



## POSITION STATEMENT

### College Athlete Health and Protection from Physical and Psychological Harm<sup>1</sup>

October 1, 2019

#### EXECUTIVE SUMMARY

The governance structure of intercollegiate athletics appears unable to police academic fraud and deliver a bona fide college education to athletes. A similar systemic failure apparently exists regarding the health and well-being of college athletes. The Drake Group<sup>2</sup>, which has examined the current state of college athlete health and safety protections, identifies numerous concerns here.

Generally, no standards exist for the certification of coaches in the United States. Therefore, many coaches lack the training and credentials necessary to practice model pedagogy. Rather, they emulate the pedagogy of those who coached them as athletes or employed them as assistant coaches. Pressured to produce winning teams, they transfer that pressure to the college athletes who actually play the game. They demand that athletes commit to year-round training, even sacrificing study time and sleep to fulfill unrealistic sport demands – watch more film, lift more weights, increase repetitions, and run or swim more laps, ignore the pain of injuries or push through exhaustion. This prevailing ‘more is better’ athletics culture demands that the athlete be stoic and uncomplaining as the system takes its toll on physical and mental health. Fearful of losing their scholarships, starting positions, or even the time and attention of their coaches, athletes often remain silent when coaches mistreat them. When coaches physically or verbally abuse athletes, assistant coaches or athletic trainers who

<sup>1</sup> Preferred citation: Donna Lopiano, Janet Blade, Gerald Gurney, Sheila Hudson, Brian Porto, Allen Sack, David Ridpath and Andrew Zimbalist (2019) The Drake Group Position Statement: College Athlete Health and Protection from Physical and Psychological Harm. (October 1, 2019). Retrieve at: [<http://thedrakegroup.org>]

<sup>2</sup> The Drake Group is a national organization of faculty and others whose mission is to defend educational integrity in higher education from the corrosive aspects of commercialized college sports.

observe the abuse are silent, fearful they will lose their jobs. As long as coaches lead successful programs, athletic administrators leave coaches alone, attending games to cheer them on, but seldom supervising, observing a practice, or criticizing coach conduct.

Consider what happens when a parent or athlete exposes an abusive coach, an athlete dies, or multiple members of a team are hospitalized with rhabdomyolysis (a life-threatening, but preventable overexertion syndrome). The institution typically ‘circles the wagons’ to protect its brand. Sometimes, it negotiates a settlement to avoid litigation or commissions an investigation by an institution-friendly third party who finds little or no wrongdoing. The coach may be warned, reprimanded, or suspended for a number of games. A lower-level staff member (seldom the winning coach) may be terminated. Throughout such episodes, the NCAA – the national athletics governance organization—provides no oversight. It does not have a code of conduct governing coach or athletic department employee behavior. It consists of member institutions that apparently have decided they do not want to be policed concerning athlete health and wellness. In fact, under the NCAA Constitution, institutions, not the NCAA, are responsible for protecting the health and well-being of athletes.

The Drake Group believes that coaches and athletics personnel, higher education institutions, and national athletic governance associations are not complying with their respective duties of care and must be held accountable. The pressures to protect the institutional brand and produce a successful athletic program, while avoiding litigation, are too great for institutions to be expected to police themselves. The Drake Group believes that only the national governance organization has the power to offset these campus-level forces. Five recommendations are proposed to describe how the NCAA should exercise its duty of care.

**RECOMMENDATION 1. NCAA Acceptance of Duty of Care.** As a national collegiate athletic governance organization, the NCAA should protect collegiate athletes from physical and mental harm related to their participation in athletics. Specifically, the NCAA should exercise this responsibility through:

- a. The adoption and enforcement of rules applicable to all member institutions intended to (1) prevent or reduce the occurrence of athletic injury, (2) prohibit physical, sexual, verbal, or emotional abuse of athletes by coaches, other athletes and others, (3) permit athletes to have adequate time to sleep, recover from training, and complete academic responsibilities, and (4) require athletics personnel to meet education, certification, licensure, or other qualification standards;
- b. The adoption of all such athlete health and protection rules by the Board of Governors upon recommendation of the Chief Medical Officer and the Committee on Competitive Safeguards and Medical Aspects of Sports, rather than by vote of any membership, divisional council, or competitive subdivision. These rules should apply to all athletes in all membership divisions;
- c. The inclusion in such athlete health and protection rules of standards of conduct for athletic department employees that are at least as stringent as the U.S. Center for SafeSport

*SafeSport Code* regarding mandatory reporter provisions, whistleblower protection, required criminal background checks, and completion of code-of-conduct training by all employees who interact regularly with athletes. The rules should also include (1) a mechanism for NCAA receipt of direct athlete complaints related to violations of the code of conduct and (2) investigatory, adjudicatory, and disciplinary powers required to process those complaints;

- d. The adoption and enforcement of rules prohibiting member institutions from recruiting any high school students or two- or four-year college transfer students to participate in athletics who have been convicted of a sexually violent or other physically violent act or have been suspended from any educational institution for such an act. High school athletes declared ineligible under such a provision should have an avenue of appeal to an independent panel comprised of both youth development and law enforcement experts;
- e. The adoption and enforcement of rules (1) prohibiting athletic department employees from involvement in campus or external athlete sexual harassment or assault investigations and adjudication processes and requiring that athletes be treated like all other students with regard to such processes, (2) requiring the immediate suspension of the athletic participation of any athlete accused of sexual or other violence until the conclusion of any preliminary hearing, investigation, or adjudication process and, if such misconduct is found, the athletes responsible should be permanently ineligible for participation in practice, competition, and receipt of athletics financial aid at that or any other member institution of a national-collegiate-athletic-governance institution;
- f. The required participation by all member institutions in the NCAA Injury Surveillance Program; and
- g. Approval by the Chief Medical Officer and the Committee on Competitive Safeguards and Medical Aspects of Sports before consideration of any change in rules of play or any sport-related legislation that may affect athlete health and protection, including an athlete's time commitment to a sport.

**RECOMMENDATION 2. Enforcement of Athlete Protection Rules.** The NCAA should establish the following mechanisms for the enforcement of such athlete health and protection rules:

- a. A periodic external peer review of member institutions' athlete-protection policies and procedures, Injury Surveillance Program records, Code of Conduct violations, athlete and employee physical and mental-health-education programs, and employee qualifications;
- b. An independent NCAA investigation requirement in the case of catastrophic injury or death at any member institution. A three-person panel of experts not affiliated with the involved institution, should be appointed by the College Athletic Trainers Society and the American College of Sports Medicine, at least two members of which should be medical doctors, to investigate and produce a public expert report and recommendations for the institution;
- c. The requirement that all administrators responsible for the supervision of sports programs undergo an NCAA Sports Science Institute (SSI) training program on the identification of dangerous or abusive pedagogy practices in the coaching of sport programs and in the conduct of strength and conditioning programs.

**RECOMMENDATION 3. Adequate Insurance Protection and Provision of Uncovered Medical Expenses.** The NCAA should mandate adequate injury insurance for athletes and institutional payment of athletic injury medical expenses not covered by insurance:

- a. NCAA Bylaw 16.4.1 specifies that only autonomy institutions must provide full medical care to college athletes for athletically related injuries extending at least two years following either graduation or separation from the institution or until the athlete qualifies for NCAA catastrophic injury program coverage. This provision should be extended to athletes in all NCAA divisions, and the NCAA should establish an insurance program and/or special fund for that purpose.
- b. The NCAA should develop gender- and sport-neutral criteria for the institutional provision of disability/loss of value insurance that does not deplete institutional Student Assistance Fund allocations.

**RECOMMENDATION 4. Consolidation of Athlete Health and Protection Best Practices and Rules Obligations.** The NCAA's Sport Science Institute (SSI) should compile and distribute annually to all member institutions all athlete health and protection "best practices" adopted by the Board of Governors. It should also compile and distribute annually, by sport, all mandated NCAA athlete health and protection rules.

**RECOMMENDATION 5. More Aggressive Pursuit of Game and Practice Rules That Reduce Injury Risk.** The NCAA Board of Governors should direct the Chief Medical Officer and the Committee on Competitive Safeguards and Medical Aspects of Sports to identify possible competition and practice rule changes designed to reduce athlete injury risk in all sports. The Board should also direct these entities to test the impact of such changes in every NCAA championship sport. Final decisions about the adoption of rules changes should be data driven.

## INTRODUCTION

Reports of failures by college coaches and other athletics personnel, institutional administrative and oversight mechanisms, and national collegiate athletic governance policies to protect the health and well-being of college athletes have reached epidemic proportions. These reports note traumatic and nontraumatic deaths,<sup>3</sup> athletes requiring hospitalization for rhabdomyolysis (an avoidable condition that results from overexertion and can cause kidney damage or death), cardiac arrest, failures to treat heat-related illness, inadequate efforts to address repetitive head contact and concussion in numerous sports, inadequate sickle-cell-trait

<sup>3</sup> Traumatic injury or death is defined as caused by an external force of violence and is easier to identify because of an observable physical circumstance; nontraumatic injury or death is not produced by mechanical stress and examples might include drug overdoses, infections, stroke, and hypertrophic cardiomyopathy.

protocols, coach abuse, humiliation, and other professional misconduct. The reports have also noted sexual harassment and assault, inadequate athletic injury insurance, and the mental and physical health costs of excessive athletic department demands on the time of college athletes.

Periodically, the national media and the public are transfixed by a single occurrence, such as the tragic avoidable death in 2018 from heatstroke of University of Maryland football player Jordan McNair. A local investigative reporter's 2019 multiple-episode coverage of a punishment workout and subsequent hospitalization for exertional rhabdomyolysis of twelve female University of Houston soccer players also garnered much attention. The public and the higher-education community are momentarily shocked, and the offending institution promises a full, unbiased investigation and a change of policy. The coach might be fired, or, if a popular, winning coach is involved, a lower level employee might be sacrificed.

Either way, the NCAA typically takes no responsibility, turning its head the other way and claiming that only the institution is responsible for protecting athletes. If the NCAA is sued in its capacity as a governance organization, it might settle out of court while acknowledging no fault, thereby avoiding an embarrassing display of evidence at trial or an adverse judgment. If media coverage includes calls for NCAA rules that put athlete-protective policies in place for member institutions, the NCAA might appoint a study committee or blue-ribbon commission and wait until the media storm blows over before issuing a report that results in minimal change, if any. Even though it was founded in 1906 because the President of the United States threatened to ban colleges from playing football if the deaths of athletes were not addressed, the NCAA has not taken responsibility for protecting the health and wellness of college athletes.

The Drake Group confronts these issues based on its belief that educators, educational institutions, and education-related governance organizations should have as their highest priority protection of the health and well-being of students. Intercollegiate athletic programs should neither ignore nor increase the health risks of college athletes.

