



The Anxious Athlete: Mental Health and Sports’ Duty and Advantage to Protect

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I. INTRODUCTION

Sports are undoubtedly a major force in our economy, culture, and society. The public intrigue and global audience for sports are seemingly insatiable.¹ Unlike other industries, sports have a unique, multi-faceted character of entertainment, physicality, business, regulation, and public exposure. The sports industry consists of a vast and varied range of sports, leagues, team franchise and ownership structures, private and quasi-public regulatory and governance schemes, federations, committees, councils, and extensive commercial ventures. The multibillion-dollar sport market is fueled by lucrative deals for broadcast, print, digital, and social media; corporate sponsorships; marketing; ticketing; merchandise; events; and the many attendant businesses, agents, and opportunists seeking to associate their brand with sports. Emerging electronic sports competitions and sports gambling ventures are compounding the dollars and viewers in the sports market.² While sports leagues generally provide the forum and infrastructure for competition, the athletes certainly are the face, key, and heartbeat that power this vast machine.

Athletes span all levels, from local youth, recreational, inter-scholastic and amateur play to elite inter-collegiate, professional, Olympic and international sport competition. Particularly at the elite competition levels, athletes garner significant attention not only because of their athletic ability and prowess, but also their personalities, distinctive moves, tattoos, tweets, overall images, influence, and brand marketability—and their apparent resilience. Few industries have dedicated beat reporters, or a voracious print and social media following, who track the individual athletes so closely—their statistics, personal and professional moves, and moods—not only team

¹ Sporting events are the most watched broadcasts, and in the era of binge-watching and cord-cutting, are one of the few broadcasts people watch live, which benefits network programming and corporate sponsorship. See Ken Fang, *Report Shows Americans Love to Watch Their Sports Live*, AWFUL ANNOUNCING (Apr. 7, 2016), <https://awfulannouncing.com/2016/report-shows-americans-love-to-watch-their-sports-live.html> [https://perma.cc/W6BE-HMEG]; see also Tamzin Barroilhet, *Brand Integration and Sports Sponsorship: Benefits and Pitfalls 2* (Spring 2016) (M.A. Essay, John Carroll University), <https://collected.jcu.edu/cgi/viewcontent.cgi?article=1045&context=MAstersessays> [https://perma.cc/Q5TK-UUGF]; see also *Total Number of Viewers of the Most Watched Television Shows in the United States in the 2020/2021 Season*, STATISTA, <https://www.statista.com/statistics/804812/top-tv-series-usa-2015/> [https://perma.cc/6JWK-6G34] (last visited Dec. 23, 2021).

² See QARA, *Sports Industry Insights*, MEDIUM (Oct. 17, 2019), <https://medium.com/qara/sports-industry-report-3244bd253b8> [https://perma.cc/V6ZH-8SAH].

scores. Legal aspects of sports have largely focused on athletes' eligibility, disciplinary measures, rights to compensation, endorsement and commercial opportunities, publicity, speech, and physical safety, but focus is rarely on responsibilities related to athlete mental health.³

Recent instances of high-profile athletes speaking out on mental health has triggered an essential shift in the mental health narrative in sports. Anxiety, depression, and mental health are a concern for all of society, but youth in their late teens and early twenties are at particular risk. Young adults at this developmental stage are navigating the social, cultural, and biological challenges of emerging adulthood, along with pressures for identity, status, and acceptance.⁴ Today's youth is also subject to the surreal experience of an ongoing pandemic and barrage of 24/7 online content and social media.⁵ Moreover, elite athletes are under significant pressure and public scrutiny, as well as demanding training and competition schedules, and are squarely part of this demographic in which issues of mental illness, depression, and anxiety begin to manifest.

The athletic culture of sport—with its expectations that elite athletes perform, win, be media personalities, influencers, and physical sensations—can compound the risk to an athlete's emotional and mental health. Individuals of all ages revere elite athletes as role models and heroes.⁶ Yet what

³ Traditional sports law casebooks, for example, cover topics involving contract, tort, crime, labor, antitrust, gender equity, agent regulation, intellectual property, and sport governing body regulation. Chapters relating to the application of disability law focus on physical access and eligibility rules concerning physical competition. See generally RAY YASSER ET AL., *Sports Law: Cases and Materials* (Carolina Academic Press 9th ed. 2020).

⁴ See Sachiko A. Kuwabara et al., *A Qualitative Exploration of Depression in Emerging Adulthood: Disorder, Development, and Social Context*, 29 GEN. HOSPITAL PSYCHIATRY 317, 318 (2007).

⁵ See Jean M. Twenge, *Have Smartphones Destroyed a Generation?*, THE ATLANTIC (Sept. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a-generation/534198/> [https://perma.cc/2L2Z-GLH4] (“[T]he impact of these devices has not been fully appreciated, and goes far beyond the usual concerns about curtailed attention spans. The arrival of the smartphone has radically changed every aspect of teenagers' lives, from the nature of their social interactions to their mental health.”). Twenge also wrote that “[i]t's not an exaggeration to describe iGen [or Generation Z] as being on the brink of the worst mental health crisis in decades.” *Id.*; see also Wendell Barnhouse, *NCAA Faces Uphill Battle Getting Mental Health Care to Student-Athletes*, GLOB. SPORT MATTERS (Aug. 21, 2019), <https://globalsportmatters.com/health/2019/08/21/ncaa-faces-uphill-battle-getting-mental-health-care-to-student-athletes/> [https://perma.cc/GTM8-RTLY].

