

Medical Independence in College Athletics and NCAA Rules

By Martin J. Greenberg and Danelle A. Welzig

1. History of Football Scandal at Penn State

In 2011, Former Pennsylvania State University (“Penn State”) Football Coach Jerry Sandusky (“Sandusky”) was arrested and arraigned on forty criminal counts involving the sexual abuse of minors.¹ The investigation expanded to include ten victims and ultimately Sandusky was found guilty and convicted on forty-five criminal counts by a jury.² Former FBI Director Louis Freeh (“Freeh”) was tasked by Penn State with investigating the matter and found that Penn State showed a “total and consistent disregard” for child sex abuse victims, while covering up the attacks of a longtime sexual predator.”³

In 2012, the NCAA fined Penn State a total of \$60 million and banned their team from postseason games for four years.⁴ The NCAA also vacated the wins of Penn State's football team from 1998-2022 and decreased their scholarship allowance by 20 football scholarships a year for four seasons.⁵ The Big Ten Conference issued a ruling that Penn State's share of bowl game revenues for four seasons, approximately \$13 million, would be donated to charities working for the prevention of child abuse.⁶

The tumult continued to follow Penn State when in 2017 former Penn State President Graham Spanier (“Spanier”) was convicted of child endangerment.⁷

¹ CNN Editorial Research, *Penn State Scandal Fast Facts*, CNN.COM, (Apr. 24, 2024) <https://www.cnn.com/2013/10/28/us/penn-state-scandal-fast-facts/index.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Charlie Thompson, *Louis Freeh, a voice long silent, erupts after former Penn State President Graham Spanier's conviction*, PENNLIVE.COM, (Mar. 25, 2017) https://www.pennlive.com/news/2017/03/louis_freeh_a_voice_long_silen.html.

"For over 12 years, these men actively protected a notorious pedophile who inflicted irreparable harm on countless child victims on the campuses and locker rooms at PSU," Freeh wrote. "Although these men had multiple opportunities to stop this vicious, serial predator from continuing to sexually assault children who trusted the PSU campuses and programs as safe havens, they decided together to protect this monster rather than report him to the police."⁸

Freeh has long been criticized by Penn State's staff and supporters as biased in his investigation, accused of colluding with the NCAA, and was even sued for defamation by Spanier which was dismissed.⁹

2. Penn State Post-Sandusky

In late 2015, we were contacted by a courageous assistant coach working for the Penn State Women's Gymnastics Team regarding alleged physical and mental abuse she was witnessing perpetrated in their program. We issued a preliminary position statement to Penn State regarding our representation of the coach and requesting her contract be honored in light of her reporting the alleged abuse she witnessed through the appropriate structure. Penn State responded by essentially terminating our client's position through a request for her resignation. We then began our own investigation into the matter beginning with the personal journal that our client began keeping just a month after accepting her appointment. The result of our investigation forced the hand of Penn State who ultimately fired one coach and let the other coach resign. Then, finally in 2023, the Pennsylvania Superior Court upheld the 2017 firing of Coach Jeff Thompson and denied his defamation lawsuit.¹⁰

We also attempted from 2018-2019 to address issues with respect to the Women's Swimming and Diving program which ended in a whitewashed investigation. We also saw the retirement of

⁸ *Id.*

⁹ *Id.*

¹⁰ Madison Montag, *Pa. Superior Court upholds firing of Penn State gymnastics coach*, PENNLIVE.COM, Nov. 28, 2023, <https://www.pennlive.com/news/2023/11/pa-superior-court-upholds-firing-of-penn-state-gymnastics-coach.html>

Women's Hockey Coach, Josh Brandwene, who was accused of abuse.¹¹ In all these cases, the accusations were so much worse than what was reported by the press. In our experience, this is usually the case. We are not in the least bit surprised when court documents detail horrendous athletic program conditions. There isn't much anymore that we haven't seen.

3. Penn State Football 2024

In May of 2024, when reporters broke a story stemming from court testimony regarding the treatment of football players at Penn State, we watched with dismay. This is just a continuation of the "Penn State Way." Nothing much has changed since the days of the Sandusky scandal. You would think by now that the Penn State Way would include zero tolerance for the mistreatment of athletes. Former Penn State Football Team Dr. Pete Seidenberg stated in his testimony that "Coach was trying to get us to release the athlete for return to play. We were being pressured to release the athlete.... Coach was trying to influence medical decisions."¹²

One player explained to reporters that their athletic trainers are in a bad situation: "Because he's got a wife and two kids and he knows the reality. And it's his job to get you out there.... So, it's not like these people are evil. They're caught in the bind themselves. I think it's easy to castigate them but it's a structural problem."¹³ The player added, "It's a pressure cooker. So, it isn't as though there's instances where you are pressured to play through pain—it's a constant, it's an expectation."¹⁴

¹¹ Geoff Rushton, *Report: Penn State Investigating Swimming Coaches After Allegations of Bullying*, ONWARDSTATE.COM, Apr. 25, 2018, <https://onwardstate.com/2018/04/25/report-penn-state-investigating-swimming-coaches-allegations-bullying/>.