We would be remiss not to acknowledge that many well-trained and conscientious coaches and sports management professionals at the institutional level run a “tight ship” regarding these health protection obligations. Similarly, individuals within conference and national governance organizations are ringing warning bells regarding the absence of rules and regulations necessary to mandate members’ adoption of best practices in sports medicine. The focus of this paper, however, is on continued failures by the intercollegiate athletics system to protect the health and well-being of college athletes.

Finally, although we do not make a legal argument for or against NCAA responsibility for athlete health and wellness, we consistently refer to a “duty of care.” This term reflects our view that individuals, higher education institutions, and intercollegiate athletic governance associations have an ethical responsibility to protect the physical and educational well-being of college athletes.

## DUTY OF CARE

Besides protecting the educational well-being of college athletes as students, the coaches and other professionals who work in college athletic programs have a responsibility to protect students on their teams from foreseeable injuries or other harm. Higher education institutions and athletic governance organizations have that same duty of care. Educational institutions address these risks by establishing policies and procedures that define appropriate coaching conduct and employee responsibilities, specify credentials and background checks required for employment of athletics personnel, and require employee education. Other policies and procedures assign personnel responsible for inspecting facilities, establish expectations for the safe operation of all programs, monitor coach pedagogy, and administer employee discipline in the case of improper conduct. National governance organizations and conferences use their rule making and enforcement authorities to require all members to respond to recognized causes of harm in specific ways. These organizations also collect, aggregate, and monitor research about and incidents of athletics injury and similar harms to improve policy, educate members, ensure the development of safe rules of play, and guarantee competent officiating. This position statement addresses issues of potential harm to college athletes of which athletics professionals and governance entities are fully aware and examines whether those individuals and entities are meeting their responsibilities to prevent such harm.

## ATHLETICS CULTURE AND MORAL INJURY

We would be remiss in limiting this paper to traditional definitions of physical and psychological harm. When coaches and other athletic program personnel use the power of their positions either to directly harm athletes, knowing they will not be held accountable, or to ignore or hide athlete mistreatment, they inflict moral injury as well as physical or psychological harm. Such moral injury is a betrayal of trust in leaders whom college athletes expect to be guided by a higher order duty to prevent harm and comply with rules.<sup>4</sup> When coaches or other administrators place their own self-interest or an interest in protecting the brand of the athletic program, institution, or governance organization above their duty to protect college athletes, the resulting failure has a core value impact more damaging than even traditional mental (depression, anxiety, etc.) or physical harm. An extreme example is the failure of Michigan State University to protect more than 400 gymnasts from team physician Dr. Larry Nassar's sexual abuse. How did that failure affect the athletes' trust in the educational institution they attended – to realize that at the highest levels of the institution, leaders knew, refused to act,

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<sup>4</sup> For additional discussion on “moral injury” see Jeremy Jinkerson. (2016) Defining and Assessing Moral Injury: A Syndrome Perspective. *Traumatology*, v.22(2), May, 2016) Retrieve at: [https://www.researchgate.net/publication/301937607\\_Defining\\_and\\_Assessing\\_Moral\\_Injury\\_A\\_Syndrome\\_Perspective](https://www.researchgate.net/publication/301937607_Defining_and_Assessing_Moral_Injury_A_Syndrome_Perspective); William Nash. (2019) Moral Injury: The War Inside. Retrieve at: <https://www.voa.org/moral-injury>

and were complicit in a cover-up? How do the silence, denial, and inaction compound the psychological impact of the harm itself?

Equally distressing is the reasonable assumption that the majority of Division I college athletes are fully aware of the highly commercialized and exploitative college sport system and do not expect fair treatment from powerful coaches and administrators. Perhaps the value of a scholarship, a small chance of entering the professional ranks, momentary fame, and privileged status among one's classmates are the quid pro quo for acceptance of moral injury. Is there any choice but complicity for the predominantly minority Division I football and basketball players who know they do not meet regular academic admission standards, are specially admitted through academic waivers, and then accede to the institution's system of academic fraud dedicated to maintaining their eligibility to play? This acceptance of moral injury means that the current intercollegiate athletics system must change fundamentally. Just expecting the institutions to improve their management of the system's negative moral, physical, and mental health consequences is unrealistic.

## **THE ABSENCE OF STANDARDS FOR THE CERTIFICATION OF ATHLETIC COACHES OR MECHANISMS TO ADDRESS PROFESSIONAL MISCONDUCT**

**Lack of Accredited Certification.** One of the significant failures of the U.S. education system has been to embed athletics in our educational institutions without applying any substantive professional preparation or licensure standards to coaches. We require classroom teachers to demonstrate sufficient levels of education, credentials appropriate to the grade levels in which they teach, and the completion of continuing education requirements. Educational institutions accredited to perform this preparation function train teachers, who must then apply for licensure or certification from the state in which they wish to teach. Coaches have no similar requirements, although they operate in a much higher risk environment than classroom teachers do. Coaches are not required to be teachers or physical educators. Some states merely require that coaches in K-12 settings be school district employees who pass criminal background checks and have completed first aid, CPR or other emergency or concussion/heat-related illness response training programs, and maybe an online course in coaching fundamentals. The online course may or may not be offered by an accredited institution of higher education<sup>5</sup>. College coaches have similar minimal requirements, but instead of the online coaching fundamentals course, an undergraduate degree is usually required. The undergraduate degree, though, does not have to be in a field related to athletics, as coaching experience is often an acceptable substitute. Coaches learn the X's and O's when they attend conventions and workshops or seek coaching credentials from

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<sup>5</sup> See <https://nfhslearn.com/home/coaches> for the National Federation of State High School Associations (NFHS) listing of requirements by state. The most commonly required online coaching fundamentals course is offered by the NFHS learning institute.

open amateur sport national governing bodies, but they are not required to have training in protecting athletes from physical and psychological harm. They coach as they have been coached or try to emulate the coaches they admire. Increasingly, college coaches come from youth-travel-team programs that embrace a “more is better” philosophy and a year-round commitment to one sport in pursuit of a college athletic scholarship. The predictable results are “burn-out” and chronic overuse injuries at an early age. Athletics directors and other administrators are well aware of the challenges posed by unprepared coaches using questionable pedagogy.

**Lack of Standards for Professional Conduct.** Athletics managers are also aware of common instances of coaching malpractice, such as verbal abuse and the use of conditioning activities as punishment for perceived lack of effort or performance errors. The absence of coaching preparation standards, however, does not fully explain such malpractice. Coaches who win are often allowed to continue questionable practices and are protected by their institutions when such practices are revealed via student complaints or media coverage. Worse yet, too many winning coaches are allowed to intimidate and overrule athletic trainers and other support staff who are hired to serve athletes. Lavish financial and reputational investments in Division I basketball and football programs also corrupt athlete-protection efforts related to coach pedagogy. The label “winning at all costs” is the commonly used descriptor; it is an invitation to the abuse of athletes.

**Professional Misconduct.** The exercise of a coach’s or staff member’s power over the college athlete often crosses the line into professional misconduct. The U.S. Center for Safe Sport’s *SafeSport Code*<sup>6</sup> applies to open amateur and Olympic/Paralympic sport programs operated by entities outside the American education system. Unfortunately, the NCAA has not promulgated an analogous document that specifically defines professional misconduct by college coaches. The *SafeSport Code* defines and prohibits sexual or gender-related harassment, nonconsensual sexual contact or intercourse, sexual exploitation, bullying, hazing, emotional and physical abuse, and the mechanisms for college athletes to confidentially report such abuse. It also identifies the responsibility of all adults associated with the sport program to be mandatory reporters and specifies an adjudication process that could result in permanently banning the offending coach from employment in any covered sport programs. Absent national governance association rules, college coaches are left to the jurisdiction of their employer institutions, which may or may not have policies dealing with abusive behaviors. Institutional employee policies are often deficient in that they do not identify behaviors specific to athletic environments, such as the use of physical exercise for punishment or the types of verbal and emotional abuse commonly practiced by coaches. Athletic department policy

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<sup>6</sup> United States Center for SafeSport. SafeSport Code for the U.S. Olympic and Paralympic Movements. April 14, 2019. Retrieve at: <https://uscenterforsafesport.org/wp-content/uploads/2019/05/2019-SafeSport-Code-04.15.19-Hyperlinked.pdf>

manuals may or may not exist and may or may not include a code of professional conduct. If a coach's employment is terminated for such misconduct, no system prevents the coach from moving to another institution and continuing such behaviors. No NCAA system exists for processing college athlete complaints about such treatment. Some institutions lack such complaint processes for athletes.

**Institutions Often Enable Coach Misconduct.** Ignorance of the information required to competently coach elite athletes does not absolve the coach from a duty of care. The athletics manager is fully aware of the lack of credentials, so the onus is clearly on the higher education institution to address such deficiencies or be held liable for coach negligence. The answer is not a simple matter of institutions stiffening educational requirements on coach position descriptions used in the hiring process. Institutions often fail to enforce educational competency requirements if winning coaches lack them. They simply accept proven team success in lieu of peer-reviewed accredited credentialing.

A similar practice of looking the other way may prevail even if the institution has a complaint-reporting system for athletes. Administrators may pressure athletes to withdraw complaints with a promise that the administration will address verbal, physical, or emotional abuse and it will not continue. Athletics managers recognize that the coach's power can be so significant that few athletes have the courage to report mistreatment for fear they might lose their athletic scholarships, a starting role on the team, or a coach committed to their training and success. Even if the complaint advances to an investigation conducted outside the athletic department or by a so-called external independent agency (often an institution-friendly law firm), institutions seldom find fault with themselves. Instead, they protect the institutional brand from bad press or litigation by failing to find any wrongdoing despite reports of coach/employee misconduct (sexual or otherwise) toward athletes.

**Absence of Skilled Oversight and an Athletics Program Culture that Inhibits the Reporting of Misconduct.** Responsibility for oversight of coach pedagogy at the institutional level most often lies with an assistant athletic director who is charged with supervising multiple sport programs. This administrator seldom attends team practices and almost never attends separate strength and conditioning practices. Even if the administrator does attend such training sessions, the administrator is highly unlikely to have the training to recognize dangerous sport-specific or strength and conditioning practices. Few institutions can provide a certified athletic trainer for every practice and competition and all strength and conditioning sessions. Although a certified athletic trainer has the training to police the pedagogy of coaches and strength and conditioning specialists, this individual is subject to the same power imbalance as the college athlete. Trainers who observe misconduct may fear losing their jobs or a prestigious assignment to the team of a winning coach if they report the coach for dangerous workouts. Such institution-level realities cannot be overcome unless the national governance association installs mechanisms similar to the SafeSport program.