⁶ See TEDx Talks, *Toxicity of Sport Culture on Athletes' Mental Health — Hillary Cautben* — TEDxTexasStateUniversity, YOUTUBE (Jan. 23, 2019), [https://](https://www.youtube.com/watch?v=...)

most do not see is that many of the greatest athletes are dealing, or have dealt, with some form of mental illness or mental health challenge. A National Collegiate Athletic Association (“NCAA”) study found that “[a]nxiety disorders are the most common mental health issues in the United States. Data from national surveys show that more than 30 percent of student-athletes have experienced overwhelming anxiety.”⁷ Mental health certainly improves sports performance, but elite sports performance is not evidence of mental health.⁸ Sports participation does provide opportunities for improved physical and mental health, skill development, socialization, and personal growth; however, for some athletes, the experience can be stressful and emotionally debilitating and create or compound mental health concerns.⁹

The culture and governance of sport has failed to adequately address athlete mental health. Athletes dealing with depression or anxiety are reluctant to acknowledge, report, or seek help. From a young age, athletes are taught to strive for perfection. Elite athletes are under unrelenting public scrutiny. From the pressure not to disappoint adoring parents “cheering” on the sidelines to having one’s professional career on the line, athletes are reluctant to show the slightest appearance of weakness. An athlete who discloses that these pressures detrimentally impact their own mental health

www.youtube.com/watch?v=UZTP3f_6coA.zTP3f_6coA [<https://perma.cc/4CSH-3LXS>] [hereinafter Cauthen].

⁷ *Anxiety Disorders*, NCAA SPORT SCI. INST., https://ncaaorg.s3.amazonaws.com/ssi/mental/SSI_AnxietyDisordersFactSheetpdf.pdf [<https://perma.cc/MWF4-Q2N3>] (last visited Oct. 29, 2021). The study advised that “[b]y understanding that anxiety is common and by addressing it, student-athletes can better manage anxiety and its impact on their health and performance.” *Id.*

⁸ See Kristoffer Henriksen et al., *Consensus Statement on Improving the Mental Health of High Performance Athletes*, 18 INT’L J. SPORT & EXERCISE PSYCH., 553, 556 (2020); see also William D. Parham, *Invisible Tattoos*, AEON (Jan. 29, 2020), <https://aeon.co/essays/if-trauma-can-propel-athletes-healing-can-make-them-soar> [<https://perma.cc/C9VL-MKLJ>].

⁹ See Claudia L. Reardon et al., *Mental Health in Elite Athletes: International Olympic Committee Consensus Statement* (2019), 53 BRIT. J. SPORTS MED. 667, 670-77 (2019) (examining the athletic culture and environmental factors that commonly impact mental health, including sexuality and gender issues, hazing, bullying, sexual misconduct and transition from sport); see also Cindy J. Chang et al., *Mental Health Issues and Psychological Factors in Athletes: Detection, Management, Effect on Performance and Prevention: American Medical Society for Sports Medicine Position Statement—Executive Summary*, 30 CLIN. J. SPORT MED. 91, 91 (2020) (“[T]he very nature of competition can provoke, augment, or expose specific psychological issues in athletes.”).

fears stigma, skepticism, disappointing others, and career jeopardy.¹⁰ The “no-pain, no-gain” and “win at all costs” messages, more often than not, deter athletes from addressing potential debilitating mental health concerns.¹¹

The perceived stigma and inadequate education regarding mental health prevent many athletes from acknowledging or seeking help with internal struggles and issues such as depression and anxiety. Indeed, many elite athletes quit playing at a young age due to the stress of competition, burnout, and impact on their mental health.¹² Few studies track statistics on athletes who left sports due to a lack of mental health resources at schools, universities, and the professional level. Much of these internal struggles are simply neither reported nor disclosed.

While many suffer in silence, some athletes have begun candidly discussing their own mental health struggles and the consequent impacts on their careers and lives. Over the past few years, NBA stars and players Kevin Love, LeBron James, Royce White and Keyon Dooling, NFL player Brandon Brooks, Olympians Michael Phelps, Liz Cambage, Simone Biles and Justin Gatlin, NCAA athletes, and numerous others have begun speaking out, advocating for awareness of, treatment for, and attention to athlete mental health. Tennis star Naomi Osaka refused to submit to post-match press conferences at the 2021 French Open tournament, citing mental health and her anxiety in having to field the barrage of intense media questions.¹³ In response, the Grand Slam tournament organizers cited her breach of contractual obligations to speak to the media and threatened penalties, including

¹⁰ See Parham, *supra* note 8.