¹² Nathan Kalman-Lamb and Derek Silva, *Penn State's Horrifying Treatment of Football Players is the Norm*, New Republic, May 23, 2024, <https://newrepublic.com/article/181883/penn-state-horrifying-treatment-football-players>.

¹³ *Id.*

¹⁴ *Id.*

The testimony that brought this issue to light included a situation wherein a Penn State football player attempted suicide and was receiving psychiatric care.¹⁵ During that critical time for the student athlete, Head Football Coach James Franklin (“Franklin”) and Athletic Director Sandy Barbour (“Barbour”) “allegedly attempted to get the player medically disqualified from the team—thus revoking his college scholarship—to open up another scholarship they could use to recruit another player for the next season.”¹⁶

The doctor went on to testify that both he and Dr. [Scott] Lynch refused to comply with the coach and AD’s request, comparing it to pulling a scholarship from a player with a torn ACL before they had a chance to recover. It’s one incident in a pattern of win-at-all-costs behavior that has come forth in the trial, showing that a lack of care for athletes is once again rearing its head at Penn State.¹⁷

The above testimony stems from a civil lawsuit for wrongful termination brought by Dr. Scott Lynch (“Lynch”), a former orthopedic consultant and director of medicine for Penn State Athletics. “Lynch, who alleged that his termination followed a refusal to ‘allow a coach to interfere with his medical treatment and return to play decisions,’ was one of two doctors to speak out against Franklin and his attempts to interfere with team medical experts.”¹⁸

According to PennLive, a rash of players failed to show up for scheduled medical treatments in 2018.¹⁹ The problem became so severe that Franklin ruled players who didn’t show up for their appointments to be treated as full-go at practices.²⁰ Lynch sent an email to Franklin

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ James Dator, *New Penn State allegations show the football program learned nothing from the past*, SBNATION.COM, May 24, 2004, <https://www.sbnation.com/2024/5/24/24163970/penn-state-allegations-james-franklin-doctors-ncaa-big10>.

¹⁸ Will Backus, *Former Penn State doctor who alleged interference from James Franklin awarded \$5.25 million in lawsuit*, CBSSPORTS.COM, May 30, 2024, <https://www.cbssports.com/college-football/news/former-penn-state-doctor-who-alleged-interference-from-james-franklin-awarded-5-25-million-in-lawsuit>.

¹⁹ John Luciew, *Emails detail deteriorating relationship between James Franklin, fired football doctor*, PENNLIVE.COM, May 24, 2024, <https://www.pennlive.com/sports/2024/05/emails-detail-deteriorating-relationship-between-james-franklin-fired-football-doctor.html>.

²⁰ *Id.*

that railed against what he called “punishment” and instead suggested that players could “clean the team's locker rooms” if they miss treatment.²¹

“Just because they don't show up for treatment doesn't mean they're not injured,” Lynch testified.²² Lynch was removed from his position on January 28, 2019, after Franklin and Barbour met with Dr. Kevin Black (“Black”), according to testimony.²³ “Following his termination, Lynch met several times with Penn State Athletics Integrity Officer Robert Boland (“Boland”) to discuss his tenure and relationship with Franklin.”²⁴

Lynch raised concerns over preserving "medical autonomy" from Franklin and his staff, particularly when it came to decisions surrounding player health. Lynch told Boland that Franklin would try to "manipulate" the situation to entice a favorable outcome in medical decisions with which he disagreed. According to Lynch, Boland shared his findings with Lynch and determined that the case was "in Lynch's favor." However, Boland never officially published his report. PennLive notes that Boland's report is off limits during the trial, and that Boland has been barred from testifying about it.²⁵

Lynch stated that as he was departing, he provided his supervisor a list of actions that could be taken to ensure the medical autonomy of student athletes and uphold the duties of sports medicine staff, including “the appointment of someone outside athletics who would be responsible for hiring and firing medical personnel.”²⁶ In the March 6, 2019 letter to Black, Lynch wrote, "I believe that the current situation, where the coach can attempt to influence medical care, is dangerous for the student athletes."²⁷ The letter stated that Lynch was aware Franklin was calling around about another doctor who became Lynch's replacement, writing that "it's rather obvious to

²¹ *Id.*

²² *Id.*

²³ Backus, *supra* Note 18.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Paula Lavigne, *Documents, claims bring NCAA medical care issues into question*, ESPN.COM, Nov. 26, 2019, https://www.espn.com/espn/otl/story/_/id/28116817/documents-claims-bring-ncaa-medical-care-issues-question.

