaluation and treatment of student head injuries, record compliance with any written concussion management plan, and retain documentation.

*—Alyssa S. Keehan, Senior Risk Management Counsel*



"I like to win just as much as the coaches like to win. If I hold a kid out it's because that's the right thing to do for his or her overall health. I do not have a problem making a decision like that. When parents call me and ask, 'Why is my kid not playing?' I think he or she should play; I say I'm glad I'm having this conversation instead of the other way around where you are calling me to say, 'Why did you let him or her play?'" he says.

Schools and colleges should review their concussion policies with a professional who is familiar with the injury and its treatment, he says. "Use the resources you have, read about the research, and make your own assessments to apply to your student athletes. Look at their overall health. No game is more important than a healthy kid."

## Educate, Train, and Follow Up

Last year, Katherine Miller's concussion management research led her to the Sports Legacy Institute (SLI) in Boston (<http://sportslegacy.org/>), whose mission is to advance the study, treatment, and prevention of the effects of brain trauma in athletes. Miller, athletic trainer at Metairie Park Country Day School



(MPCDS) in Metairie, La., used SLI's guidelines to help develop and implement a concussion management plan for her school.

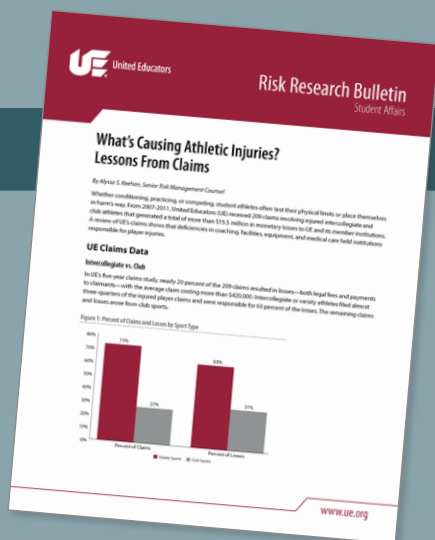
The 14-year veteran's primary responsibility is sports-related injuries at MPCDS, which has approximately 370 students. About 80 percent of students in grade nine to 12 are involved in athletics, along with some sixth-, seventh-, and eighth-graders.

Miller had pieces of a concussion management plan in place, but she wanted to broaden its scope. The updated plan involves the coaches, athletes, and parents. MPCDS provides education and training for the student athletes and distributes a written plan to parents.

The students have embraced the new policy. "They appreciated feeling like there was some support for them. I think there was some hesitation and a sort of stigma that kids get stuck with when they say, 'Oh I had a concussion.' It's like you are being weak. Concussions are tricky because there is no visible sign. They aren't wearing crutches; they don't have a brace on their head," Miller says. "So a lot of times kids take heat for that. And opening up the lines for communication and discussion gives them a little safety, 'I can talk about this and it's going to be OK.'"

In addition, the coaches seemed to appreciate the education and tips about handling injuries, following Miller's motto, "When in doubt, sit them out." The written policy also helped satisfy parents who wanted their kids back on the field too quickly.

Like JCU, MPCDS uses ImPACT to establish a neurocognitive baseline for student athletes and SCAT 2 to monitor symptoms. Miller requires injured athletes to follow up with her every day for the first week, then weekly until symptoms disappear.



For more information, see UE's *Risk Research Bulletin*, "What's Causing Athletic Injuries? Lessons From Claims," on [www.ue.org](http://www.ue.org) in the Risk Management Library under Periodicals.

"The protocol, these guidelines, and continued research and education... are so important because we are learning so much and know so much more than we did 10 years ago, and I feel confident that the same will be true in another 10 years," she says.

**"No game is more important than a healthy kid."**

– Donald McPhillips, head athletic trainer at John Carroll University


## It's the Law

Many public K-12 schools are implementing or improving concussion management policies and procedures because lawmakers have mandated such protections. Effective this year, for example, California Education Code Section 49475 requires schools that offer an athletics program to remove from activity any athlete who is suspected to have had a concussion and to keep the student out of the game or practice until a licensed health care provider clears the student. In addition, schools must provide a concussion and head injury information sheet to parents and students. (For more information, see <http://tinyurl.com/CaliforniaAthletics>.)

"When a concussion occurs, it is usually a forceful bump, blow, or jolt. In football, if a helmet is removed, we are telling the districts to assume there has been a concussion," says Russ Olsen, director of risk management for the Ventura County Schools Self-Funding Authority (VCSSFA) in Camarillo, Calif. "We have provided all the school districts with fact sheets to help them recognize signs and symptoms of concussions. When those things happen, they are to monitor the player for signs or symptoms and they are to remove them from play. Then they inform the parent or guardian, and it is required that the athlete have a medical evaluation before returning to play," says Olsen, who has been with VCSSFA for 12 years.