¹¹ See *id.* (“Athletes can resist professional help due to beliefs that, if effective, therapy might blunt their ‘edge’ and thus compromise their drive and determination. This fear, fuelled by their quest to remain in the game as long as they possibly can, might cause them to conclude that fighting through the grind and emotional walls of challenge remains the best option.”).

¹² See Emily Pluhar et al., *Team Sport Athletes May Be Less Likely To Suffer Anxiety or Depression than Individual Sport Athletes*, 18 J. SPORTS SCI. & MED. 490, 490 (2019) (noting a study finding that those who do not participate in or drop out of organized sports have greater social and emotional difficulties than those who continue to play); see also Pricilla Tallman, *Is Sports Culture Toxic to Athlete Mental Health?*, SPIKEDR.COM (May 15, 2020), <https://spikedr.com/2020/05/15/is-sports-culture-toxic-to-athlete-mental-health/> [<https://perma.cc/NS83-V74K>] (noting that approximately 70% of youth athletes stop playing sports by their junior year, citing burnout, financial considerations, and other reasons).

¹³ See Alan Blinder, *With Her Candor, Osaka Adds to the Conversation on Mental Health*, N.Y. TIMES (July 30, 2021), <https://www.nytimes.com/2021/06/01/sports/tennis/mental-health-osaka.html> [<https://perma.cc/CK98-E53N>].

disqualification.¹⁴ Some considered it a competitive advantage to allow a player to avoid media conferences. Osaka agreed to pay the imposed \$15,000 monetary fine, then withdrew from competition and Wimbledon, saying she did not want to be a distraction for the tournament.¹⁵ Osaka later wrote in *It's O.K. Not to Be O.K.* that “[p]erhaps we should give athletes the right to take a mental break from media scrutiny on a rare occasion without being subject to strict sanctions. . . . I also do not want to have to engage in a scrutiny of my personal medical history ever again.”¹⁶

Former NBA player Royce White suffered from severe generalized anxiety disorder and panic attacks and requested certain permission to drive rather than fly to NBA games and to determine his own mental health treatment through the use of an independent physician.¹⁷ Are these types of accommodations “reasonable” to require of the tournament organizers, teams, or sport leagues? Is participating in press conferences an essential function of a professional athlete’s job, such as that requested of Naomi Osaka? Does mental health constitute a “disability” for purposes of legal rights to non-discrimination and accommodation? Notwithstanding “legal” rights or obligations to mental health, what is the right thing to do with respect to athlete mental health?

These athletes and others have set in motion a global conversation across sports regarding the responsibilities that leagues, teams, and sport governing bodies have to address and to accommodate players with mental

¹⁴ See Bryan Robinson, *7 Things Naomi Osaka Taught Us About Mental Health and Career Success*, FORBES (June 4, 2021), <https://www.forbes.com/sites/bryanrobinson/2021/06/04/7-things-naomi-osaka-taught-us-about-mental-health-and-career-success/?sh=734579c440c7> [<https://perma.cc/4AT9-XSS2>].

¹⁵ See Christopher Clarey, *A Shocking Exit and Sad Day for Tennis*, N.Y. TIMES (Sept. 5, 2021), <https://www.nytimes.com/2021/05/31/sports/tennis/french-open-naomi-osaka-quits.html> [<https://perma.cc/FCP6-WQTU>]. In a May 31, 2021 Twitter posting, Osaka revealed that “[t]he truth is that I have suffered long bouts of depression since the US Open in 2018 and I have had a really hard time coping with that. Anyone that knows me knows that I’m introverted, and anyone that has seen me at tournaments will notice that I’m often wearing headphones as that helps dull my social anxiety.” Naomi Osaka 大坂なおみ, (@naomiosaka), Twitter (May 31, 2021, 1:47 PM), <https://twitter.com/naomiosaka/status/1399422304854188037>.

¹⁶ Naomi Osaka, *Naomi Osaka: 'It's O.K. Not to Be O.K.*, TIME (July 8, 2021, 7:15 AM), <https://time.com/6077128/naomi-osaka-essay-tokyo-olympics/> [<https://perma.cc/W4LD-9VK4>] (suggesting sport organizers “allow a small number of ‘sick days’ per year where you are excused from your press commitments without having to disclose your personal reasons”).

¹⁷ See Michael A. McCann, *Do You Believe He Can Fly? Royce White and Reasonable Accommodations Under the Americans with Disabilities Act for NBA Players with Anxiety Disorder and Fear of Flying*, 41 PEPP. L. REV. 397, 401, 406 (2014).

health issues. The emergence of this dialogue compels the inquiry into the legal, contractual, and ethical obligations of sport governing bodies, as well as the practical competitive benefits to addressing athlete mental health concerns.

This paper examines issues concerning athlete mental health, along with sports' role, potential complicity, and responsibility.¹⁸ Part II considers the scope and accounts of anxiety, depression, and overall mental health concerns among athletes in youth, elite, amateur, and professional sport. Part II also explores the prospect that competitive sport may foster increased risks to mental health, noting athlete accounts of mental distress and recognizing athletes who have come forward to raise awareness of and to destigmatize mental health needs. Part III examines legal issues raised regarding athlete mental health, including application of the Americans with Disabilities Act ("ADA"); duties to report, identify, and accommodate athlete mental health; confidentiality in reporting and identifying athlete mental health concerns; impact on contractual obligations; player discipline; and recruiting.