## STRENGTH AND CONDITIONING COACHES – ENFORCERS OR PERFORMANCE SPECIALISTS?

Multiple concerns surround the position of athletic program strength and conditioning coaches: (1) lack of accredited certification, (2) use as enforcers of physical penalties upon athletes, (3) hiring and supervision by head coaches instead of the medical team, (4) heightened concern about rhabdomyolysis, which results from unrealistic physical demands and a failure to acclimate before strenuous exercise, and (5) the use of strength and conditioning programs as a means of evading hour limits on athletics-related activities.

**Lack of Accredited Certification.** Not until 2014 did the NCAA require that strength and conditioning coaches “be certified and maintain current certification through a nationally accredited strength and conditioning certification program.”<sup>7</sup> The NCAA acknowledges the ineffectiveness of the rule in its recently released *Interassociation Recommendations: Preventing Catastrophic Injury and Death in Collegiate Athletes*:

*“The current state of credentialing across the strength and conditioning profession makes it difficult to ensure that all strength and conditioning professionals have the requisite competency to safely and effectively conduct conditioning sessions. Many organizations currently offer “strength and conditioning” credentials, though there is significant variability in both the content represented by these credentials and the rigor required to attain them. The complete absence of state regulation further complicates this landscape because there is no clearly established strength and conditioning scope of practice, and therefore, there is no authoritative accounting of the knowledge and skill domains required for the safe and effective practice of a strength and conditioning professional.” (p. 10)*

Further, the policy suggests (at page 11) that closing the credentials loophole would require an NCAA rule to specify certification through a program accredited by the National Commission for Certifying Agencies. No such NCAA rule currently exists.

**Role of “Enforcer.”** In the case of football and basketball especially, the head coach need not participate in the physical abuse of athletes. Assistant coaches and strength and conditioning coaches (the latter not counted against limits on the number of coaches) can “do the dirty work.” Unfortunately, athletes and coaches have bought into the false narrative that physical punishment is acceptable and extra conditioning workloads will only help. Even the NCAA knows this is not true. Adopted by the NCAA, the *Interassociation Recommendations: Preventing Catastrophic Injury and Death in Collegiate Athletes* state that “physical activity never should be used for punitive purposes. Exercise as punishment invariably abandons sound physiologic principles and elevates risk above any reasonable performance reward.” (p.10). The

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<sup>7</sup> National Collegiate Athletic Association. (July, 2019), 2019-20 NCAA Division I Manual, Section 11.1.5, p. 50.

NCAA FAQ document accompanying the recommendations provides more details about why exercise should not be punitive.

*The recommendations note that punishment workouts are based on intent and unsound physiological principles. However, beyond that, no formal definition is provided. Punishment workouts are more than just “extra exercise.” In general terms, punitive workouts are motivated by anger or frustration and may include a volume and intensity of exercise corresponding to that anger and frustration. Such volume and intensity is not part of a planned workout and is not based on sound principles of exercise science and physiology, but rather is used to make athletes “tougher” or to create a team culture of “accountability.” Punitive exercises are unplanned, spontaneous, are inconsistent with the conditioning level of the athlete or team, are not logically progressive in intensity, and are not sport-specific in their nature. Common sense should prevail.<sup>8</sup>*

**Hiring and Supervision by Head Coaches.** The *Interassociation Recommendations: Preventing Catastrophic Injury and Death in Collegiate Athletics* policy clearly states the problem with coaches hiring or supervising strength and conditioning staff members:

*An additional problem arises through the increasingly close alignment between sport coaches and strength and conditioning professionals, especially in the sport of football. Strength and conditioning professionals frequently are hired by the head football coach, and/or subject to their administrative oversight. This alignment is problematic because it contributes to the perception that strength and conditioning professionals are members of the coaching staff rather than independently credentialed strength and conditioning professionals. Such singular alignment and reporting are not consistent with this document. All strength and conditioning professionals should have a reporting line into the sports medicine or sport performance lines of the institution. This includes sport coaches who have responsibility for providing strength and conditioning services across all sport teams. (p. 11)*

**Rhabdomyolysis and Acclimatization Concerns.** The increased emphasis on strength and conditioning via the hiring of specialized personnel and an expectation that athletes will engage in year-round workouts, reflect coaches' efforts to achieve a winning edge. Presumably, adding strength and conditioning specialists to an athletics staff provides expertise that will keep athletes safe. Not so. Preventable non-traumatic deaths, occurring primarily during out-of-season or preseason workouts, remain a major concern. Rhabdomyolysis (overexertion syndrome that damages or destroys muscle fibers, releasing proteins into the bloodstream which can result in kidney failure) is life-threatening and totally preventable.

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<sup>8</sup> National Collegiate Athletic Association. *Interassociation Recommendations: Preventing Catastrophic Injury and Death in Collegiate Athletics July 19 2019: Frequently Asked Questions.* (p. 6). Retrieve at: [https://ncaaorg.s3.amazonaws.com/ssi/injury\\_prev/SSI\\_CatastrophicInjuryPreventionFAQs.pdf](https://ncaaorg.s3.amazonaws.com/ssi/injury_prev/SSI_CatastrophicInjuryPreventionFAQs.pdf)

Heat-related illnesses, such as heat stroke and heat exhaustion, dangerously elevate the body's core temperature and are similarly life-threatening but preventable. Yet we continue to see these occurrences in college athletic programs and they are not being successfully addressed:

- *Between 2001 and 2017, the ratio of nontraumatic to traumatic deaths in collegiate football was 5:1 — 35 nontraumatic deaths compared with seven traumatic fatalities.<sup>9</sup>*
- *Following a January, 2017 workout, which included over an hour of continuous push-ups and up-downs, three University of Oregon football players were hospitalized with rhabdomyolysis. A strength training coach whose only credential was a 21-hour strength training course was in charge of the session. He was suspended for one month following the incident and is now the head strength and conditioning coach at Florida State University.<sup>10</sup>*
- *On August 1, 2019, a Garden City Community College football player died of exertional heat stroke following a conditioning session in which players were asked to run 35 50-yard sprints with little rest, on a hot, muggy night.<sup>11</sup>*
- *In February of 2019, twelve University of Houston women's soccer players were hospitalized with rhabdomyolysis after everyone on the team was forced to perform 100 "up-downs" (similar to burpees) as a penalty for two players taking food designated for the football team.<sup>12</sup>*
- *On May 29, 2018, University of Maryland football player Jordan McNair died of heatstroke during a football workout supervised by strength and conditioning staff members. After warm-up, players were told to run ten 110-yard sprints.<sup>13</sup>*

**Evasion of Practice Limitations.** Division I football and basketball programs now operate year- around contrary to NCAA season limits and rules that exclude out of season team

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<sup>9</sup> Kristen L. Kucera, David Klossner Bob Colgate, Robert C. Cantu. Annual survey of football injury research: 1931-2017. Chapel Hill, NC: National Center for Catastrophic Sport Injury Research at the University of North Carolina at Chapel Hill for the American Football Coaches Association, National Collegiate Athletic Association, & National Federation of State High School Associations, February 16 2018.

<sup>10</sup> James, Crepea. Former Oregon Ducks football player Doug Brenner suing UO, Willie Taggart, NCAA for \$11.5 million. *The Oregonian*. (January 9, 2019) Retrieve at: <https://www.oregonlive.com/ducks/2019/01/former-oregon-ducks-football-player-doug-brenner-suing-uo-willie-taggart-ncaa-for-115-million.html>

<sup>11</sup> Steve Strunsky. College where N.J. football player died after practice announces reforms. His mom is skeptical. *NJ.com* (May 4, 2019) Retrieve at: <https://www.nj.com/education/2019/05/college-where-nj-football-player-died-after-practice-announces-reforms-his-mom-is-skeptical.html>

<sup>12</sup> Brittany Britto. UH launches investigation into rhabdo cases as new details emerge related to life-threatening condition. *Houston Chronicle* (June 13, 2019). Retrieve at: <https://www.houstonchronicle.com/news/education/article/UH-launches-investigation-into-rhabdo-cases-as-13992419.php>

<sup>13</sup> Heather Dinich. Sources: Maryland OL Jordan McNair showed signs of extreme exhaustion. *ESPN.com* (August 11, 2018) Retrieve at: [https://www.espn.com/college-football/story/\\_/id/24343021/jordan-mcnair-maryland-terraps-died-heatstroke-team-workout](https://www.espn.com/college-football/story/_/id/24343021/jordan-mcnair-maryland-terraps-died-heatstroke-team-workout)

practices, evading the spirit, if not the letter, of the rules. For the proffered reason of athlete safety, strength and conditioning coaches are permitted to be present at so-called voluntary athlete workouts during the summer and during the regular academic year when team practices are prohibited. The message is clear to athletes that participation in these strength and conditioning workouts is anything but voluntary (see discussion above on moral injury). Oftentimes, financial support for athletes' summer school attendance, cements the expectation. Indeed, Division I athletic programs have mastered the art of manipulating the athletes' academic programs to make sure the emphasis is on athletic performance rather than academic success. The allowable presence of a strength-and-conditioning coach, but no other coach, enables these year-round conditioning programs.

Coaches and athletic administrators defend year-round training, maintaining that going "academic light" during the semester when the sport is in season prevents sport from negatively affecting studies (fewer classes missed, athletes can take more difficult classes in the summer or during non-competition/less competition semester, etc.) by spacing out courses over twelve months. The justification would make sense if athletic departments were not openly engaged in academic fraud. Standard operating practice for high-priority-for-success sports programs is to waive academic admissions standards for talented athletes, the majority of whom are minority football and basketball players, which, in turn, begins a pattern of exploitation about which the institution is well aware. Athletic departments (rather than academic departments) conduct their own tutoring and advising programs – a direct conflict of interest. Athletes are encouraged or required to enroll in less demanding majors and courses, take courses with friendly professors or take online courses or "independent studies," which do not demand classroom attendance. Athletes take the minimum required number of courses to fulfill the "full-time student" status required for athletics eligibility during the regular academic year. Then they receive scholarships to attend summer classes to ensure they meet the requirements to show "normal progress" toward a degree.<sup>14</sup> This academic system is artfully branded as an athlete "benefit" to hide its true purposes - enabling coaches to facilitate year-round conditioning expectations and non-coach-directed sport practices, thereby disguising the academic exploitation of academically underprepared athletes and allowing coaches to better control the athletes' lives. The more rigorous the academic program and the more selective the institution, the greater is the insult to this group, whose members are ill-prepared to compete in the classroom with their non-athlete peers. These athletes are also isolated from the college educational experience within athletes-only computer centers and study halls and athletic

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<sup>14</sup> For further discussion on academic integrity and academic fraud, see Gerald Gurney, Donna Lopiano, Allen Sack, Mary Willingham, Brian Porto, David B. Ridpath, and Andrew Zimbalist. (2014) The Drake Group Position Statement: Guidelines for Academic Integrity in Athletics. (October 28, 2014) Retrieve at: <https://www.thedrakegroup.org/wp-content/uploads/2019/06/revised-guidelines-for-academic-integrity-in-athletics.pdf> and Gerald Gurney, Allen Sack, Donna Lopiano, Brian Porto, David B. Ridpath, Mary Willingham, and Andrew Zimbalist. (2016) The Drake Group Position Statement: Excessive Athletics Time Demands Undermine College Athletes' Health and Education and Require Immediate Reform. (July,2016). Retrieve at: <https://www.thedrakegroup.org/wp-content/uploads/2019/06/position-statement-time-demands-8-1.pdf>

facilities, so isolated that student-athlete life now effectively continues throughout the summer as well as during the regular academic year.