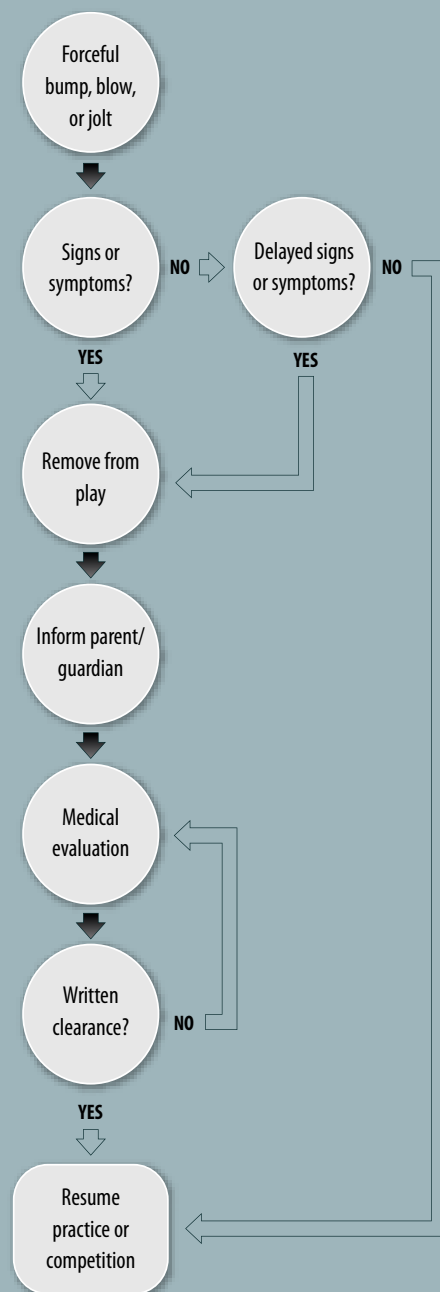
Olsen acts as an advisor for the 20 VCSSFA member districts, which serve approximately 140,000 students in Southern California. When a risk management issue arises, he researches the topic, develops possible programs for the group, and presents the proposals at regular meetings with the district's risk managers. Members of that risk management committee make suggestions for improvement, and then Olsen rolls out to policies to the districts. "We try to teach some correct risk management and let them govern themselves," he says.

He distributed flow charts to illustrate proper concussion response and is developing written guidance for the fall semester. (See "Concussion Response Flow Chart" at right.) VCSSFA also encourages coaches to participate in free training provided by the National Federation of High Schools and the Centers for Disease Control and Prevention.

VCFFSA's loss runs have not identified concussions as a big problem for member districts, but Olsen says the danger is there for boys and girls in soccer, softball, and track, as well as football. "Somebody could walk in front of the shot putter without realizing it and get a concussion. So we are just telling them across the board to send the information sheet home, have the athlete and the parents sign it, and collect them." 



## Concussion Response Flow Chart





## Lessons From Claims

The following are examples of UE claims related to concussions or other head injuries among student athletes:

- A football player with traumatic brain injuries suffered a catastrophic brain injury from impact with another player.
- A cheerleader suffered a head injury during a demonstration.
- A softball player sustained head injuries in a collision with another player during practice.
- A student was knocked unconscious in a fall during a pole vaulting event.
- A ski team member sustained head injuries when she hit a tree during practice.
- A lacrosse player suffered a concussion when the goal post fell and hit her head.
- A wrestler suffered a severe injury when he landed on his head during a match.
- A student fell and was knocked out while playing basketball.

For more information on concussion management and related topics, search for these resources on [www.ue.org](http://www.ue.org) in the **Risk Management Library**:

- "Concussion Management Plans"
- "Computerized Neurocognitive Testing for the Student Athlete"
- "Children's Head Injuries: Helmets and Other Safe Practices"
- "Give Me an O-U-C-H Ouch!"

## Trending on UE.org

### Managing Risks in Short-Term International Programs



Educational institutions are increasingly encouraging students to take advantage of opportunities to study abroad and expand their knowledge of other cultures. Despite their brevity, short-term international programs require the same vetting, preparation, and planning as traditional semester-long programs.