Part IV surveys initiatives that major leagues and governing organizations have recently implemented in addressing player mental health and proposes areas where these programs can be improved. Part V concludes with the submission that all constituents in the sport network (i.e., governing bodies, teams, coaches, athletic support personnel, parents, peers, media, and fans) have an obligation to consider athletes' full wellness, both physical and emotional. The time is now for sport leadership and stakeholders to attune to athlete mental health conscientiously and compassionately and to provide programs and access to resources that help athletes achieve their highest performance; awareness of athlete mental health is as important as, if not more important than, what it truly means to win.

II. ANXIETY, DEPRESSION, AND MENTAL HEALTH CONCERNS IN SOCIETY AND SPORT

Mental illness has a rippling effect throughout society. According to the National Alliance on Mental Illness ("NAMI"), tens of millions of people, or one in five adults, experience some form of mental illness each year,

¹⁸ See *infra* Section II.A. (discussing definition of "mental health" to encompass the spectrum of mental health conditions); see also *Mental Health Conditions*, NAT'L ALL. ON MENTAL ILLNESS, <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions> [https://perma.cc/V5X9-RR97] (last visited June 26, 2021).

but only half receive treatment.¹⁹ With respect to youth, NAMI also reports that “1 in 6 U.S. youth aged 6-17 experience a mental health disorder each year,” and “50% of all lifetime mental illness begins by age 14 and 75% begin by age 24.”²⁰ Sadly, “[s]uicide is the 2nd leading cause of death among people aged 10-34.”²¹

Mental health disorders impact not only the individual, but also family members, communities, and the world.²² According to the World Health Organization (“WHO”), “[t]he burden of mental disorders continues to grow with significant impacts on health and major social, human rights and economic consequences in all countries of the world.”²³ The economic impact of mental health disorders on the global economy is estimated to cost “\$1 trillion each year in lost productivity.”²⁴

A. *Defining Mental Health*

Mental health is a complex medico-socio-legal topic. The terms “mental health,” “mental illness,” and “mental disorder” are often used interchangeably to encompass a range of emotional, psychological, and behavioral conditions.²⁵ Both mental health conditions and mental illness impact “[a] person’s thinking, feeling, mood or behavior.”²⁶ The distinction between mental health and mental illness can be relevant for specific diag-

¹⁹ See *Mental Health by the Numbers*, NAT’L ALL. ON MENTAL ILLNESS, <https://nami.org/mhstats> [<https://perma.cc/QH34-PDWG>] (last visited Oct. 29, 2021).

²⁰ *Id.*

²¹ *Mental Health Conditions*, *supra* note 18.

²² See *The Ripple Effect of Mental Illness*, NAT’L ALL. ON MENTAL ILLNESS, <https://www.nami.org/NAMI/media/NAMI-Media/Infographics/NAMI-Impact-Ripple-Effect-FINAL.pdf> [<https://perma.cc/UTY6-4AKU>] (last visited Dec. 24, 2021) (claiming that mental illness can also have serious implications on the community, including homelessness and incarcerations) (“At least 8.4 million Americans provide care to an adult with an emotion or mental illness.”).

²³ See *Mental Disorders*, WORLD HEALTH ORG. (Nov. 28, 2019), <https://www.who.int/news-room/fact-sheets/detail/mental-disorders> [<https://perma.cc/3X4X-AYYK>].

²⁴ See *Mental Health in the Workplace*, WORLD HEALTH ORG., <https://www.who.int/teams/mental-health-and-substance-use/promotion-prevention/mental-health-in-the-workplace> [<https://perma.cc/2WXX-W89P>] (last visited Nov. 15, 2021).

²⁵ See *Mental Health by the Numbers*, *supra* note 19; see also Yaron Covo, *Gambling on Disability Rights*, 43 COLUM. J.L. & ARTS 237, 258 (2020) (noting that no single term can define or accurately encompass all aspects of what constitutes a psychiatric or “mental disorder” and that the term “psychosocial disability” is a more progressive term preferred over mental illness or disorder).

²⁶ *Mental Health Conditions*, *supra* note 18.

nosis, treatment protocol, legal protection, and societal acceptance purposes.²⁷ “Mental health” is defined as “effective functioning in daily activities,” and as reflecting a person’s “emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices.”²⁸ In comparison, “mental illness” refers to diagnosable mental disorders,²⁹ such as anxiety, Attention Deficit Hyperactivity Disorder (“ADHD”), depression, bipolar disorder, post-traumatic stress disorder (“PTSD”), obsessive-compulsive disorder (“OCD”), psychosis, and schizophrenia.³⁰ Studies report varied statistics on the prevalence of mental health disorders.³¹ Mental health disorders can rarely be traced to a single cause.³² Research suggests contributing factors to mental illness include genetics, environment and lifestyle, stress, trauma, abuse, chronic medical conditions, alcohol and drug use, and chemical imbalances in the brain.³³

Part of the confusion or stigma regarding mental health may be attributed to conflating the terms “mental health” and “mental illness.” Not everyone suffers from a diagnosable mental disorder, yet everyone has mental health needs. NAMI reminds people with mental health conditions:

[n]one of this means that you’re broken or that you, or your family, did something ‘wrong.’ Mental illness is no one’s fault. And for many people, recovery — including meaningful roles in social life, school and work —

²⁷ See *infra* Section IV.