## ATHLETE MENTAL HEALTH

Athlete mental health concerns deserve discussion from three perspectives: prevention, awareness of mental health services, and treatment.

**Prevention.** The most recent research literature<sup>15</sup> related to the mental health of elite athletes supports the identification of the following controllable sport-specific factors that pose high risks to athlete mental health: (a) the stigma associated with seeking counseling, (b) lack of access to mental health services, (c) lack of early identification and referral of athletes with mental health symptoms, (d) insufficient sleep, (e) injury and the associated relationship of injury with premature return and overuse, (f) competitive failure, (g) pain, (h) concussion, (i) retirement, (j) overtraining, (k) body shaming pressure from coaches/team weigh-ins, and the three most common forms of non-accidental violence perpetuated by adults (usually coaches) with power over athletes: (l) psychological abuse, (m) physical abuse, and (n) sexual abuse.

The literature also teaches that the culture of sports can both complicate and enhance athlete mental health. Media and campus expressions of approval or excitement for exemplary athletic performance certainly reinforce athletes' feelings of self-worth. But the exposure of academic fraud and athlete exploitation or campus outrage over lavish athletic facilities or special treatment for athletes can produce the opposite effect. Cultural acceptance is important, and marginalization of athlete subgroups, as expressed by unequal treatment, unequal resources, socio-economic inequities and discrimination based on race, gender stereotyping, gender identity or expression, or sexual orientation create stressors that influence the mental health of these populations. To make matters worse, evidence indicates that black college athletes are more difficult to reach because (a) mental health services have been stigmatized in the African-American community, (b) these students feel that they don't have the time to access such services due to athletics, academic and social obligations, (c) especially among black males, talking about emotions is considered a sign of weakness, and (d) the combined stigmas associated with being black and a student-athlete often affect the "way they respond to and interact with other students, teachers and professors."<sup>16</sup>

Concerning prevention, the problems are (a) the failure of the NCAA to promulgate rules requiring institutions to address those factors that exacerbate athletes' mental health issues;

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<sup>15</sup> Claudia L. Reardon, et al. Mental health in elite athletes: International Olympic Committee consensus statement (2019). *British Journal of Sports Medicine*. Vol. 53, Issue 11, pp. 667-699. Retrieve at: <https://bjsm.bmjjournals.com/content/53/11/667>

<sup>16</sup> Ike Evans. (2017) Mental Health and the Black Student-Athlete. Hogg Foundation for Mental Health. Retrieve at: <http://hogg.utexas.edu/black-student-athlete-mental-health>

(b) the rules, if passed, do not extend to all member institutions; or (c) such rules are simply inadequate. For example, in 2019 Divisions I and II adopted rules requiring that mental health services be available to athletes and that educational materials about access to such services and other mental health resources be provided to athletes, coaches, and athletic personnel. But Division III has not adopted that rule.<sup>17</sup> The NCAA does not require certification of sport coaches or strength and conditioning coaches, nor does it have an enforceable “code of conduct” that prohibits coaches from engaging in psychological, physical, or sexual abuse, body shaming, or team weigh-ins. Individual NCAA member institutions cannot control powerful, winning coaches, and the void created by the absence of NCAA rules leaves athletes unprotected from coach violence. The NCAA has failed to control athlete time demands and the result is often athlete sleep deprivation. The NCAA has adopted rules related to concussion protocols and has reduced two-a-day practices but has not limited the number of full-pad or contact practices in football during the championship and non-traditional seasons despite knowledge that such limits would reduce injuries in general and concussions in particular. Although the NCAA has published “best practices” with regard to year-round football practice contact, only a few of these “recommendations” have been adopted by the NCAA as mandated football practice limitations.<sup>18</sup> It is simply insufficient to require the provision of athlete mental health services without also addressing the factors that create the need for such services. We know what the controllable factors are, but the NCAA has not adopted rules to mandate “best practices” or to prohibit practices that endanger the mental health of athletes.

**Awareness of Mental Health Services.** Effective in 2019-20, Divisions I and II are required to provide mental health services to athletes. Notably, the rule is not applicable to Division III.

**16.4.2 Mental Health Services and Resources.** *An institution shall make mental health services and resources available to its student-athletes. Such services and resources may be provided by the department of athletics and/or the institution’s health services or counseling services department. Provision of services and resources should be consistent with the Interassociation Consensus: Mental Health Best Practices. In addition, an institution must distribute mental health educational materials and resources to student-athletes, including those transitioning out of their sport, coaches, athletics administrators and other athletics personnel throughout the year. Such educational materials and resources must include a guide to the mental health services and resources available at the institution and information regarding how to access them.<sup>19</sup>*

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<sup>17</sup> Id., 2019-20 NCAA Division I Manual, Section 16.4.2, pp. 232-233; 2019-20 NCAA Division II Manual, Section 16.4.1, p. 172.

<sup>18</sup> National Collegiate Athletic Association Sports Science Institute. Year-Round Football Practice Contact Recommendations. Retrieve at: <http://www.ncaa.org/sport-science-institute/year-round-football-practice-contact-recommendations>

<sup>19</sup> National Collegiate Athletic Association. 2019-20 NCAA Division I Manual, Section 16.4.2, p. 232-233; National Collegiate Athletic Association. 2019-20 NCAA Division II Manual, Section 16.4.1, p. 172.

Most colleges and universities have a student health center that provides health and counseling services, but such centers have varying resources and staff expertise. The purpose of the newly issued NCAA publication, *Interassociation Consensus: Mental Health Best Practices*, is to “provide athletics and sports medicine departments - regardless of size and resources -- with recommendations for supporting and promoting student-athlete mental health.”<sup>20</sup> The NCAA Sports Science Institute web site contains numerous resources that institutions may choose to use to fulfill this educational materials distribution obligation.<sup>21</sup> Indeed, the provision of educational resources is a valuable function of the NCAA’s Sports Science Institute. However, this mental health initiative includes no athlete protection “teeth.” For example, the NCAA could require every coach to be “mental health” certified by completing a NCAA Sports Science Institute online training program or by complying with an NCAA Coaches “Code of Conduct” that prohibits psychological, physical, or sexual abuse and includes a similar training/certification requirement. The NCAA has long required coaches to be certified via a standardized NCAA developed national test on recruiting regulations before being allowed to recruit.<sup>22</sup> Certainly, a required test on coach understanding of mental health best practices would be a reasonable expectation.

**Treatment.** The NCAA’s *Interassociation Consensus Document: Mental Health Best Practices*<sup>23</sup> specifies that treatment providers be clinical licensed mental health care professionals whose work would be coordinated by the athletic trainer and team physician. The NCAA should be commended for recommending that the athlete be allowed to self-refer to a list of licensed practitioners provided by the athletics medical teams, thereby promising patient confidentiality that may be critical. The NCAA also properly cautions the institution to carefully examine the circumstance in which it hires an individual to work with athletes who is trained in performance enhancement, but is not licensed to provide mental health services. The medical team must carefully consider whether an athlete’s performance deficiency has an underlying mental health disorder. Ideally, if the institution is going to hire a sports performance specialist and successfully avoid the possibility of that position attempting to provide mental health services without a license, the individual should be qualified to do work across the spectrum of the most common issues presented by college athletes. Such an individual would have a Ph.D. or Psy.D. in counseling or clinical psychology, or be a licensed independent clinical social worker with a certification in sport social work (Alliance of Social Workers in Sports), and also be an AASP Certified Consultant (Association for Applied Sport Psychology).

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<sup>20</sup> Ibid, p. 2.

<sup>21</sup> National Collegiate Athletic Association. Sports Science Institute: Mental Health Educational Resources. See <http://www.ncaa.org/sport-science-institute/mental-health-educational-resources>

<sup>22</sup> Ibid.; See NCAA Division I Manual, Section 11.5, p. 53.

<sup>23</sup> National Collegiate Athletic Association. (2019) Interassociation Consensus Document: Mental Health Best Practices. Retrieve at:

[http://www.ncaa.org/sites/default/files/SSI\\_MentalHealthBestPractices\\_Web\\_20170921.pdf](http://www.ncaa.org/sites/default/files/SSI_MentalHealthBestPractices_Web_20170921.pdf)

## INSTITUTIONAL POLICY AND OVERSIGHT SYSTEMS

If one looks up “risk” in any collegiate athletics department policy handbook, one is likely to find that any requirements will be limited to facilities and equipment. One is more likely to see a policy demanding that all college athletes exhibit sportsmanship than a policy prohibiting coaches from using exercise as punishment or engaging in other behaviors that pose health risks to the college athlete. The institutional failures to protect athlete health and well-being are grounded in eight factors: (1) acknowledged impotence in controlling the practices of powerful winning coaches, (2) lack of institutional/athletic department policy and oversight protections, (3) inadequate insurance protection, (4) the absence of national or conference rules that force institutions to install such protections, (5) denial of any institutional fault that damages its or the athletic department’s brand or increases vulnerability to legal liability or lack of athlete recruiting success, (6) athlete fear of retaliation that silences the possibility of their complaints, (7) an anachronistic athletic culture that celebrates “tough” coaches and coaching practices as builders of character and winning teams, and (8) the absence of whistleblower protection or mandatory reporting of sport personnel behaviors that endanger athletes.