UE's online course, **Short-Term International Programs**, can help higher education institutions prepare students and staff for safe and rewarding educational experiences around the world. For more information and to enroll, visit the **Online Courses** section of **Learn@UE** on [www.ue.org](http://www.ue.org).

Search the **Risk Management Library** for these related resources for K-12 and higher education institutions:

- *You Asked UE: "Minors on Study Abroad Trips"*
- *UE Roundtable: "Student Foreign Travel"*
- *From the UE Toolbox: "A Checklist for Leaders of Short-Term International Programs"*
- *Managing Liability: "Understanding and Managing the Risks of Short-Term International Programs"*
- *You Asked UE: "Travel Alerts, Warnings and Advisories"*
- *You Asked UE: "Homestay Placements"*

# DRIVING DOWN DRINKING AT ASSUMPTION COLLEGE

By Hoda Hussein

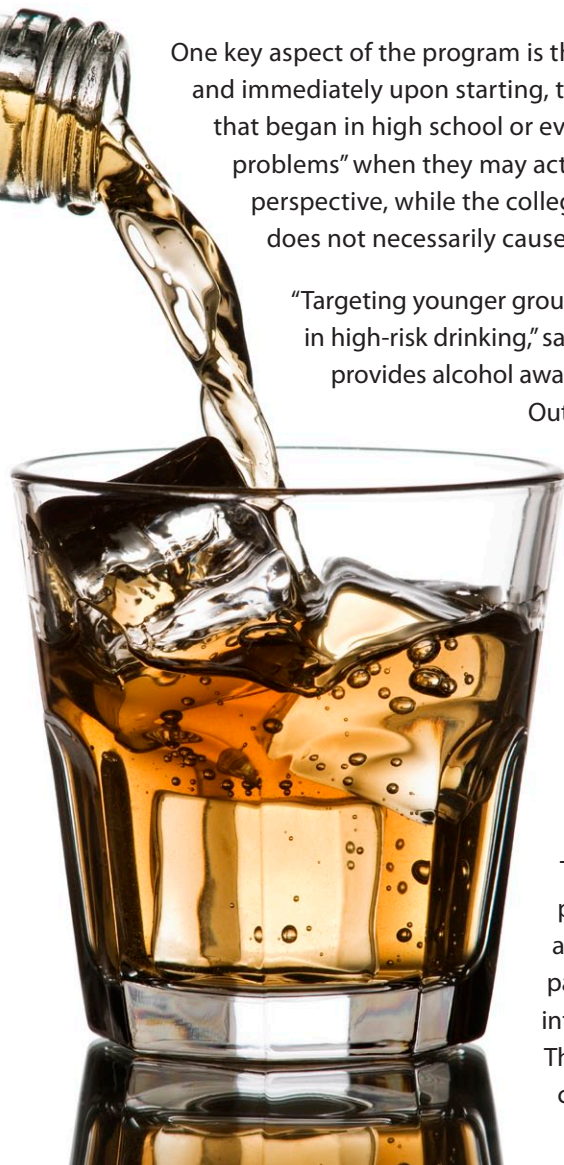
High-risk student drinking is a perennial concern at most higher education institutions. At Assumption College in Worcester, Mass., administrators took a broad view to identify root issues and help students understand the impact of alcohol use through their Alcohol Impairment Awareness (AIA) Program.

One key aspect of the program is that Assumption starts early in getting students' attention on this issue—both before, and immediately upon starting, their college career. College students' drinking patterns often continue behavior that began in high school or even earlier. So when these patterns emerge at age 18 or 19, they are labeled "college problems" when they may actually have started as high school or middle school problems. Viewed from this perspective, while the college experience may serve to identify or, in some cases, amplify excessive drinking, it does not necessarily cause the abuse.

"Targeting younger groups in which drinking starts may reduce the likelihood that these students will engage in high-risk drinking," says Dr. Tracey Pakstis-Claiborne, Assumption's director of Alcohol & Drug Education. She provides alcohol awareness programs for local middle and high school students through Assumption's Reach Out Center, the college's community service hub.

Assumption also trains all incoming freshmen at the start of the fall semester, when drinking rates peak for college students, Pakstis-Claiborne says. The college also holds alcohol awareness sessions during National Alcohol Awareness Week in October and on National Alcohol Screening Day in April. Additionally, alcohol awareness and safety are highlighted during on-campus events where high-risk drinking is prevalent. The spring Pup Cup weekend includes a carnival, competitions, and games. The college invites local state troopers to measure students' blood alcohol content using breath analysis devices and allows students to tour their "Batmobile," a 40-foot-long replica of a prison holding cell, to remind them of one possible outcome of drinking.