²⁸ Ranna Parekh, *What is Mental Illness?*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/patients-families/what-is-mental-illness> [<https://perma.cc/W94U-QNMA>] (last visited Dec. 24, 2021); *About Mental Health*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/mentalhealth/learn/index.htm> [<https://perma.cc/BEP5-QRX8>] (last visited June 26, 2021).

²⁹ See Parekh, *supra* note 28. The World Health Organization (“WHO”) defines mental health as “a state of well-being in which an individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.” *Mental Health: Strengthening Our Response*, WORLD HEALTH ORG. (Mar. 30, 2018), <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> [<https://perma.cc/W2KT-8R9K>]; see also Covo, *supra* note 25.

³⁰ *Mental Health Conditions*, *supra* note 18.

³¹ Covo, *supra* note 25, at 258 (noting varied results, such as one study reporting that 18.9 percent of adults (age eighteen or older) in the United States experience “mental illness” within any one-year period, while other studies report mental illness among adults ranges from 26.2 percent to 32.4 percent in a given year, and explaining that “[e]stimates may vary depending on how the relevant study defines ‘mental illness.’”).

³² *Id.*

³³ See *Mental Health by the Numbers*, *supra* note 25.

is possible, especially when you start treatment early and play a strong role in your own recovery process.³⁴

As noted by members of the international Think Tank on Athlete Mental Health, “[a]thletes do not need to have a clinical mental disorder to need help to manage their mental health.”³⁵

As defining mental health is nuanced, data collected on mental health conditions is similarly complicated. While recognizing the technical distinction between “mental health conditions” as opposed to “mental illnesses,” NAMI “intentionally use[s] the terms ‘mental health conditions’ and ‘mental illness/es’ interchangeably.”³⁶ Like NAMI, many of the sport surveys, reports, and other pieces of sport-related literature on the topic tend to use the term “mental health” to broadly encompass a range of mental or psychosocial disorders. This paper likewise broadly uses the term athlete “mental health,” unless noted otherwise, for purposes of focusing on the policy aspects specific to sport.

B. *Athlete Mental Health Concerns and Prevalence*

While not everyone deals with mental illness, anxiety, depression, or panic attacks, as with physical health, everyone deals with mental health. Exact data on the prevalence of athlete mental health conditions can vary based on the study methodologies and definitions. Athletes for Hope reports that up to 35% of professional athletes “[s]uffer from a mental health crisis which may manifest as stress, eating disorders, burnout, or depression and anxiety.”³⁷ The study also reports “startling” statistics that “33% of all college students experience significant symptoms of depression, anxiety or

³⁴ *Id.*

³⁵ Henriksen, *supra* note 8, at 55.

³⁶ *Mental Health Conditions*, *supra* note 18; see also Timothy L. Neal et al., *Inter-Association Recommendations in Developing a Plan for Recognition and Referral of Student-Athletes with Psychological Concerns at the Collegiate Level: A Consensus Statement*, NAT’L ATHLETIC TRAINERS’ ASS’N, <https://www.nata.org/sites/default/files/psychologicalreferral.pdf> [<https://perma.cc/C9QX-3H9V>] (last visited Oct. 16, 2021) (using the term “Psychological Concern” is used instead of “Mental Illness” because only credentialed mental health care professionals have the legal authority to diagnose a mental illness).

³⁷ Robin Kuik & Suzanne Potts, *Mental Health and Athletes*, ATHLETES FOR HOPE, <http://www.athletesforhope.org/2019/05/mental-health-and-athletes/> [<https://perma.cc/R2FF-A2U2>] (last visited Oct. 16, 2021) (“Approximately 46.6 million people are living with mental illness in the US. That’s 1 in 5 adults who will be living with a mental health condition at some point in their lives.”).

other mental health conditions. Among that group, 30% seek help. But of college athletes with mental health conditions, only 10% do.”³⁸

1. Youth Sports

A study of youth recreational sports found that individual sport athletes may be at a higher risk of mental health issues than team sport athletes are.³⁹ Participation in team sports (e.g., basketball, soccer, etc.) seems to be associated with improved social and psychological outcomes when compared to individual sports (e.g., golf, tennis, etc.).⁴⁰ An individual sport increases an athlete’s sense of accountability—due to their success completely depending on their own performance—and may lead to stronger experiences of emotions, both positive and negative, after performance, and, thus, increased feelings of guilt or shame after losing.⁴¹ The internalized anxiety and stronger experiences of emotions may be significant factors in why individual sport athletes report suffering more from depression and anxiety than team sport athletes.⁴² There is no one to help carry the weight of expectations or the burden of a loss. Individual sport athletes also tend to set high personal goals for themselves when compared to team sport athletes.⁴³ The foregoing relied on studies related to youth sports; however, mental health concerns persist at higher levels of sport.