²⁷ *Id.*

me that [Franklin] was doing this to see if [that doctor] was easier to control than me."²⁸ Lynch said the school refused to implement his ideas, so in August, he filed a whistleblower lawsuit alleging he was fired because he spoke up against Franklin.²⁹ "I don't care how much money they give me," he said. "I won't go away unless they do the right thing to protect patients." ³⁰

On May 30, 2024, it was reported that Lynch was awarded \$5.25 million in his wrongful termination suit against Penn State Health.³¹

4. Texas A&M & Tennessee

In January 2018, a month after Texas A&M hired Jimbo Fisher for \$75 million over 10 years, then-Texas A&M athletic director Scott Woodward signed off on the letters terminating the employment of Phil Hedrick, associate athletics director overseeing athletic training, and Owen Stanley, head football athletic trainer.³² The letters state that Fisher was hired on Dec. 4, 2017, "and will want to hire his own staff, as in the industry standard."³³ When Outside the Lines showed one of the letters to Dr. Brian Hainline ("Hainline"), Chief Medical Officer of the NCAA, Dr. Hainline stated that "[t]his is not the industry standard today, and it's not consistent with independent medical care legislation."³⁴

National Athletics Trainers' Association (NATA) President Tory Lindley ("Lindley"), said Texas A&M's move was a "direct contradiction of NCAA policy. I'm not sure what industry they're in, but last I checked, they were an NCAA member institution."³⁵

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Backus, *supra* Note 18.

³² Lavigne, *supra* Note 26.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

In April of 2019, Texas A&M announced that Buzz Williams (“Williams”) had been hired as men's basketball coach.³⁶ The school subsequently fired their men's basketball athletic trainer, Matt Doles, who had been with the program for 14 years.³⁷ Outside the Lines reported that based upon documents obtained from Texas A&M staff that Williams was “bringing his guy with him from Virginia Tech.”³⁸ “And indeed, athletic trainer Eddie Benion left Virginia Tech, where he worked with Williams, and is now Texas A&M's men's basketball athletic trainer, making almost \$100,000, or about 55% more than Doles, according to records provided by the university.”³⁹

With respect to the Texas A&M situation described, Dr. Hainline also concluded that that sort of action was “not consistent with the legislation.”⁴⁰ “This is an example where that understanding is not consistent with what we had put out. So even if it's just ... one, that's too many,” Hainline stated.⁴¹

When Outside the Lines asked Texas A&M team physician Dr. J.P. Bramhall about the NCAA’s Medical Autonomy Rules, Dr. Bramhall replied that “guidelines we are given are not rules.”⁴² “But Dr. Hainline said NCAA legislation is indeed a ‘rule’ that member institutions are supposed to follow. In June of 2019, Dr. Hainline told Outside the Lines that schools that don't follow the rules should self-report an NCAA violation.”⁴³

Former University of Tennessee linebacker Darrin Kirkland Jr. (“Kirkland”) said he was still rehabbing his knee post-surgery in November 2017, when Coach Butch Jones (“Jones”) was fired and replaced with Alabama defensive coordinator Jeremy Pruitt (“Pruitt”).⁴⁴ When Kirkland

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

returned in January to the university he had concerns how the coaching changes would affect his recovery, and stated that “[t]hings were picking up really fast” and that he was “very uncomfortable” with how quickly he was going back into full practice.⁴⁵ “I was extremely nervous and didn't know how my leg was going to react,” Kirkland said.⁴⁶ “I'm wearing a big brace. Still swelling, still in pain, still not able to do the things that I'm normally used to.”⁴⁷

About a year later in February of 2018, Kirkland stated he reinjured his knee during team workouts and had another surgery after which he retired from football that spring.⁴⁸ “If I had more time for my knee, I feel like I would've been healthier long term, you know,” he said. “Probably would've healed up. Probably would've still been playing ball, honestly.”⁴⁹ Over training and returning to training too soon is often cited as a reason that a student-athlete reinjures themselves.

It was disclosed to reporters by some of Tennessee's former sports medicine staff that in Pruitt's early months at Tennessee he allegedly pressured athletic trainers and interfered with the management of injured student athletes by medical personnel, including yelling at the medical personnel to delay on tending to potentially injured student athletes immediately upon suspected injury.⁵⁰ “He [Pruitt] wanted us to wait until he decided it was OK. He thought that the players were too soft and sometimes they needed a second to get up and shake it off. But that's not his decision to make,” one former employee said.⁵¹ “Jeremy [Pruitt] had enough juice behind him to where if he really wanted to, he could get things his way. If you invest this much money in a coach, that's their guy.”⁵² Another former employee confirmed Pruitt's request but said that in the interest

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

of athlete health, the athletic training staff didn't always comply [with Pruitt's request].⁵³ Then, according to information garnered from available press reporting, Pruitt arranged for the head football athletic trainer, John Burnside, to be fired, as well as having two orthopedic team doctors removed from their responsibilities within the football program.⁵⁴ "It was foot on the throat, right off the bat," according to a former employee.⁵⁵ "A lot of pressure, and pretty much letting us know pretty early on that he didn't want any of us to be there and he was looking for a reason to let everyone go and bring on his own staff."⁵⁶

Nearly six years have passed since Dr. Lynch blew the whistle on the lack of care or delayed care provided student-athletes in Penn State's athletics program. Even now, we are unable to find definitive information in the press with respect to a university being issued a penalty by the NCAA for violation of the Medical Autonomy Rules as stated by Dr. Hainline, even though those violations have received much reporting. It appears that all the talk of ensuring the safety of student-athletes is merely good PR on the part of the NCAA as their enforcement division seems to not use its teeth when it comes to the Rules promulgated on Medical Autonomy.