To measure the success of their training program, the college this year will begin using pre- and post-training surveys on iPads for any student who participates in the goggles and cart exercise to assess its effectiveness. Assumption will also track attendance and participation in training sessions, and monitor the reduction in operating under the influence (OUI) or near-miss incidents and compare the data to that from previous years. The school uses Campus Labs, a service provider for higher education institutions, to collect information from students that they can use to improve programs and services.



## Award-Winning Alcohol Prevention



Sgt. Donald Brickman, left, and Officer Colby Tytula test Assumption's pedal cart.

United Educators recognized Assumption College this year for its innovative and sustainable approach to educating students about the negative effects of alcohol. In Assumption's AIA program, students wear beer goggles while driving a course in a pedal cart. The goggles simulate blood alcohol content of .08 to .15, demonstrating the dangers of impaired driving. The experiential learning environment helps students recognize their limitations and make better decisions, says Robert A. Murphy, director of Public Safety.

The college, one of 10 recipients of UE's 25th anniversary Silver Grant, used the \$2,500 award to purchase a Drunk Busters Pedal Kart package. (See Silver Grant Winners at right.)

## Lessons Learned

**Implementing the Alcohol Impairment Awareness Program helped Assumption improve student awareness of alcohol abuse, especially its effect on drivers. Pakstis-Claiborne identified these best practices for fighting the problem:**

- Focus on specific aspects of the issue. Rather than emphasizing the general negative effects of alcohol, Assumption highlighted alcohol's effect on driving. Students can identify with this negative outcome, and the school can demonstrate the risks through training.
- Partner with on- and off-campus constituents. Assumption credits the training program's success to the partnership between various campus departments, campus police, and local law enforcement.
- Encourage students to train others. Assumption's Students for Safe Choices program enables students to train peers about drug and alcohol safety. After receiving extensive training on alcohol use/abuse, addiction, and alcohol poisoning emergency protocol, students conduct one-on-one education. In this "Info Blitzing" program, students go door to door. During the first week of school, they distribute fortune cookies with alcohol/personal safety messages to all first-year students. This approach encourages participation and promotes better decisions about alcohol use.
- Survey students at training sessions. Assumption polls students electronically and asks for completed surveys following training sessions, which piques interest and elicits immediate feedback.

# SILVER Grant Winners

**The following schools also won Silver Grant awards for their innovative risk management projects:**

- **Collegiate School** is updating and replacing emergency information directories in each classroom.
- **Defiance College** is developing online safety and security training for students traveling domestically and internationally.
- **Johnson County Community College** will further its enterprise risk management by training each identified risk owner on how to manage specific risks.
- **Miami University** is enabling faculty, staff, students, and families to access online risk management courses.
- **The School for Field Studies** is plotting incidents to recognize exposures, threats, patterns, and trends.
- **Siena College** is developing multimedia resources on identifying individuals of concern, and initiating effective referrals and support.
- **Stephens College** is creating training tools and modules to increase awareness of discrimination and incivility issues, and prevent harassment.
- **Susquehanna University** will teach students and faculty to respond to a medical emergency.
- **University of Kentucky** will provide 39 club sports teams with first aid kits and CPR, AED, and first aid training. **UE**



# Reason&Risk

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## NEW TO UE STAFF

United Educators is pleased to announce new staff members in our Claims Management and Underwriting departments.

### Christine Freund McHugh

Christine McHugh, claims counsel, joined UE in July. She has worked at law firms in Washington, D.C., and Boston, specializing in employment law and higher education legal issues. Christine has a BA in political science and German from Duke University. She earned a law degree and a master's degree in higher education administration at Boston College.

### Gilbert Wharwood

Gil Wharwood has joined UE as associate vice president of underwriting. He holds an MBA with a concentration in finance from Howard University. He has worked with Aetna Life & Casualty, Travelers, and Chubb, and most recently was branch underwriting manager at CNA Financial.

## CONGRATULATIONS!

UE is proud to announce that **Johnny Gilbert**, an associate in the Actuarial Services department, recently became a Fellow in the Casualty Actuarial Society (FCAS), a designation held by only 4,000 people in the U.S. This achievement, the culmination of a rigorous vetting process consisting of nine exams, three academic courses, and a seminar on professionalism, signifies unique and valuable expertise in the insurance industry. Lewis Augustine, vice president and chief actuary for actuarial services and chief risk officer, also holds the FCAS designation. Having two actuarial Fellows on staff helps assure members that UE is well-positioned to take advantage of the most advanced and appropriate actuarial techniques.