2. U.S. College Athletes

An NCAA report found that approximately one in four U.S. college athletes will suffer from depression—the same rate as the general population.⁴⁴ The study also reported that 31% of male and 48% of female athletes

³⁸ *Id.*

³⁹ Pluhar, *supra* note 12 (“[A]mong young athletes, anxiety and depression are more common in those who play individual sports than those who play team sports); see also Rochelle M. Eime et al., *A Systematic Review of the Psychological and Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health Through Sport*, 10 INT’L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY 98 (2013).

⁴⁰ See Pluhar, *supra* note 12, at 495.

⁴¹ See Insa Nixdorf et al., *Comparison of Athletes’ Proneness to Depressive Symptoms in Individual and Team Sports: Research on Psychological Mediators in Junior Elite Athletes*, 7 FRONTIERS IN PSYCHOL. 893 (2016).

⁴² See Pluhar, *supra* note 12, at 491.

⁴³ *Id.*

⁴⁴ See *Mental Health Best Practices: Inter-Association Consensus Document: Best Practices for Understanding and Supporting Student-Athlete Mental Wellness*, NCAA SPORTS

reported feeling “overwhelming anxiety” within the last twelve months, compared to 40% of male and 56% of female non-athletes.⁴⁵ In response to questions regarding depression, 21% of male and 28% female student-athletes self-reported feeling difficulty to function within the prior twelve months, compared to 27% of male and 33% of female non-athletes.⁴⁶ The NCAA study also found that male student-athletes were more likely to engage in aggressive behavior within the last twelve months, with 24% of male student-athletes reporting being in a physical fight, compared to only 12% of male non-athletes.⁴⁷

The pandemic wrought even more pressure on athlete mental health. Over 37,000 student-athletes responded to the NCAA’s Student-Athlete COVID-19 Well-being Survey conducted between April and May 2020.⁴⁸ The report states that the “rates of mental health concerns were 150% to 250% higher than those historically reported by NCAA student-athletes in the American College Health Association’s National College Health Assessment.”⁴⁹ The impacts of remote learning, canceled sports, isolation, closed sport facilities, and barriers to athletic training heightened mental distress among student-athletes.⁵⁰ Although the reported levels of anxiety and depression among collegiate student-athletes are not significantly higher than those of their non-athlete peers, many college athletes do experience serious

SCI. INST. (2016) https://ncaaorg.s3.amazonaws.com/ssi/mental/SSI_MentalHealthBestPractices.pdf [<https://perma.cc/UN5F-25JX>] (last visited Oct. 16, 2021).

⁴⁵ See Simon M. Rice et al., Determinants of Anxiety in Elite Athletes: A Systematic Review and Meta-Analysis, 53 BRIT. J. SPORTS MED. 722, 726 (2019).

⁴⁶ Robert J. Schinke et al., *International Society of Sport Psychology Position Stand: Athletes’ Mental Health, Performance, and Development*, INT’L J. SPORT & EXERCISE PSYCHOL. at 3 (2017).

⁴⁷ *Id.*

⁴⁸ *Student-Athlete COVID-19 Well-being Survey*, NCAA RSCH. (2020), https://ncaaorg.s3.amazonaws.com/research/other/2020/2020RES_NCAASACOV-19SurveyReport.pdf [<https://perma.cc/F345-DN2T>]; see also *Survey Shows Student-Athletes Grappling with Mental Health Issues*, NCAA (May 22, 2020), <https://www.ncaa.org/about/resources/media-center/news/survey-shows-student-athletes-grappling-mental-health-issues> [<https://perma.cc/4BEA-2RB5>].

⁴⁹ Michelle Gardner, *Suicides in College Sports Put Focus on Mental Health*, ARIZ. REPUBLIC (May 17, 2021), <https://www.azcentral.com/story/sports/college/asu/2021/05/17/suicides-college-sports-put-focus-mental-health-those-trying-make-difference/7128392002/> [<https://perma.cc/V6XJ-3GRA>].