5. Severity of the Problem

Over nearly a decade, we have worked with student-athletes who have presented us with a variety of ways that their coaches have allegedly abused them and their teammates. It doesn't matter the sport, men's or women's, university or college, there is one theme that comes up over and over again in the complaints we receive: coaches pressuring student-athletes to return too soon, against doctor's orders, to practice and play after an injury or illness. Here are some complaints we've received:

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

- a) Demands to return to intense soccer practice too soon after bronchitis, ends up in hospital twice.
- b) Demands to return to gymnastics practice after injury before fully released by doctors, pressure from coaches included derogatory comments about the injury, comments about failure to practice or workout when injured, berated athletes when injured in a manner that questions whether or not they are actually injured, questioning athletes' commitment to the team when they are injured, and demanding to know from the student-athlete whether they will perform at the meet because the team needs you (guilt tripping).
- c) Student-athlete playing softball with an asthma diagnosis that requires an inhaler not being afforded recovery time during punishment sprints. She starts to black out and loses consciousness during the next rep. Coach was screaming at her to get up and threatening her. Coach also implied that the student-athlete passed out because the athlete had been out drinking the night before, which was not the case. Coaching staff unconcerned. Student-athlete had to go through a battery of tests and be cleared by a cardiologist before returning to play, which her father had to firmly enforce with the staff at the next series of games. Two other teammates had their inhalers withheld by the coach on at least one instance.
- d) Student-athlete playing softball had a ball ricocheted off a fence and breaking her nose. She was expected to practice the following day and participate in conditioning, even though her head was throbbing from the jarring impact. During the practice her facial swelling and bruising got worse and two days later her nose was finally confirmed as broken. No concern from the coaches, no concussion protocol implemented, just demand to push through.
- e) Coach called a student-athlete a pussy for having an injury and needing to limit reps at practice.
- f) A softball student-athlete had surgery either sophomore or junior year for an injury. She was meant to be out for 14 days; the coaching staff pressured her to come back after 6.
- g) Another softball student-athlete had surgery around the first week of fall. Though she had only had the surgery 2-3 days before, Head Coach forced her to participate in the running test, though she was obviously having great difficulties and her balance was clearly off; she swerved when running, almost as if she was drunk, and Head Coach had to catch her at the end of one part of the runs.
- h) A softball student-athlete got hit on the head during batting practice and put down on the concussion form that she had a headache. One member of the staff questioned her in a demeaning manner, saying something to the effect of 'why did you put that down?'
- i) A softball student-athlete had strep throat about mid-spring season and had already gone to the doctor and gotten the proper written excused absence from practice. Nonetheless, the trainer forced her to come in and visit the coach to confirm she was truly sick.

- j) A cheerleader was injured during camp, after practice the trainer told her she had to go to the doctor in Tuscaloosa. She told the trainer she could not. She told the trainer that the coach would be very angry. Her ankle was bruised and swollen. The trainer said they were going the next day. She walked into practice the following morning and the coach pulled her aside. Coach said, "I hear you want to go to the doctor. I would appreciate it if you would not go to the doctor and push through camp. You will be behind and it won't be good for you. If I were you, I would really think about it." Diagnosed with oblique fracture of the medial malleolus with associated avulsion fracture.
- k) A basketball student-athlete dislocated her shoulder. Her surgery was scheduled for the Monday following their last game. She arrived at 6am for surgery and the nurse said her surgery was canceled by the coaches. She had no clue this was happening until she arrived. Reason given for not getting surgery: "I wasn't stable enough to get surgery because of the medication from the psych ward, and they said I wouldn't be able to handle all the medication." The coaches had called the police to take her to the psych ward in September. From the Parent perspective: Coach thought athlete had psychological problems, coach tried to force athlete to get medication so she would be the type of athlete that coach wanted her to be. Coach mandated athlete to go see a psychologist which the athlete was forced to pay for out of her own pocket. The athlete declined to take the medication and was kicked off the team. When the athlete showed up for her scheduled shoulder surgery the university wouldn't pay for her surgery because the coach kicked her off the team for not medicating. This coach also decided another athlete needed to be medicated for bipolar.
- l) Coach forced basketball student-athlete to play on shin splints and bruised bones. Coach told the athlete she was lazy and didn't try hard even though the athlete was injured.
- m) Another basketball student-athlete was injured and was not supposed to play in games or practice, coach forced her to anyway and her injury worsened and required extra time for recovery. The coach made snide comments about how they should never accept suggestions from an athlete that hadn't practiced in over a week, even though those practices were missed because of injury and the athlete was instructed not to attend practices.
- n) An equestrian student-athlete with a Type-1 Diabetes diagnosis. Coach told the student-athlete to suck it up when the athlete expressed concern about not having enough time to eat between classes and her practice schedule. To try and keep up and not anger the coach, who was aware of the athlete's care plan, the athlete began skipping lunches which led to erratic blood sugar levels.
- o) A softball student-athlete with a major injury was encouraged not to get surgery but instead rehab it and play through the pain. This student-athlete had a suspected cracked femur and played every game while in visible pain. During practice this student-athlete was not asked if she was okay when she was limping during practice. Coach told this student-athlete that she has been cleared since the fall so it was alright for her to play full time again.
- p) A soccer student-athlete sustained a concussion after being hit by a stray shot that ricocheted off of the crossbar of the goal. Despite a diagnosis by the team athletic trainer