**Impotence in Controlling Powerful Coaches.** College presidents have clearly indicated they have limited power to produce change on their own campuses. Eighty percent of Football Bowl Subdivision college presidents believe they are unable to control their commercialized athletic programs.<sup>24</sup> Too many presidents have lost their jobs challenging major donors, trustees and legislators who want to win football and basketball contests. Coach salaries are out of control, and college presidents know they are at risk when the winning football coach can easily go somewhere else if salary demands are not met. If the coach leaves, the president is blamed. In such an environment, challenging a powerful and winning coach about the efficacy of his or her potentially harmful coaching practices is considered by many to be tantamount to voluntary termination. Even when policies exist regarding the primacy of medical team decision-making, the job of the athletic trainer or physician may be at risk if the trainer or physician challenges a coach.<sup>25</sup> In a 2019 National Athletic Trainers Association survey of its membership, 19% of college athletic trainers reported that a coach played an

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<sup>24</sup> Knight Commission on Intercollegiate Athletics. (2009) Quantitative and Qualitative Research with Football Bowl Subdivision University Presidents on the Costs and Financing of Intercollegiate Athletics Report of Findings and Implications. Retrieve at: [http://www.knightcommissionmedia.org/images/President\\_Survey\\_FINAL.pdf](http://www.knightcommissionmedia.org/images/President_Survey_FINAL.pdf)

<sup>25</sup> Emily Kroshus, Christine M. Baugh, Daniel H. Daneshvar, Julie M. Stamm, R. Mark Laursen, and S. Bryn Austin. (2015) Pressure on Sports Medicine Clinicians to Prematurely Return Collegiate Athletes to Play After Concussion. *Journal of Athletic Training.* 2015 Sep; 50(9); 944-951. Retrieve at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4639885/>. ESPN News Services/Associated Press. Franklin denies ex-Penn State doctor’s allegations. *ESPN.com.* August 27, 2019. Penn State team doctor and director of sports medicine maintains he was terminated after reporting pressure on multiple occasions from head football coach to return athletes to play. Retrieve at: [https://www.espn.com/college-football/story/\\_id/27470287/ex-psu-doctor-alleges-pressure-clear-players?platform=amp](https://www.espn.com/college-football/story/_id/27470287/ex-psu-doctor-alleges-pressure-clear-players?platform=amp)

athlete who had not been cleared to participate, 36% of respondents reported that a coach influenced the hiring and firing of sports medicine staff, and 58% reported being pressured by a coach or administrator to make a decision “not in the best interest of the student-athlete’s health.”<sup>26</sup>

**Lack of Policy and Oversight Protections.** If the college president is powerless to control winning coaches, who will? College athlete deaths and near deaths due to rhabdomyolysis and heat-related illness have focused the spotlight on the athletics medical team – the doctors and certified athletic trainers with credentials that cannot be ignored by the public or powerful stakeholders. Although the *Interassociation Recommendations: Preventing catastrophic injury and death in collegiate athletes* call for coaches and strength and conditioning specialists to “have a reporting line into the sports medicine or sport performance lines of the institution,” the NCAA rulebook does not require that arrangement and neither do the recommendations. In response to the question of whether institutions must implement the recommended reporting line by August 1, 2019, the implementation date of the recommendations, it is clear from the following NCAA response that the document is merely recommending an institutional standard of care:

*August 1, 2019 is the starting line – not the finishing line – for school adoption of the recommendations in this document. Member schools should have begun the process of aligning with the document by August 1, 2019, utilizing the Checklist as a guide. This includes beginning the process of determining alignment strategies with strength and conditioning professionals.*<sup>27</sup>

Assuming institutions adopt the recommended “medical model,” the public should know that doctors are not going to be on-campus attending team practices. Few institutions have sports medicine MDs within school health centers and even if they do, a physician would not be used to cover practice sessions. Most institutions do not have a sports medicine physician on campus. It is more typical for the athletic department or the campus health center to enter into an agreement with an external sports medicine specialty group, usually one with a focus on orthopedic issues. Many schools are simply too small to have any MD on staff. Thus, the only licensed medical professionals in almost every athletic department are the NATA certified athletic trainers who, like registered school nurses, operate under “doctors’ orders.” The NCAA does have a rule that addresses athletic trainer and sports medicine staff authority:

#### *13.11.3.8.2 Strength and Conditioning Coach First Aid/CPR Certification and Authority of Sports Medicine Staff—Sports Other Than Football. A strength and conditioning coach*

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<sup>26</sup> Paula Lavigne.. Survey: NCAA coaches’ clout concerns athletic trainers. *ESPN.com*. June 25, 2019. Retrieve at: [https://www.espn.com/espn/otl/story/\\_/id/27048906/survey-ncaa-coaches-clout-concerns-trainers](https://www.espn.com/espn/otl/story/_/id/27048906/survey-ncaa-coaches-clout-concerns-trainers)

<sup>27</sup> National Collegiate Athletics Association. Interassociation Recommendations: Preventing Catastrophic Injury and Death in Collegiate Athletics July 19, 2019. Frequently Asked Questions. (p. 4). Retrieve at: [https://ncaaorg.s3.amazonaws.com/ssi/injury\\_prev/SSI\\_CatastrophicInjuryPreventionFAQs.pdf](https://ncaaorg.s3.amazonaws.com/ssi/injury_prev/SSI_CatastrophicInjuryPreventionFAQs.pdf)

*who conducts voluntary weight-training or conditioning activities is required to maintain certification in first aid and cardiopulmonary resuscitation. If a member of the institution's sports medicine staff (e.g., athletic trainer, physician) is present during voluntary conditioning activities conducted by a strength and conditioning coach, the sports medicine staff member must be empowered with the unchallengeable authority to cancel or modify the workout for health and safety reasons, as he or she deems appropriate.<sup>28</sup>*

Only football is required to have a certified athletic trainer in attendance at "voluntary" conditioning activities.<sup>29</sup> The policy contains a big "if" regarding the presence of a medical team member for such activities in all other sports. Although the policy confers authority on medical staff, one must question whether an athletic trainer believes it is in the best interest of his or her continued employment to confront a powerful coach if the trainer observes a drill or conditioning activity that appears harmful to athlete safety. The policy is also limited to "voluntary conditioning sessions," when no coaches are present, rather than applying to all team practices and required conditioning sessions.

Few schools can afford large athletic training staffs. Many have one to three full-time trainers supplemented by student assistants, and still others contract for such services with third parties. Dependence on athletic trainer oversight, considering the current workloads of these positions, is problematic, especially if the trainers are expected to cover every practice session, every competition, and to attend separate strength and conditioning sessions. Further, at many institutions, medical care assignments are based on whether a sport is a revenue sport or a nonrevenue sport, as opposed to providing equitable care for all sports or being based on whether a sport has a high injury risk. Trainers will rightfully argue that multiple solutions are required: (a) increased funding to permit the hiring of more certified athletic trainers, (b) the imposition of stronger credentialing and state licensure requirements for strength and conditioning coaches, (c) more stringent credentials for athletic coaches, training programs for supervisors of sport programs, and (d) and approval by the medical team of all sport coach-created and strength and conditioning coach-created conditioning programs.

Oversight over sport programs in larger and better resourced athletic programs is relegated to one or more assistant athletic directors with multiple sports in their assignment portfolio. Few of these sports managers, however, are trained to identify inappropriate strength or conditioning demands. Sports management degrees do not require courses in biomechanics or exercise physiology. Similarly, athletic directors are not always trained to promulgate coach conduct and pedagogy policies that identify impermissible practices.

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<sup>28</sup> 2019-20 NCAA Division I Manual, p. 142.

<sup>29</sup> Ibid. The same rule exists for football, but attendance by a member of the institution's sports medicine staff is required (13.11.3.7.4).

Thus, although lines of authority exist on paper to identify appropriate personnel with knowledge to address potentially harmful practices, considerable policy and personnel gaps still prevent adequate athlete protection. No magic model exists in which a powerful and autonomous student health center independent of the athletic department hires and supervises a sufficient number of personnel trained in sports medicine.

**Inadequate and Selective Insurance Protection.** The NCAA, its member conferences, and its member institutions derive billions of dollars from television media rights for regular season and post-season championship events. The NCAA provides a type of catastrophic injury insurance for all 430,000 NCAA athletes. Its member institutions must certify that all of their athletes are covered by athletic injury insurance as a condition of participation. The minimum amount of such coverage must be equal to or greater than the deductible of the NCAA Catastrophic Injury Insurance Program. The member institution may provide medical and related expenses and services to a student-athlete, including paying for athletic injury insurance. The operative word, though, is "may." Neither the NCAA nor its member institutions are "required" to provide primary athletics injury insurance for athletes. Most college athletic programs require parents and student-athletes to carry their own insurance as a condition of permitting athletic participation, and most require athletes or their parents to pay for deductibles specified by those policies. College athletic departments usually carry secondary policies, and some cover the cost of deductibles. A limit of two years of benefits from the date of the injury is an insurance industry norm. Thus, most college athletes pay for their own primary insurance and deductibles, and if medical expenses occur after the two-year coverage period, the athlete must absorb that expense.

The NCAA allows some athletes from some institutions to be better protected from medical expenses than others. Although the NCAA has 1102 members, only six percent, the richest sixty-five member institutions of the Power Five FBS conferences have the autonomy to provide additional benefits to their athletes that other members may not offer or to require the funding of specified medical services. For example, the following rule, adopted in 2018, only applies to these sixty-five institutions and results in athletes from these institutions being totally insulated from incurring any athletic injury expense:

*16.4.1 Medical Coverage. [A] An institution shall provide medical care to a student-athlete for an athletically related injury incurred during his or her involvement in intercollegiate athletics for the institution. The period of care for such an injury shall extend at least two years following either graduation or separation from the institution, or until the student-athlete qualifies for coverage under the NCAA Catastrophic Injury Insurance Program, whichever occurs first. Each institution has the discretion to determine the method by which it will provide medical care, the method by which it*

*determines whether an injury is athletically related and any policy deemed necessary for implementing the medical care.<sup>30</sup>*

These special medical expense benefits will probably be provided via the athletic department's purchase of insurance.

Some athletes receive disability/loss-of-value insurance coverage. Each year the NCAA distributes monies referred to as the Student Assistance Fund (SAF) to conferences for distribution to their respective member institutions. The purpose of this fund is to "assist student-athletes in meeting financial needs that arise in conjunction with participation in intercollegiate athletics, enrollment in academic curriculum or to recognize academic achievement."<sup>31</sup> Typically, the fund has been used to finance athlete travel to return home upon death of a family member or similar extraordinary circumstances. Recently, a number of institutions have used these funds to provide disability/loss-of-value insurance to star players.<sup>32</sup> This insurance, often costing in the \$30,000 to \$50,000 range per policy, provides pay-outs that could be in the millions of dollars if an injured player is unable to play again. Most athletes who are predicted to be selected high in the professional draft take out loans to purchase such coverage and pay off the policy when they sign professional contracts.<sup>33</sup> If they are not drafted, though, they must pay off the policy. Thus, institutions that pay for these policies with NCAA-furnished SAF funds are providing selected athletes with a significant benefit. Questions have been raised about whether provision of such a benefit is proper and whether the remaining amount in the SAF is sufficient to meet the needs of athletes dealing with emergencies.<sup>34</sup> Most observers acknowledge that such selective use of the SAF is a way of persuading an athlete to return to school for another season of collegiate eligibility instead of entering the professional draft, not a reflection of concern for athlete health and wellness.

**Absence of National or Conference Rules Mandates.** A subsequent section of this paper addresses the responsibility of national and conference governance organizations for athlete safety, health, and wellness. No governance-association rules mandate institutional

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<sup>30</sup> NCAA Division I Manual, p. 230.

