

College Athletics and the Law

Practical Guidance on Athletics Laws and Regulations

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Crisis Management

Minimize potential liabilities in collegiate sports medicine departments

By Timothy Neal, ATC; Eric Quandt, J.D.; James Thornton, ATC; and Jeffrey Anderson, M.D.

When collegiate sports medicine staff, other athletics department staff and institutions fail to properly address student-athlete safety and welfare issues, you can bank on facing potential liability.

But you can take steps to help enhance the safety and well-being of your student-athletes while also limiting your institution's liability risk by reviewing the key areas that pose the most liability and by raising awareness among your institution's and athletics department's administrators, risk managers and general counsel.

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Liability

Follow tips for making findings, writing reports in employee misconduct investigations

By Justin P. Sievert, Esq.

During the past couple of months, I have addressed the essential elements necessary in preparing for an employee misconduct investigation within your athletics department as well as best practices to implement during the discovery process.

This month, to conclude this multipart series involving key considerations athletics administrators should address when conducting employee misconduct investigations, we'll focus on making a finding, drafting the investigation report, and wrapping up the investigation.

Making a finding

As soon as the investigation has been completed and all facts have been

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Continued from page 1**Manage concussion incidents**

Start by reviewing the "Sports-Related Concussion" guideline in the *2013–2014 NCAA Sports Medicine Handbook* (www.ncaapublications.com/p-4328-2013-14-ncaa-sports-medicine-handbook.aspx). That guideline thoroughly addresses a variety of important concussion-related topics. Ensure you also carefully examine the section "Concussion Diagnosis and Management" for critical guidance on diagnosis, concussion management, supervised graded program of exertion before medical clearance, and return to play. And be sure to adhere to the admonition included in that guidance: "Final clearance for a return to play should be provided by a physician or a physician's designee."

Also pay particular attention to the National Collegiate Athletic Association's Health and Safety materials on the NCAA's website (www.ncaa.org/health-and-safety). The new guidelines, which aim to improve student-athlete safety, are based upon an interassociation consensus. In addition to the guidelines for football practice contact, also consider the following two areas covered on the website:

1. Independent medical care for college student-athletes:

- An institutional medical line of authority should be established independently of a coach, and in the sole interest of student-athlete health and welfare.
- Institutions should, at a minimum, designate a licensed physician (M.D. or D.O.) to serve as medical director, and that medical director should oversee the medical tasks of all primary athletics health care providers.
- The medical director and primary athletics health care providers should be empowered with unchallengeable autonomous authority to determine

medical management and return-to-play decisions of student-athletes.

2. Diagnosis and management of sport-related concussion:

- Institutions should make their concussion management plan publicly available, either through printed material, their website or both.
- A student-athlete diagnosed with sport-related

concussion shouldn't be allowed to return in the current game or practice and should be withheld from athletic activity for the remainder of the day.

- The return to academics should be managed in a gradual program that fits the needs of the individual, within the context of a multidisciplinary team that includes physicians, athletic trainers, coaches, psychologists/counselors, neuropsychologists and administrators, as well as representatives from academic areas (e.g., professors, deans, academic advisors) and disability services.

Develop a concussion plan

You also need to know when you should first remove a student-athlete from practice or competition. The "NCAA Concussion

Policy and Legislation" section in the *2013–2014 NCAA Sports Medicine Handbook* provides information about the policy adopted in 2010 by the NCAA Executive Committee for institutions in all three divisions:

"Institutions shall have a concussion management plan on file such that a student-athlete who exhibits signs, symptoms or behaviors consistent with a concussion shall be removed from practice or competition and evaluated by an athletics health care provider with experience in the evaluation and management of concussions. Student-athletes diagnosed with a concussion shall not return to activity for the remainder of that day. Medical clearance shall be determined by the team physi-

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The authors have collaborated in the past on publications and conferences, including organizing The Clearwater Symposium, a national sports medicine and sports law conference that brought together top national experts discussing key topics such as concussions, cardiac issues, and other medical-legal topics involving sports. (See "Clearwater Symposium" at www.ismsl.org.) ■

cian or his designee according to the concussion management plan.”

