

NIL Necessitates Shared Medical Decision-Making for College Athletes

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Hypotheses

- Opportunity for compensation or NIL revenue will increase pressure on athletes from themselves, “team leadership” and Boosters to play while injured
- The presence of Collectives (the entities that pay athletes) will exacerbate conflicts of interest that pervade the provision of healthcare to athletes and medical eligibility decision-making as Boosters seek ROI for their investment



Proposal

1. State or Federal NIL laws should require colleges to augment life skills classes to include management of wellness and injuries
2. Athletes should complete values-assessment forms annually to identify and articulate their wellness goals vis a vis their career aspirations
3. Federal law should require the NCAA to fund a wholly independent research entity to
 - create decision aids for intercollegiate athletes and
 - conduct research about intercollegiate athletes' medical decision-making
 - track cardiac incidents
4. State or Federal law should require transparency of team physicians' conflicts of interest
5. Shared Decision-Making should become best practice with intercollegiate athletes
6. Schools should offer athletes the opportunity to consent to the participation of a trusted advisor in the Shared Decision-Making process

Footnote re sexual abuse of athletes

What is NIL?

- The right of publicity refers to any individual's right to control the use of their Name, Image or Likeness for commercial purposes. Misappropriation gives one the right to seek damages.
- Example: a commercial video game uses an avatar that looks exactly like you, with your number on the avatar's shirt.



Justice Kavanaugh in NCAA v Alston (2021)

- NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars on revenue for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes...
- But the student athletes who generate the revenue, many of whom are African American and from lower-income backgrounds, end up with little or nothing.

And while negotiations ensue

- Schools are now
 - doing NIL deals with high school seniors
 - using NIL to recruit transfers
 - Using NIL to retain their stars

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- “NCAA and the so-called “power five” athletic conferences reached a groundbreaking agreement that seeks to end the century-old tradition of amateurism in college sports by allowing athletes to receive pay directly from the colleges and universities they play for.” NPR

Healthcare for Athletes



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TEAM DOCTOR

New NCAA Rules Effective 8/2024

Division I members must

- Provide medical coverage for athletically related injuries for at least two years after graduation.
- Cover out-of-pocket medical expenses during a student-athlete's playing career.
- Provide mental health services consistent with the NCAA's mental health best practices.
- Follow concussion management protocols in line with the NCAA Concussion Safety Protocol Checklist.
- Provide life skills development across a range of topics, including at minimum:
 - Mental health.
 - Strength and conditioning.
 - Nutrition.
 - Name, image and likeness opportunities.
 - Financial literacy.
 - Career preparation.
 - Transfer requirements.
 - Diversity, equity, inclusion and belonging.
 - Sexual violence prevention.

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Annual Values Assessment

How does the athlete prioritize the following:

1. Leaving college without permanent injury even if that means prematurely retiring
2. Maximizing compensation even if long-term physical effects of continued play or delaying medical intervention to mitigate injury
3. Maximizing potential for professional athletic career

NCAA funded independent research entity

- Create **healthcare decision aids** to facilitate consent process about the most common injuries experienced by and treatments offered to athletes
- Research about athletes' **decision-making process**
 - Who athletes engage as their support system
 - Factors most important to athletes in making decisions
 - Trust in team physician and athletic trainers
 - Importance of being primary treatment decision-maker
 - Effectiveness of decision-aids and shared decision-making
 - Differential outcomes based on race, gender, age, sport, socio-economic, aspirations to go Pro

Physicians Conflicts of Interest

- Does Team Physician have experience in treating elite athletes?
- What is Team Physician's scope of responsibility with athlete vis a vis athletic trainers?
- Transparency and mitigation of COI
 - Does physician/practice pay university?
 - What salient parts of the arrangement should athletes know?
- Athlete should understand who employs and supervises team physician
 - Team physicians should not report to Athletic Director or coaches
 - Student health services

Shared Decision-Making

- Intercollegiate athletes are legal adults
- Intercollegiate athletes must be normed to use their agency
- All consensus statements recommend shared decision-making model with intercollegiate athletes
- Whom does the athlete wish to have in the conversation?