<sup>31</sup> National Collegiate Athletic Association. 2019 Division I Revenue Distribution Plan. Retrieve at: <https://www.google.com/search?client=firefox-b-1-d&q=NCAA+Student+Assistance+Fund>

<sup>32</sup> John Infante. No compliance issue with Winston insurance purchase. *AthleticScholarships.net*. Retrieve at: <https://www.athleticscholarships.net/2014/08/06/no-compliance-issue-with-winston-insurance-purchase.htm> Kristi Dosh. (2015) Assistance funds pay tab to insure stars. *Sports Business Journal*. January 12, 2015. Retrieve at: <https://www.sportsbusinessdaily.com/Journal/Issues/2015/01/12/Colleges/Student-Assistance-Fund.aspx>

<sup>33</sup> National Collegiate Athletic Association. Loss-of-value insurance FAQs. Retrieve at: <http://www.ncaa.org/about/resources/insurance/loss-value-insurance-faqs>

<sup>34</sup> For example see: Kristi Dosh. (2015) Assistance funds pay tab to insure stars. *Sports Business Journal*. January 12, 2015. Retrieve at: <https://www.sportsbusinessdaily.com/Journal/Issues/2015/01/12/Colleges/Student-Assistance-Fund.aspx>; Frank Darras. (2016) The Challenges of Funding Elite College Athlete Disability Insurance. *TheLegalBlitz.com*. March 28, 2018. Retrieve at: <http://thelegalblitz.com/blog/2016/03/28/the-challenges-of-funding-elite-college-athlete-disability-insurance/>

member compliance with best practices and include an enforcement system. No entity is policing the athlete protection system. Thus, it is a pipe dream to expect individual institutions to self-regulate, always acting in the best interest of the athlete. Coaches' decide to play athletes before they are medically cleared, to engage in extraordinary sport drill or conditioning demands, or to require that more time be spent practicing and preparing for games because of the pressure to win. Winning enables the institution to reap brand recognition and media attention, gate receipts and donor contributions. This commercial pressure also explains why expenditures on coaches' salaries and benefits, sport-related personnel, recruiting, marketing, promotions, and the building of lavish facilities take precedence over a sufficient number of athletic trainers, and provision of adequate athletic injury insurance with long term coverage. It also explains why requiring better coaching credentials or funding better professional development of coaches and strength and conditioning specialists is a similarly low priority. No governance entity tells the institutions that athlete health protection must be a priority.

**Protection of Brand and Fear of Legal Liability/Recruiting Failure.** When significant harm to athletes occurs, institutions often go to extraordinary lengths to hide details from public view. They fear that information transparency will result in lawsuits and bad press that will, in turn, adversely affect athletic recruiting, general institutional admissions, alumni contributions, and athletic ticket sales. Higher education is an educational product industry and athletics is an entertainment product industry. Like their for-profit counterparts, college and university brands have become sacred – more important than honesty, academic integrity, and the health and protection of students. When an athlete dies or media reports or lawsuits reveal the existence of misconduct, the response of most institutions is seldom the admission of error and system change. Rather, whistleblowers are fired or lower-level employees are thrown under the bus to protect powerful coaches or administrators. The institution's deep pockets and well-funded insurance policies frequently fuel an army of attorneys who try to outlast often under-resourced complainants. If it appears that the institution will lose in court, multi-million-dollar settlements with confidentiality agreements are offered to stop the reputational bleeding. So-called independent investigations arranged by the institution in the case of athlete deaths or significant episodes of rhabdomyolysis, give the public the illusion of a responsible university response but are often conducted by law firms "friendly" to the institution. These investigations frequently find no wrongdoing. No governance organization requires an independent, unbiased and expert investigation, and no transparency of findings exist to foster public trust.

**Athlete Fear of Retaliation.** College athlete victims have the most at stake and are the least likely to report coach or other abuse. Every athlete knows that the coach holds the keys to the kingdom: decisions about the renewal of athletic scholarships, whether the athlete will be in the starting line-up, and how much time, attention, and instruction the athlete receives. Every athlete also knows that the coach can administer physical and psychological punishment, the latter in artful ways. Athletes know about the power differential between athletes and coaches, and athletics administrators do little to calm these fears. Seldom does an athletic director begin an academic year by reviewing department policy about unacceptable coach

pedagogy or behavior with coaches and athletes in the same room, instructing athletes how to report such transgressions and assuring them of no retaliation. It just does not happen.

**Anachronistic Athletic Culture of “Toughness.”** Historically, the culture of athletics has embraced hazing and other team initiation rituals and has accepted “tough coach” practices, such as harsh communication, physical handling of students, and physical punishment in response to errors. Even though school environments generally are now intolerant of bullying, hazing and verbal, physical, and mental abuse, the athletics culture has not caught up. Further, the focus of athletics on the physical body elevates the probability of questionable coaching practices related to inappropriate congratulatory and skill-instruction touching, frequently without athletes’ permission. Such behavior is particularly risky as our society becomes more focused on sexual harassment. Add the lack of adequate credentials for coaches and strength and conditioning specialists and the result does not bode well for the health and well-being of athletes.<sup>35</sup> Although the Drake Group believes that most coaches act responsibly and in the best interests of their players, unacceptable pedagogy still poses a health risk to college athletes. The coaching profession is without clear and consistent standards and, absent such guidelines, too many coaches, albeit a minority, are crossing the line that separates good practice from harm to athletes.

**Absence of Whistleblower Protection and Mandatory Reporting.** In open amateur, non-school sport in the United States, a federal law (2018 Safe Sport Act, S. 534) requires criminal background checks, coach, staff, and volunteer adult education delivered by an independent external agency (United States Center for Safe Sport, “USCSS”), and that all adults working in the sport environment report the emotional, physical, or sexual abuse of athletes. This law also establishes mechanisms for athletes and others to submit reports to the USCSS with an ethical firewall established for the USCSS to receive and investigate complaints. Although Title IX, the federal law that prohibits sexual harassment and other forms of discrimination on the basis of sex applies to educational institutions that receive federal funds, it does not have the scope of protection custom-tailored for the sport environment or any comparable independent agency like the USCSS. Institutions and their athletic departments can promulgate their own policies that offer whistleblower protection and impose mandatory reporting. But these whistleblower protections and reporting regimes generally do not exist, and no collegiate athletic governing organizations mandate them.

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35 For a more extensive discussion of coaching misconduct, see Donna Lopiano, Gerald Gurney, Fritz Polite, Brian Porto, David B. Ridpath, Allen Sack, and Andrew Zimbalist. (2016) The Drake Group Position Statement: Athletic Governance Organization and Institutional Responsibilities Related to Professional Coaching Conduct. (December, 2016). Retrieve at <https://www.thedrakegroup.org/wp-content/uploads/2019/06/professional-conduct-of-coaches-final-dec-3.pdf>

## NATIONAL AND CONFERENCE ATHLETICS GOVERNANCE ORGANIZATIONS POLICY AND OVERSIGHT SYSTEMS

**Refusal to Govern in the Area of Athlete Health and Wellness Protection Unless Threatened by Litigation.** The meaning of “governance” is significant. A governance organization makes rules that require member institutions to act in certain ways, or it controls the actions of its members by prohibiting certain practices so as to achieve the purposes of the organization. The NCAA was founded in 1906 because the President of the United States threatened to ban college football due to football player deaths if colleges did not organize to protect students from dangerous athletics practices.<sup>36</sup> Despite this, the NCAA has claimed in court documents that it is not legally responsible for protecting student-athletes.<sup>37</sup> It cites Article 2.2.3 of the NCAA Constitution, which states: “It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes” to support a contention that the institution, not the NCAA, is responsible for athletes’ health and well-being. Despite this court claim, the NCAA recently acknowledged its responsibility in its settlement of multiple consolidated concussion cases<sup>38</sup>, hereafter referred to as the Arrington Settlement. In that settlement the NCAA committed to requiring every NCAA member institution to:

- conduct pre-season baseline concussion testing<sup>39</sup> prior to allowing an athlete to participate in any sport;
- prohibit any athlete diagnosed with a concussion from returning to play or participating in any practice or competition on the same day the concussion occurred;
- prohibit return to practice or competition following a concussion until cleared by a physician;
- require the presence of medical personnel trained in the diagnosis, treatment and management of concussion at all Division I, II or III practices and competitions in contact sports;
- require annual certification that the member school has a concussion management plan in place;

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<sup>36</sup> Gerald Gurney, Donna Lopiano, and Andrew Zimbalist. (2017) *Unwinding Madness: What Went Wrong with College Sports and How to Fix It*. Brookings Institution Press: Washington, D.C.

<sup>37</sup> Nathan Fenno. (2013) In court filing, NCAA denies legal duty to protect athletes. *The Washington Times*. (December 18, 2013) Retrieve at: <http://www.washingtontimes.com/news/2013/dec/18/court-filing-ncaa-denies-legal-duty-protect-athlet/>

<sup>38</sup> United States District Court for the Northern District of Illinois Eastern Division. Class Action Settlement Agreement and Release. National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation )MDL No. 2492, Master Docket No. 1;13-ev-09116. Retrieve at: <https://www.documentcloud.org/documents/4478836-NCAA-Student-Athlete-Concussion-Injury.html>

<sup>39</sup> Baseline concussion testing is a pre-season exam of an athlete’s balance and brain function, learning and memory skills, ability to pay attention or concentrate, speed of thinking and problem-solving and whether concussion symptoms are present at the time of testing.

- require all member schools to report concussion incidents and their resolutions to the NCAA; and
- provide NCAA approved concussion education and training to student-athletes, coaches and athletic trainers prior to every sport season

In addition, the Arrington Settlement mandates that the NCAA must:

- establish a reporting process in which athletes, their parents or other third parties can report concussion management concerns; and
- provide, at the beginning of each academic year, educational materials for faculty regarding educational accommodations that accommodate the needs of athletes who have sustained a concussion.<sup>40</sup>

Clearly, the NCAA had the knowledge, authority and jurisdiction to take these actions without being required to do so under the terms of a court approved settlement. But, focused on avoiding legal risk, it failed to do so. Only in response to legal action did the NCAA make such an acknowledgement.

**Why National Governing Bodies Must Exercise Rule Making Authority to Protect Athletes.** The Drake Group contends that the high-risk competitive environment of intercollegiate athletics requires the NCAA to mandate responsible actions by its members to protect the health and well-being of college athletes. This national governance organization responsibility is in addition to the responsibilities of the institutional member and athletic department employees. Each entity has different, but complementary authorities to prevent harm. All three must combat the pressures of commercialized athletic programs to produce winning teams, usually without certified coaches and other personnel who are trained to recognize and mitigate health risks. The college athletics environment threatens to sacrifice the well-being of athletes on the altar of victory. It will take the proverbial village to protect athletes in this reality.