and severe concussion symptoms, she was told by Coach that any injury, especially those that were invisible like concussions, were simply signs of mental weakness. She was told every day that she was out on medical leave, that she was not only faking the concussion, but that she was failing her teammates every day that she stayed in the dorms recovering during practice. She was cleared by our athletic trainers 2 weeks later, but Coach continued to bring up what he deemed mental weakness anytime my playing time was discussed.

- q) A soccer student-athlete sustained a mild ankle injury. Her ankle swelled up like a balloon and was black and blue, but she was encouraged to play with heavy tape as we were down to two goalkeepers that season. The athletic trainer placed her in a walking boot when she was not playing and taped her ankle heavily when she was needed in practice, and she still traveled with the team. While at an away game, another player also sustained an ankle injury and the coach loudly encouraged the athletic trainer to remove her boot and give it to the other player for the remainder of the trip, despite her ankle still being a heavy risk.
- r) A soccer student athlete with a chronic overuse injury to her knee had an appointment set up to get a round of injections as part of treatment plan. The doctor said she should have a week of no soccer after the injections and slowly build back into it. She missed the fitness test during that week and the trainer gave her an alternative test on the anti-gravity machine where the pressure on her knees was taken off, which she passed with flying colors. Coach still pressured her into taking the actual test anyways before her week was up if she wanted to play in the game that weekend. Coach called her a liar about her knee pain countless times. She was not going to him complaining about her knee pain or asking to get out of something, it was when he asked me how she was feeling, and she gave him a truthful answer. He just did not agree with the plan the medical staff had set up and had turned the team away from her by not supporting it.
- s) A wrestling student-athlete reported that his coach will scream at guys who are injured and aren't physically able to go as hard as the rest of the team. Coach ignores this and tries to get the injured athletes to go as hard as the healthy ones. He does this by swearing at them, screaming, and berating them.
- t) A wrestling student-athlete says his injury was ignored by making him run when he had severe shin splints. It is clear that the coaches don't listen to the trainer because the coaches asked him if his shins were healed yet a day after he was allowed to bike instead of run. One conversation with the trainer would tell them that he had to rest for 4-6 weeks because his shins were on the verge of breaking due to the constant pounding.
- u) A wrestling student-athlete sprained his ankle, and they forced him to wrestle live the next day during practice even though the trainer had said the student-athlete probably should not even be drilling with it like that. When the student-athlete was getting beat by people because he had a sprained ankle, he was told he was "pitiful" and told to get off the mat.

Throughout our investigations, we have found that not only do coaches pressure athletes under doctors' care and order them to return too soon from injury or illness, the coaches also ignore

medical protocols in place for injuries and concussions by demanding that the athletes “work through” the pain. What we see happen when a coach creates this kind of toxic environment, wherein a coach expresses displeasure and irritation when an athlete is injured or sick instead of empathy and concern, is that the athletes and trainers become anxious or even fearful of reporting the injury or illness to the coach.

6. Medical Autonomy

Medical autonomy is a concept that is endorsed by the NCAA and other sports related organizations wherein the coach is to specifically refrain from acting against medical advice. This is a protective measure in favor of athletes to allow injuries to properly heal, to prevent further injury, or in the case of illness, to prevent them from getting injured playing while ill. University policies often state that university medical authorities hold the keys to clear an athlete to return to play.

However, over the past ten years we have learned that medical autonomy is often not abided by, and medical authority is often overridden by coaches who demand more and more of their athletes. The mistreatment of ill or injured athletes is often an issue we cite when describing the allegedly abusive atmosphere created by coaches who want to win at all costs. Even when the medical professionals' authority is honored, the student-athlete often faces consequences or punishment from their coach for medical issues that are beyond the athlete's control. The environment becomes so toxic that athletes decide to either forego medical treatment all together or even ignore their own injuries so as not to upset their coaches. This does nothing but lead to athletes ending up dealing with lifelong physical pain and permanent injury. Unfortunately, we see this more often than we wish to when speaking with our clients.