Although it was not finally approved at the time of this publication, the NCAA reached a proposed settlement in its concussion lawsuit, stating that: “under the proposed settlement agreement, all current and former NCAA student-athletes in all sports and divisions who competed at an NCAA member school may qualify for physical examination, neurological measurements and neurocognitive assessments.”

The \$70 million NCAA fund will go toward concussion testing and diagnosis — not as payment of damages. But the student-athletes can sue individually for damages. The NCAA settlement doesn't prevent individual lawsuits by student-athletes regarding mismanaged concussion assessment and care.

Address use of energy drinks

Energy drinks contain high levels of caffeine and can lead to tachycardia, hypertension, obesity, and other medical problems, according to the American Academy of Pediatrics. Energy drinks become even more dangerous when mixed with alcohol, the AAP reported.

Nearly 40 percent of college students consumed energy drinks in the past month, according to an AAP survey of almost 800 college students. And consuming high levels of caffeine can place student-athletes at risk of NCAA violations. In fact, student-athletes are in violation when their caffeine levels, as measured in their urine, reveal that they drank the equivalent of about five to eight cups of coffee in one hour — or as few as one to three energy drinks.

“Energy drinks contain high, unregulated amounts of caffeine that may lead to significant morbidity in adolescents (cardiovascular effects, withdrawal symptoms, mixing with alcohol, association with substance abuse),” the AAP stated.

Clearly, energy drinks should be a subject of concern in developing an overall plan for the health, safety and well-being of your student-athletes.

Beware OTC supplements

The cardiac risks of tachycardia and hypertension noted by the AAP are similar to the risk posed by over-the-counter dietary supplements containing ephedrine alkaloids banned by the U.S. Food and Drug Administration in 2004. In 2006, the U.S. Court of Appeals for the 10th Circuit in Denver upheld the FDA ban in a carefully reasoned decision (*Nutraceutical Corp. v. Von Eschenbach*, 459

F.3d 1033).

A surge in the use of supplements containing ephedrine alkaloids led to many reports of student-athletes suffering severe side effects, including at least 10 Northwestern University football players, according to the American College of Sports Medicine.

The ACSM recommended that coaches, athletic trainers, parents, and health care professionals encourage optimal hydration and educate student-athletes about the disadvantages of using energy drinks. In fact, drinks like Red Bull, Lizard Fuel and Adrenaline Rush all contain high doses of caffeine and might not even contribute to increased performance, the ACSM stressed.

Health concerns surrounding energy drinks have also been the subject of recent legislative activities. Just last year, in a press conference and a joint letter to the NCAA and the National Federation of State High School Associations, Illinois Senator Dick Durbin and his colleagues addressed concerns about the marketing of energy drinks at high school and collegiate athletic events. Alderman Edward M. Burke also last year chaired hearings before the Chicago City Council Health and Environmental Protection Committee focusing on the dangers of energy drinks.

Raise awareness of plans

Ensure that your concussion guidelines, recommendations and policies are clearly understood by all of your institution's athletics health care providers (athletic trainers and team physicians), coaches, athletics directors, risk managers, insurers, and all relevant institutional administrators — and implemented in a clearly written concussion management plan easily and publicly accessible in writing, through your website or both.

When you develop a concussion protocol for your athletics department, be sure to collaborate with experts knowledgeable about the sports medicine issues involved, as well as all of the potential risks and liabilities.

Enhancing the health and safety of your student-athletes in the context of protecting the legitimate interests of your institution and staff members should remain your ultimate goal. ■

In our next issue...

The authors will address athletic training/staffing, medical decisions and return-to-play guidelines, student-athlete mental health, and legal considerations. ■