The NCAA controls the rules of play in every sport, thereby influencing any health risk associated with such rules. Yet, the NCAA has been relatively passive in this regard because member institutions and coaches resist change. The reasons for the resistance range from nostalgia to maintaining the “entertainment value” of sport even though we know we can take a great deal of contact out of football, ice hockey, lacrosse, soccer, and rugby with fairly simple rules changes. We also know we can impose rules on the conduct of practices, such as reducing the number of days in which teams are allowed to conduct contact drills, prohibiting tackling to the ground, and reducing full-field scrimmages. Many of these possible changes are recommended via consensus sport science statements, or we know they will work because they are the result of experimentation and research, with much of this experimentation being performed by the Ivy League. It is fair to say that an aggressive pursuit of such changes outside the Ivy League doesn’t exist.

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<sup>40</sup> Arrington Settlement, pp. 32-34.

In addition, the NCAA has full knowledge of the causes of and how to prevent physical and mental harm because it obtains information from sport-science authorities, collects and analyzes injury and other information from member institutions, commissions research studies, and employs a chief medical officer. The NCAA monitors both risk and best practices recommended by medical authorities and appoints committees of experts and stakeholders (Committee on Competitive Safeguards and Medical Aspects of Sport) to address the need for governance action. The NCAA also requires its members to report fatalities, near-fatalities, and catastrophic injuries on an annual basis and to participate in an annual college athlete health and safety survey. But it does not even require its members to participate in the NCAA Injury Surveillance Program, the preeminent data-collection mechanism used to produce peer-reviewed research on college athlete injuries.<sup>41</sup> Similarly, the NCAA regularly convenes experts to produce consensus statements defining “best practices,” but it does not require members to follow these “best practices,” even though it could. In the case of athlete health and safety, the NCAA consistently shirks governance responsibility.

**How should the NCAA carry out its responsibility for athletes’ health, safety, and well-being?** We know national organizations are unable to directly supervise athletics programs at the institutional level. Rather, the national organization exercises its duty of care through the adoption and enforcement of rules that require (a) compliance with certain conditions of initial and continuing institutional or conference membership, (b) the adoption of specific policies and procedures by all member institutions and (c) adherence by all athletic department employees to behavioral or professional preparation or certification standards. It is simply not enough for the NCAA to state a constitutional “principle” without adopting an enforceable rule that defines specific “do’s and don’ts” in these three areas. It must govern.

**The NCAA’s Mixed Messages to Members.** In August of 2014, the NCAA published the 25<sup>th</sup> edition of its *Sports Medicine Handbook*. The preface uses convoluted reasoning to maintain that the *Handbook*’s guidelines are NOT intended to establish a legal standard of care and are NOT mandated by the NCAA, but that they MIGHT be considered a legal standard of care:

*The health and safety principle of the National Collegiate Athletic Association’s constitution provides that it is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes. To provide guidance in accomplishing this objective and to assist member schools in developing a safe intercollegiate athletics program, the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, in conjunction with the NCAA Sport Science Institute, creates a*

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<sup>41</sup> National Collegiate Athletics Association. NCAA Injury Surveillance Program. Retrieve at: <http://www.ncaa.org/sport-science-institute/ncaa-injury-surveillance-program>

*Sports Medicine Handbook. The committee has agreed to formulate guidelines for sports medicine care and protection of student-athletes' health and safety for topics relevant to intercollegiate athletics, applicable to a large population of student-athletes, and not accessible in another easily obtainable source.*

*This handbook consists of guidelines for each institution for developing sports medicine policies appropriate for its intercollegiate athletics program. In some instances, accompanying best practices, and references to sports medicine or legal resource materials are provided for further guidance. These recommendations are not intended to establish a legal standard of care that must be strictly adhered to by member institutions. In other words, these guidelines are not mandates that an institution is required to follow to avoid legal liability or disciplinary sanctions by the NCAA. However, an institution has a legal duty to use reasonable care in conducting its intercollegiate athletics program, and guidelines may constitute some evidence of the legal standard of care.<sup>42</sup>*

Despite the institutional “guideline/not mandated” disclaimer, portions of the policies contained therein have been adopted by the membership as legislative mandates, sometimes only by one division or subdivision of the membership and typically only when public pressure to do so was extraordinary (e.g., concussion protocol legislation, authority of medical teams following the death of athletes, the previously discussed mental health legislation, etc.).

Prior to the establishment of the online NCAA Sports Science Institute (SSI), the Sports Medicine Handbook was the primary resource for informing member institutions on “best practices,” with all information in one location. But this publication has not been updated since 2014. Besides, the SSI online appears to be about to take over this function. Therefore, institutions now find locating athlete protection “best practices” complicated. The SSI online area is structured by strategic priority topic.<sup>43</sup> Within each topic are four categories of

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<sup>42</sup> National Collegiate Athletic Association (2014). 2014-15 Sports Medicine Handbook. August, 2014 Twenty-Fifth edition. Retrieve at: <https://www.ncaapublications.com/p-4374-2014-15-ncaa-sports-medicine-handbook.aspx>

<sup>43</sup> The SSI nine strategic priorities are (1) cardiac health, (2) concussion, (3) doping and substance abuse, (4) mental health, (5) nutrition, sleep and performance, (6) overuse injuries and periodization, (7) sexual assault and interpersonal violence, (8) athletics health care administration, and (9) data driven decisions. Other topics are listed under “other health and safety issues” such as air quality, sickle cell trait, skin safety and inclement/hazardous weather. Also located under “Other...” are the Sports Medicine Handbook as well as consensus policies that don’t fall under a specific topic such as the “Preventing Catastrophic Injury and Death in Collegiate Athletes.” Retrieve at: <https://www.ncaa.org/sport-science-institute/topics> See also “About the SSI” strategic plan in Sport Science Institute area of the NCAA web site. Retrieve at: <http://www.ncaa.org/sport-science-institute/about-ssi>

materials: (1) educational resources, (2) best practices for campuses, (3) data and research and (4) summits and task forces. Not all topics have “best practices.” If an institution wants to know its “best practice” obligations, it must conduct an SSI search “to produce a list of “best practice” articles but such a search also produces best practice articles about topics such as recruiting. SSI may be a good content library but member institutions are not well-served with regard to consolidation of critical “best practice” materials. Granted, the SSI online resource is less costly, easily updated, and more expandable than a print publication. However, the overriding problem remains. Even if a search of SSI reveals institutional or individual “best practices,” they are not mandated or enforced via NCAA rules.

**Athlete Health Protection Rules Should Not Be Subject to Membership Vote or Based on Litigation Risk or Brand Reputation.** The Drake Group maintains that athlete protection policies should not be subject to approval via membership vote. Membership votes may subordinate athlete health and wellness to considerations such as cost, the desire of powerful coaches not to be limited in the conduct of their programs, and whether the rules give some members a competitive advantage. Neither should athlete protection mandates be selectively applied to one class of members (i.e., Division I, II or III) and not others. The rules should protect all athletes under the jurisdiction of a national governance association.

Further, such rules should be promulgated solely to protect athlete safety, not an organization’s brand. Nor should such rules result from a fear of litigation. Yet, avoiding legal and reputational risks (see bold for emphasis) to the Association is the stated NCAA policy behind athlete protection, as adopted by the NCAA Board of Governors:

*2. What is the origin of the Uniform Standard of Care policy?*

*In December 2016, the NCAA Division I Board of Directors requested CSMAS<sup>44</sup> assistance to develop language to capture “unified standards of care” for student-athlete health and safety matters. This request was in support of its report to the NCAA Board of Governors Ad Hoc Committee on Structure and Composition, and specifically addressed the roles and responsibilities of the Board of Governors “to monitor and provide direction in student-athlete health and safety matters that require a unified standard of care and/or pose legal risk to the Association.”*

*In March 2017, CSMAS satisfied this request by recommending a policy framework that would facilitate association-wide action when, on occasion, an issue of significance arises that not only poses a substantial challenge to the principle of student-athlete well-being, but also requires a uniform, Association-wide response to address that challenge. The policy calls for CSMAS to evaluate such an issue against four criteria, and then to determine if referral to the Board of Governors is indicated. The four criteria are:*

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<sup>44</sup> NCAA Committee on Competitive Safeguards and Medical Aspects of Sports (CSMAS)

- a. *The issue involves new scientific evidence with anticipated Association-wide importance.*
- b. *The issue will impact a core Association-wide value.*
- c. ***The issue poses a legal risk to the Association.***
- d. ***The issue poses a reputational risk to the Association.***

*The Board of Governors approved the CSMAS framework at its April 2017 meeting.<sup>45</sup>*

In addition, this FAQ reveals that the so-called catastrophic injury and death “policy” (see bold below) to which this FAQ refers, is really a recommendation rather than a rule that all members must follow:

8. *Are these recommendations or requirements? What is the difference? What is the penalty for not following these recommendations?*

*In both name and in structure, the document is presented as recommendations, rather than legislation. The membership’s embracing these recommendations stems from the emerging standard of care they collectively illuminate.*

*The value of the endorsement of external scientific and medical organizations is that their endorsements validate the existence of a standard of care. Consequently, the recommendations are serving the membership by helping it to understand and respond to the existing landscape of expectations.*

*The Board of Governors’ endorsement of the recommendations under the Uniform Standard of Care policy does not transform them into legislation. Instead, the Board of Governors’ endorsement:*

- a. ***Establishes the recommendations as Association-wide policy and priority.***
- b. *Simultaneously creates a pathway to uniformity and consistency in guidance provided to the Association as a whole.*

*Institutions are advised to review all the recommendations with campus general counsel and medical personnel to determine necessary and appropriate changes to protect and enhance the safety of student-athletes.<sup>46</sup>*

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<sup>45</sup> This FAQ refers to the NCAA’s newly released policy: National Collegiate Athletic Association. (July, 2019) Interassociation Recommendations: Preventing Catastrophic Injury and Death In Collegiate Athletes Frequently Asked Questions, pp. 1-2. Retrieve at: [https://ncaaorg.s3.amazonaws.com/ssi/injury\\_prev/SSI\\_CatastrophicInjuryPreventionFAQs.pdf](https://ncaaorg.s3.amazonaws.com/ssi/injury_prev/SSI_CatastrophicInjuryPreventionFAQs.pdf)

<sup>46</sup> Id, Interassociation Recommendations: Preventing Catastrophic Injury and Death In Collegiate Athletes Frequently Asked Questions, p. 4.

The presentation of this “industry standard” as a “recommendation” is a rejection of the governance association’s responsibility and creates confusion as to whether such a health, safety and protection standard is mandated with regard to individual coach or member institution compliance. National governance association rules normally conform with “industry standards” because, in a lawsuit, this is the standard usually used to establish negligence or failure to perform under a contract. The Drake Group contends that the NCAA should be using its unique national governance position to require and enforce rather than “recommend” all consensus policies advanced by medical authorities that could prevent athlete harm, injury or death.