"The coach must be completely de-coupled from medical decision-making," an NCAA briefing document states, per ESPN, "and primary athletics health care providers must be in an environment in which making such decisions are free of any threat from coaches."⁵⁷

In 2016, the NCAA approved rules set to guarantee athletic training and sports medicine staff had independence from coaches in the Power 5 conferences.⁵⁸ The remaining Division I schools voted in October (2019) to pass the legislation.⁵⁹

NATA president Tory Lindley said athletic trainers are influenced in their decision-making when they know a coach is responsible for their employment.⁶⁰ "Until there's zero evidence it still exists, there's going to be concern," he said. "It's the ultimate compromise in medical autonomy."⁶¹

Dr. Hainline, Chief Medical Officer of the NCAA, told ESPN's *Outside the Lines* that while coaches can have input and make suggestions on sports medicine staff, the hiring and firing decisions should be independent of coaches because allowing coaches to bring in their own medical staffs can create a conflict of interest.⁶² "It sort of sets up the possibility of a relationship where I'm answering to the coach, and I shouldn't be answering to the coach. I should be answering to the call of medicine," Dr. Hainline said.⁶³

With that in mind, what follows are regulations promulgated by the NCAA with respect to Student-Athlete wellbeing:

A. NCAA Bylaws

2.1.2 Scope of Responsibility. [*] The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members

⁵⁷ Jenna West, *Report: Schools Violating NCAA Care*, SI.COM, Nov. 26, 2019, <https://www.si.com/college/2019/11/26/ncaa-medical-care-violations>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Lavigne, *supra* Note 26.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

2.2 The Principle of Student-Athlete Well-Being. [*] Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes.

2.2.1 Overall Educational Experience. [*] It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience.

2.2.3 Health and Safety. [*] 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.

2.2.4 Student-Athlete/Coach Relationship. [*] It is the responsibility of each member institution to establish and maintain an environment that fosters a positive relationship between the student-athlete and coach.

2.2.5 Fairness, Openness and Honesty. [*] It is the responsibility of each member institution to ensure that coaches and administrators exhibit fairness, openness and honesty in their relationships with student-athletes.

2.4 The Principle of Sportsmanship and Ethical Conduct. [*] For intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society, student-athletes, coaches, and all others associated with these athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program. It is the responsibility of each institution to: (Adopted: 1/9/96)

(a) Establish policies for sportsmanship and ethical conduct in intercollegiate athletics consistent with the educational mission and goals of the institution; and

(b) Educate, on a continuing basis, all constituencies about the policies in Constitution 2.4-(a).

B. NCAA Mental Health Best Practices

Foundational Principles for Understanding and supporting Student-Athlete Mental Health
Mental health is an important dimension of overall student-athlete health and optimal functioning.

Emerging adulthood is a particularly important time for supporting mental health.

Mental health risk and protective factors occur across settings and over time.

Coaches play an important role in student athlete mental health and well-being.

Mental and physical health are inextricably linked.

Discrimination, maltreatment and psychosocial trauma negatively impact mental health.

Social media is an evolving and concerning risk factor for poor mental health.

Collaboration and continuous improvement are essential.

Mental Health Best Practices

Create Healthy Environments that Support Mental Health and Promote Well-Being

Procedures for Identification of Student-Athletes with Mental Health Symptoms and Disorders, including Mental Health Screening Tools

Mental Health Action Plans that Outline Referral Pathways of Student-Athletes to Qualified Providers
Licensure of Providers who Oversee and Manage Student-Athlete Mental Health Care

C. Athletics Health Care Administration – Best Practices

The physical and psychosocial welfare of the individual student-athlete should always be the highest priority of the athletic trainer and the team physician.

Any program that delivers athletic training services to student-athletes should always have a designated medical director.

Sports medicine physicians and athletic trainers should always practice in a manner that integrates the best current research evidence within the preferences and values of each student-athlete.

The clinical responsibilities of an athletic trainer should always be performed in a manner that is consistent with the written or verbal instructions of a physician or standing orders and clinical management protocols that have been approved by a program's designated medical director.

Decisions that affect the current or future health status of a student-athlete who has an injury or illness should only be made by a properly credentialed health professional (e.g., a physician or an athletic trainer who has a physician's authorization to make the decision). In every case that a physician has granted an athletic trainer the discretion to make decisions relating to an individual student athlete's injury management or sports participation status, all aspects of the care process and changes in the student-athlete's disposition should be thoroughly documented.

Coaches must not be allowed to impose demands that are inconsistent with guidelines and recommendations established by sports medicine and athletic training professional organizations.

An athletic trainer's role delineation and employment status should be determined through a formal administrative role for a physician who provides medical direction.

An athletic trainer's professional qualifications and performance evaluations must not be primarily judged by administrative personnel who lack health care expertise, particularly in the context of hiring, promotion and termination decisions.

Member institutions should adopt an administrative structure for delivery of integrated sports medicine and athletic training services to minimize the potential for any conflicts of interest that could adversely affect the health and well-being of student-athletes.