⁵⁰ Timothy Neal, *Understand Mental Health Impact of Pandemic on Student-Athletes*, *Sports Medicine Staff*, 18 COLL. ATHLETICS & L. 6, 7 (May 2021); see also JoAnne Barbieri Bullard, *The Impact of COVID-19 on the Well-Being of Division III Student-Athletes*, SPORT J. (Oct. 7, 2020), at 3-6.

mental health issues, must navigate the demands of both academic and athletic competition, and yet have been less likely to report these issues.⁵¹

3. Elite Athletes

The International Olympic Committee (“IOC”) convened a group of medical experts and IOC leadership to study and address mental health in elite athletes.⁵² The IOC Consensus Group evaluated various aspects of athlete mental health, publishing their findings and recommendations in the *Mental Health in Elite Athletes: IOC Consensus Statement* (2019). The IOC Report notes that studies on athlete mental health have increased, but that statistics on the prevalence of mental health disorders in sport, and as compared with the general population, are difficult to discern as definitions of athlete mental health can encompass both self-reported and clinically-diagnosed conditions, and studies report varied statistics.⁵³ For example, the IOC study on athlete mental health reports a broad range that 5–35% of elite athletes (i.e., those competing at professional, Olympic, or collegiate levels) are affected with mental health disorders.⁵⁴ The study noted anxiety and depression rates of nearly 45% among male athletes in team sports (cricket,

⁵¹ See Jennifer Moreland et al., *College Athletes’ Mental Health Services Utilization: A Systematic Review of Conceptualizations, Operationalizations, Facilitators, and Barriers*, 7 J. SPORTS & HEALTH SCI. 58, 59-67 (2018); (“NCAA athletes not only face difficulties surrounding the transition to adulthood and college studies, but the pressure to remain in peak physical and mental condition to their athletic performance . . . Both the athlete and the culture surrounding the athlete could facilitate or hamper an athlete’s use of sport psychology and related mental health services.”); see also Ann Kearns Devoren & Seunghyun Hwang, *Mind, Body and Sport: Depression and Anxiety Prevalence in Student-Athletes*, NCAA, <https://www.ncaa.org/sport-science-institute/mind-body-and-sport-depression-and-anxiety-prevalence-student-athletes> [https://perma.cc/9GDV-VUHB] (last visited Dec. 24, 2021); NCAA, *Mind Body & Sport: Understanding and Supporting Student-Athlete Mental Wellness* 38-39 (2014), https://www.naspa.org/images/uploads/events/Mind_Body_and_Sport.pdf [https://perma.cc/AA7Z-MGC7]; Jayce Born, *National Protection of Student-Athlete Mental Health: The Case for Federal Regulation over the National Collegiate Athletic Association*, 92 IND. L.J. 1221, 1222 (2017) (noting push for NCAA to implement mental health programs in addition to concussion protocols after two high-profile athlete suicide deaths).

⁵² Reardon, *supra* note 9, at 686.

⁵³ *Id.* at 668 (noting that most studies on athlete mental health have lacked reference to general population or to account for cross-cultural differences and that “[s]tudies vary in whether they describe self-reported specific mental health symptoms or physician diagnosed disorders”).

⁵⁴ *Id.*

football, handball, ice hockey and rugby), with 10-25% of collegiate athletes reporting depression and eating disorders.⁵⁵

The IOC study reports that elite athletes experience generalized anxiety disorders (“GAD”) in a range from 6.0% for clinician-confirmed diagnoses to 14.6% self-reported.⁵⁶ This range is similar to the general population, in which 10.6–12% are affected by an anxiety disorder or self-report anxiety issues.⁵⁷ Individual aesthetic sports like gymnastics, figure skating, and dance, in which subjective judgment determines success, also correlate with the highest rates of GAD among elite athletes.⁵⁸

C. *Sport-Related Factors Impacting Athlete Mental Health*

Sports and exercise can certainly benefit both physical and mental health.⁵⁹ Yet athletes suffer from mental health issues at the same rate as non-athletes, suggesting that aspects of the sports experience may influence the severity of a person’s mental health issues.⁶⁰ Athletes’ mental health symptoms and disorders can be attributed to both generic and sport-specific reasons.⁶¹ The risk of mental health disorders in elite athletes is heightened, for example, when an athlete suffers a physical injury, decreased performance, or tends to maladaptive perfectionism.⁶² Certain aspects of sports can exacerbate mental health risks.⁶³ Elite athletes often travel across time zones, have rigorous training and study schedules, and face sleep disruption and

⁵⁵ *Id.*

⁵⁶ *Id.* at 672.

⁵⁷ Rice, *supra* note 45, at 722.

⁵⁸ Karine Schaal et al., *Psychological Balance in High Level Athletes: Gender-Based Differences and Sport-Specific Patterns*, 6 PLOS ONE e19007 (2011), available at <https://pubmed.ncbi.nlm.nih.gov/21573222/> [<https://perma.cc/5JNB-R3UF>].

⁵⁹ See Simon Rice et al., *The Mental Health of Elite Athletes: A Narrative Systematic Review*, 46 SPORTS MED. 1333, 1344 (2016) (reporting findings suggested that elite athletes experience a broadly comparable risk of high-prevalence mental disorders, such as anxiety and depression, relative to the general population).