**Needed Rule Making and Enforcement Mechanisms.** Mandating that all member institutions adopt and enforce athlete-protection policies would not be difficult. In the past, the NCAA has required institutions to regularly undergo peer review evaluation. Currently, the NCAA requires compliance reviews conducted by external authorities in other rules areas. These reviews enable the NCAA to ensure that such policies are in place. Another mechanism could be to require a review of institutional practices in the case of an athlete’s catastrophic injury or death. Although member institutions must report such events to the NCAA, currently the institution is left to determine its own response, including whether to conduct its own internal investigation or commission a third party to do so. As noted earlier (see p. 8), internal investigations are seldom transparent and the conflict of interest is obvious when so-called independent investigations find no fault. Rather than not-so-independent institutional investigations, such circumstances demand the hiring by the NCAA of a blue-ribbon medical team that is above reproach to conduct a proper investigation. The NCAA should mandate such inquiries in the case of every death or catastrophic injury. The institution would continue, as it is now, to be held liable for any shortfall in its duty of care, while appointment of the medical team by the NCAA would fulfill its duty of care.

The NCAA must also address the power differential between head coaches and athletes and, at many institutions, between coaches and athletic trainers, medical teams and others. The NCAA can do so by (a) adopting an enforceable coach and employee “code of ethics” that can be used to police coach misconduct, (b) imposing rules that provide athlete and employee whistleblower protection, (c) establishing a mechanism that permits confidential athlete complaints to a non-institutional entity, and (d) requiring an investigation and adjudication process independent of the member institution. The open amateur non-school Olympic and Paralympic sport governance structure in the USA was faced with these identical athlete protection challenges. In 2017 Congress undertook an agonizing examination of the inability of U.S. national sport governing bodies to protect their athletes from abusive coaches and employees and the failure of the United States Olympic Committee to fulfill its governance

responsibilities to protect athletes from sexual abuse. The result was a 2018 federal law<sup>47</sup> that created the United States Center for Safe Sport (USCSS) as an independent agency. The first act of the USCSS was to publish a comprehensive SafeSport Code<sup>48</sup> designed to clearly define sexual misconduct, bullying, hazing, emotional and physical misconduct and the obligations of coaches, volunteers and employees to report such conduct. The USCSS also developed and implemented policies and procedures that specified the obligations of mandatory reporters and required certification of coaches and education of athletes about direct and confidential reporting of complaints. No such system protects collegiate athletes. The NCAA can replicate the USCSS model.

The NCAA must also address the fact that college coaches regularly move from institution to institution when let go by their previous employer. The Olympic/Paralympic system has recognized that to protect athletes' health and well-being, it must ban abusive coaches from continued employment in its programs. In Olympic/Paralympic system, it was too easy for sex offenders, especially if they were exceptional coaches, to move from club to club, thereby avoiding discipline. The current NCAA system only suspends coaches who commit serious rules violations regarding impermissible benefits, recruiting, etc. The NCAA has no investigatory and adjudication mechanism to ban coaches who endanger the health and well-being of their athletes. No centralized system exists among NCAA-member institutions to prohibit such coaches or employees from moving from institution to institution, continuing to endanger athletes. Although Title IX, a federal law that requires gender equity in higher education, prohibits sexual abuse and harassment, it is institution-specific and is limited to sex discrimination. Moreover, the federal government lacks the capacity for oversight of athlete health and well-being issues at thousands of colleges and universities and over 25,000 secondary schools in the U.S. Oversight is a role best played by national, state, and conference athletic governance organizations consisting of smaller numbers of institutions.

Finally, the NCAA must address the issue of college athlete violence and sexual misconduct against other athletes and non-athletes. The Drake Group has already issued an extensive position paper on this topic.<sup>49</sup> For example, in 2017, a Michigan State University football player was kicked off the team after allegations surfaced that he raped a teammate's

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<sup>47</sup> U.S. 115th Congress. S. 534-*Protecting young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017*. Retrieve at: <https://www.congress.gov/bill/115th-congress/senate-bill/534/text>

<sup>48</sup> United States Center for Safe Sport. *SafeSport Code for the U.S. Olympic and Paralympic Movements*. April 15, 2019. Retrieve at: <https://uscenterforsafesport.org/wp-content/uploads/2019/05/2019-SafeSport-Code-04.15.19-Hyperlinked.pdf>

<sup>49</sup> Donna Lopiano, Gerald Gurney, Brian Porto, David Ridpath, Allen Sack, Mary Willingham, and Andrew Zimbalist. (2016) The Drake Group Position Statement: Institutional Integrity Issues Related to Athlete Sexual Assault and Other Forms of Serious Misconduct. (August, 2016). Retrieve at: <https://www.thedrakegroup.org/2016/09/11/institutional-integrity-issues-related-to-college-athlete-sexual-assault-and-other-forms-of-serious-violence/>

girlfriend.<sup>50</sup> In December of 2018, he was sentenced to ten years in prison after pleading to a lesser charge. The MSU head football coach had ignored warnings that this recruit had a troubling history of sexual misconduct. He was kicked off his high school team and barred from the high school campus during his senior year while facing similar allegations. MSU hired a local law firm which cleared the three MSU coaches who ignored these warnings and sought MSU special admissions status for this recruit. The NCAA has no rules to deal with such issues.

## RECOMMENDATIONS

The Drake Group believes that acceptance by the NCAA of its duty of care and its leadership is are the keys to protecting the health and well-being of college athletes. Accordingly, we present the following recommendations:

### **RECOMMENDATION 1. NCAA Acceptance of Duty of Care.**

As a national collegiate athletic governance organization, the NCAA should protect collegiate athletes from physical and mental harm related to their participation in athletics. Specifically, the NCAA should exercise this responsibility through:

- a. The adoption and enforcement of rules applicable to all member institutions intended to (1) prevent or reduce the occurrence of athletic injury, (2) prohibit physical, sexual, verbal, or emotional abuse of athletes by coaches, other athletes and others, (3) permit athletes to have adequate time to sleep, recover from training, and complete academic responsibilities, and (4) require athletics personnel to meet education, certification, licensure, or other qualification standards;
- b. The adoption of all such athlete health and protection rules by the Board of Governors upon recommendation of the Chief Medical Officer and the Committee on Competitive Safeguards and Medical Aspects of Sports, rather than by vote of any membership, divisional council, or competitive subdivision. These rules should apply to all athletes in all membership divisions;
- c. The inclusion in such athlete health and protection rules of standards of conduct for athletic department employees that are at least as stringent as the U.S. Center for SafeSport *SafeSport Code* regarding mandatory reporter provisions, whistleblower protection, required criminal background checks, and completion of code-of-conduct training by all employees who interact regularly with athletes. The rules should also include (1) a mechanism for NCAA receipt of direct athlete complaints related to violations of the code of

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<sup>50</sup> Steinbach, Paul. (2019) Suit: MSU's Dantonio Ignored Warnings About Recruit. *Athletic Business*. September 2019. Retrieve at: <https://www.athleticbusiness.com/civil-actions/suit-msu-s-dantonio-ignored-warnings-about-recruit.html?bid=2525489&eid=306480847>

conduct and (2) investigatory, adjudicatory, and disciplinary powers required to process those complaints;

- d. The adoption and enforcement of rules prohibiting member institutions from recruiting any high school students or two- or four-year college transfer students to participate in athletics who have been convicted of a sexually violent or other physically violent act or have been suspended from any educational institution for such an act. High school athletes declared ineligible under such a provision should have an avenue of appeal to an independent panel comprised of both youth development and law enforcement experts;
- e. The adoption and enforcement of rules (1) prohibiting athletic department employees from involvement in campus or external athlete sexual harassment or assault investigations and adjudication processes and requiring that athletes be treated like all other students with regard to such processes, (2) requiring the immediate suspension of the athletic participation of any athlete accused of sexual or other violence until the conclusion of any preliminary hearing, investigation, or adjudication process and, if such misconduct is found, the athletes responsible should be permanently ineligible for participation in practice, competition, and receipt of athletics financial aid at that or any other member institution of a national-collegiate-athletic-governance institution;
- f. The required participation by all member institutions in the NCAA Injury Surveillance Program; and
- g. Approval by the Chief Medical Officer and the Committee on Competitive Safeguards and Medical Aspects of Sports before consideration of any change in rules of play or any sport-related legislation that may affect athlete health and protection, including an athlete's time commitment to a sport.

## **RECOMMENDATION 2. Enforcement of Athlete Protection Rules.**

The NCAA should establish the following mechanisms for the enforcement of such athlete health and protection rules:

- a. A periodic external peer review of member institutions' athlete-protection policies and procedures, Injury Surveillance Program records, Code of Conduct violations, athlete and employee physical and mental-health-education programs, and employee qualifications;
- b. An independent NCAA investigation requirement in the case of catastrophic injury or death at any member institution. A three-person panel of experts not affiliated with the involved institution, should be appointed by the College Athletic Trainers Society and the American College of Sports Medicine, at least two members of which should be medical doctors, to investigate and produce a public expert report and recommendations for the institution;
- c. The requirement that all administrators responsible for the supervision of sports programs undergo an NCAA Sports Science Institute (SSI) training program on the identification of dangerous or abusive pedagogy practices in the coaching of sport programs and in the conduct of strength and conditioning programs.

**RECOMMENDATION 3. Adequate Insurance Protection and Provision of Uncovered Medical Expenses.**

The NCAA should mandate adequate injury insurance for athletes and institutional payment of athletic injury medical expenses not covered by insurance. Specifically,

- a. NCAA Bylaw 16.4.1 specifies that only autonomy institutions must provide full medical care to college athletes for athletically related injuries extending at least two years following either graduation or separation from the institution or until the athlete qualifies for NCAA catastrophic injury program coverage. This provision should be extended to athletes in all NCAA divisions, and the NCAA should establish an insurance program and/or special fund for that purpose; and
- b. The NCAA should develop gender- and sport-neutral criteria for the institutional provision of disability/loss of value insurance that does not deplete institutional Student Assistance Fund allocations.

**RECOMMENDATION 4. Consolidation of Athlete Health and Protection Best Practices and Rules Obligations.**

The NCAA's Sport Science Institute (SSI) should compile and distribute annually to all member institutions all athlete health and protection "best practices" adopted by the Board of Governors. It should also compile and distribute annually, by sport, all mandated NCAA athlete health and protection rules.

**RECOMMENDATION 5. More Aggressive Pursuit of Game and Practice Rules That Reduce Injury Risk.**

The NCAA Board of Governors should direct the Chief Medical Officer and the Committee on Competitive Safeguards and Medical Aspects of Sports to identify possible competition and practice rule changes designed to reduce athlete injury risk in all sports. The Board should also direct these entities to test the impact of such changes in every NCAA championship sport. Final decisions about the adoption of rules changes should be data driven.