The unchallengeable, autonomous authority of primary athletics healthcare providers to determine medical management and return-to-play decisions becomes the linchpin for independent medical care of student-athletes. Importantly, this linchpin in college sports is the team effort of both physicians and athletic trainers, with ultimate medical reporting authority being the team physician. The NCAA Sports Medicine Handbook's Guideline 1B opens with a charge to athletics and institutional leadership to "create an administrative system where athletics healthcare professionals—team physicians and athletic trainers—

are able to make medical decisions with only the best interests of student-athletes at the forefront.”⁶⁴

In 2019, Dr. Hainline said the NCAA's challenge is how to enforce the rules, and “[w]e aren't there right now.”⁶⁵ Issues with respect to amateurism and eligibility, for which the NCAA has a structure to address with enforcement, apparently differ from the medical autonomy rules at issue.⁶⁶ As we see little to no information regarding the NCAA sanctions regarding violations of medical autonomy rules, the NCAA must still be working on a way to enforce rules.⁶⁷ However, Dr. Hainline maintained that institutions still are obligated to follow the rules, even without an enforcement structure and that the NCAA has made efforts to educate athletic department personnel.⁶⁸

Hainline said information about the rules and a list of frequently asked questions went out to "every president, every athletic director, every athletics healthcare administrator, every compliance director ... and then the team physicians and athletic trainers. ... The expectation was everyone should know this.”⁶⁹

In June [of 2019], NATA released the results of a survey of college athletic trainers in which about 36% of respondents reported that a coach has been able to influence the hiring and firing of sports medicine staff.⁷⁰ Of athletic trainers who reported that happening, 58% reported being pressured by a coach or administrator to make a decision "not in the best interest of a student-athlete's health.”⁷¹

However, “A Division I athletic trainer said the head coach at his school was calling players and trying to talk them out of surgery. ‘It set off an alarm bell for me; this guy might be gunning for

⁶⁴ *Athletics Health Care Administration Best Practices*, NCAA.ORG, <https://www.ncaa.org/sports/2014/7/8/athletics-health-care-administration-best-practices.aspx>.

⁶⁵ Lavigne, *supra* Note 26.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

me,’ he said, noting that soon afterward he was forced out.”⁷² Even with the release of the medical autonomy rules, it seems that athletic trainers are still pressured to fall in line with a head coach’s wishes. After a head coach starts complaining to their athletic directors, the Division 1 athletic trainer explained that “eventually the AD is saying, ‘Hey, this relationship is not going to work. I’m not going to get rid of the head coach, especially if he’s winning. It’s very easy to get rid of the athletic trainer.’”⁷³ To date, it seems the status quo remains as the NCAA seems to still not have a enforcement structure to support their medical autonomy rules.

7. Conclusion

We have long called upon the NCAA to take a more definitive stance on making these regulations enforceable. In 2016, we tendered a letter to NCAA President Mark Emmert imploring him to work to protect student-athletes from abusive coach.⁷⁴ In that letter, which has been posted online since June of 2016, we suggested the NCAA and Conferences take the following steps:

1. Governing bodies such as the NCAA and Conferences should require participating universities to employ anti-bully, anti-abuse regulations that cite the need to protect a student-athlete from abusive coaching techniques which includes an oversight system of checks and balance to recognize non-compliance and hold administrators, as well as coaches, accountable for failures to comply. Those regulations must include punitive measures for coaches at all levels, along with stiffened penalties for apathy, concealment, or non-reporting. Coaches and university administrations should not be allowed to abdicate responsibility to student-athlete welfare; to the health and safety of complainants; and to university values. Universities should be eager to adopt rules and regulations that ensure the safety and wellbeing of their student-athletes and that promote values such as integrity, respect, responsibility, discovery, excellence, and community.
2. The NCAA and Conferences also need to take the threat of loss of athletic scholarship out of the coaches’ hands in some way, shape or form. This alone creates a huge power vacuum wherein a student-athlete may not report abuse for

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Martin J. Greenberg, *Open Letter to President Mark Emmert of the NCAA – Abuse Must End*, GREENBERGLAWOFFICE.COM, Jun. 14, 2016, <https://greenberglawoffice.com/open-letter-president-ncca-abuse-must-end/>.

fear of losing their scholarship. Coaches can inspire athletes in other ways beyond the base tactic of threatening a student's very existence at an academic institution. Unless a student-athlete has a known medical ailment, the university should honor their commitment. This could also help slow down early recruiting of student-athletes at such a young age. Coaches and universities should be responsible for the student-athletes they recruit.

3. NCAA and Conference student-athletes subjected to an abusive coach should be allowed to immediately transfer without any loss of eligibility. Coaches can make or break the student-athletes' college experience. Our athletes deserve a healthy environment to learn and grow without penalty.

4. The NCAA and Conferences should require that coaching contracts include specific language making physical and verbal abuse and bullying a basis for termination for cause. It is unjust for coaches to be fired without cause, or be allowed to resign, and then have the ability to collect money for the remainder of their contract term due to poor contract drafting — especially in cases where abuse is the foundation for the termination.⁷⁵ Universities need to employ the use of coaching contracts with stronger language regarding expectations of their relationships with their student-athletes, including language that includes a for cause termination upon finding of abuse regardless of whether it is physical, mental, or sexual. Coaches found to be engaging in abusive or bullying activities should be required on some prorated basis to participate in an action for damages monetarily, much the same way that Penn State's former Women's Basketball Coach was fined at least \$10,000 in 2007 for discriminatory practices.

5. The NCAA and Conferences should require that coaching contracts include language that makes it clear that resignation cannot be utilized as a means to skirt an investigation. Universities should not angle to be portrayed in a better light by letting coaches resign at the contract's end and wander off into the sunset to another university where this process might be repeated. The investigation should stand and continue regardless of the employment status of the accused coach. Universities need to take a hard line on the protection of the student-athletes. After all, first and foremost, universities are supposed to be a safe learning environment.

6. The NCAA and Conferences should require that, where there is an accusation of abuse, the university immediately involves an independent investigator that has no interest in the outcome who is willing to do an objective and complete investigation regardless of the consequences.

7. Abusive coaching may have worked for another generation, but not now. Universities should have rules and contract clauses that address administrators who tolerate, are indifferent to, or who conceal this type of abusive behavior. They, too,

⁷⁵ Benjamin C. Haynes, "Poorly drafted college coaching contracts that reward abuse," SPORTING NEWS, Sep. 17, 2014, <http://www.sportingnews.com/ncaa-basketball/news/poorly-drafted-coaching-contracts-that-promote-abuse-doug-wojcik-college-charleston-mike-rice-rutgers/1hcvijlpxji9114wphe6h94bxg>.

must face the firing squad. Every time an administrator looks the other way or issues a dismissive punishment, it's like dispatching an abuser back into the home of a domestic violence victim. To ensure accountability for all, there must be rules adopted by the university that affect administrators including contract language that provides for termination when they fail to report alleged abuse.

8. Whistle blowing must be encouraged, not discouraged. When a student-athlete steps out of the darkness and reports abuse, above all, they must be taken seriously. In order for them to feel they can come forward, there must be steps taken to ensure there will be no retaliation or retribution from the alleged abuser. The NCAA and Conferences should have anti-retaliation rules for these situations. Student-athletes bring in a lot of crowds and money to universities and the NCAA, as such they should be afforded some protection. The university should create a culture that ensures that the reporting, investigation, and disciplinary actions involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus and that coaches are held accountable to the same standards as all university personnel.

9. In a post-Sandusky environment this bears repeating, every university needs to adopt a zero tolerance policy. Abusive behavior by high profile university employees who coach student-athletes doesn't merely merit a time out and second chance, it merits dismissal. Abusive coaching may have been given a pass for another generation, but not now, and not in an age where research has proven the tolls that physical and mental abuse has on a person. We know better, we should do better.

10. Discussions between university psychologists and student-athletes should remain confidential. In the case of Penn State, I found numerous instances where the sports psychologist reported back to the gymnastics coaches about their discussion with the student-athlete. Where was the safe place for a student-athlete to express her concerns and gain insight into her dealings with their coaches? Why are university psychologists not required to automatically report to administration in cases where they suspect alleged abuse? Doctor-patient confidentiality should be sacrosanct, regardless of the personal relationships that a sports psychologist may have with coaches.⁷⁶

These recommendations were made based upon our experiences in advocating for our clients' wellbeing within athletic departments at universities and secondary schools.

We believe compliance with mental and physical health best practices should be the standard for all NCAA universities, and that reporting to the NCAA should occur with respect to

⁷⁶ Greenberg, *supra* Note 74.

the same. Medical care should be independent from coaching decisions and medical personnel should always have the final authority on whether or not an athlete is fit to continue to play or return to play. Only when universities start taking a hit to their wallet will student-athletes start to feel relief from the pressure to get back to training and competition and be able to truly focus on their own wellbeing instead of what consequences or punishments they might face because of their absence. As such, the NCAA should be more involved in matters of abuse of student-athletes and should amend their Constitution and Bylaws to indicate that universities that become aware of alleged abuse, which includes violations of the medical autonomy rules, should at the bare minimum put the coach on leave, instigate an independent investigation with a firm that does not have a prior relationship with the university, and self-report these actions to the NCAA. We also believe it would behoove the NCAA and all conferences to keep a database of coaches that have been reported for abuse and the ultimate outcome to prevent coaches from resigning or being terminated without cause and jumping to another institution.

As stated in 2016: the NCAA needs to take immediate action to stem the outbreak of alleged mental and physical abuse in college athletics. It is critically important that the NCAA acts now to protect the physical and mental wellbeing of our student-athletes.⁷⁷

Danelle Anderson Welzig holds a Bachelor of Science in Psychology from the College of Charleston, as well as an Associate Degree in Criminal Justice and Certificates in Paralegal Studies, Law Enforcement, and Corrections. Danelle has been a paralegal for over 20 years in the areas of complex construction litigation, real estate and sports law. She has been a paralegal with The Law Office of Martin J. Greenberg, LLC since 2013. Over the past eight years, Danelle has been intricately involved in over 20 of Attorney Greenberg's high school and college athletic abuse cases.

⁷⁷ *Id.*