⁶⁰ Athletes seek treatments at lower rates or after a longer period from onset than the general population. Since the rates of mental health issues are relatively equal, lower rates of treatment may show that athletes are dissuaded from seeking early treatment because of their status as athletes. See Reardon, *supra* note 9, at 668.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Born, *supra* note 51, at 1223; Rice, *supra* note 45, at 726 (2019); see also Marnae Mawdsley, *A Losing Mentality: An Analysis of the Duty Owed by Universities to Provide Their Student-Athletes with Mental Health Services*, 31 MARQ. SPORTS L. REV. 243, 247 (2021) (citing research and asserting that student-athletes have a potentially higher risk of experiencing mental health issues and requiring treatment).

disorders that can impair mental health.⁶⁴ The emphasis on body physicality in some elite sports poses higher risks for eating disorders and “exercise addiction.”⁶⁵

The IOC study noted that specific factors in sport associated with elite athlete depression include: “genetic factors (e.g., family history); environmental factors (e.g., poor quality relationships, lack of social support); injury, competitive failure, retirement from sport; pain, and concussion.”⁶⁶ Mental health symptoms such as depression, anxiety, and higher risk of suicide may also follow sports-related concussions⁶⁷ and impact athletes who are ending their careers due to injury or retirement as well as athletes whose time and self-identity are changed. In addition to these conditions, athletes are vulnerable to eating disorders, anxiety and stress, overtraining, and sleep disorders.⁶⁸ Aspects of sport that involve physical injuries, verbal abuse, sexual misconduct, racial and gender discrimination, addictive behaviors, and intense public scrutiny heighten risks for athlete mental health struggles.

1. Physical Risks and Concussions’ Impact on Mental Health

The physical health pressures and risks in sport can translate to a higher risk of mental health disorders, particularly in sports that commonly involve blows to the head that result in concussions.⁶⁹ Dr. Bennet Omalu, a forensic neuropathologist, has been credited with discovering Chronic Traumatic Encephalopathy (“CTE”) in the brains of deceased NFL football players.⁷⁰ CTE is a degenerative disease that is associated with repeated blows to the head.⁷¹ Symptoms of CTE include memory loss, confusion, depression,

⁶⁴ Reardon, *supra* note 9, at 669-70.

⁶⁵ Other sport-specific risk factors for eating disorders include body shaming and body image pressures; weight-sensitive sports or aesthetic-judged sports such as gymnastics; and team weigh-ins. *See id.* at 674.

⁶⁶ *Id.* at 671.

⁶⁷ *Id.* at 678.

⁶⁸ Chang, *supra* note 9, at 216-20 (examining the athletic culture and environmental factors that commonly impact mental health, including sexuality and gender issues, hazing, bullying, sexual misconduct and transition from sport).

⁶⁹ David Lester, *Mind, Body and Sport: Suicidal Tendencies*, NCAA, <https://www.ncaa.org/sport-science-institute/mind-body-and-sport-suicidal-tendencies> [<https://perma.cc/J6GH-ADN9>] (last visited Oct. 16, 2021).

⁷⁰ Jenny Vrentas, *The NFL’s ‘Concussion’ Problem*, SPORTS ILLUSTRATED (Dec. 23, 2015), <https://www.si.com/nfl/2015/12/23/nfl-reaction-concussion-movie-will-smith-bennet-omalu> [<https://perma.cc/EL73-SLNK>].

⁷¹ Joe Ward et al., *110 N.F.L. Brains*, N.Y. TIMES (July 25, 2017), <https://www.nytimes.com/interactive/2017/07/25/sports/football/nfl-cte.html> [<https://perma.cc/L96Y-BLES>].

and dementia.⁷² A study in the *Journal of the American Medical Association* found that 110 out of 111 brains of deceased football players showed signs of CTE.⁷³ The disease has reportedly been linked to athlete suicide, evidenced by the cases of former NFL Hall of Fame linebacker Junior Seau⁷⁴ and NFL player Dave Duerson.⁷⁵ Both Seau and Duerson's brain examinations showed evidence of CTE.⁷⁶

CTE “[h]as been linked to serious psychiatric symptoms, including depression, aggression, and suicidal behavior.”⁷⁷ CTE is a serious issue in the world of sports and highlights the culture of competitive sport in which the desire and drive to be the best can often blind athletes to serious mental and physical injuries. As with mental illness, athletes often hide their physical injuries out of fear that they will be seen as weak, cut from the team, taken out of the starting rotation, or replaced by a teammate. The director of Brain Injury Research at UCLA, Dr. David Hovda, stated that “[a]thletes are like military personnel in that they don’t tell the truth[.] They want to go back to play, or they want to go back and be with their unit, so they’re less likely to be straightforward with a physician or trainer or coach.”⁷⁸ For decades, when athletes sustained a serious blow to the head, they were often told to “walk it off.” As Gary Plummer, a former NFL linebacker, stated:

Your entire life, that is probably your most revered characteristic as a player – your toughness, your ability to handle pain, your ability to overcome adversity. . . . And you take that to a mental level as well. You’ve got to be mentally tough, you’ve got to overcome. Just block out this pain. It’s taught from coaches from the time you’re in Pop Warner. I’ve done it myself as a coach, coaching my kids through high school.⁷⁹

⁷² See *id.*

⁷³ Jesse Mez et al., *Clinicopathological Evaluation of Chronic Trauma Encephalopathy in Players of American Football*, 318 J. AM. MED. ASS’N 360, 360 (2017).

⁷⁴ Sam Farmer, *Junior Seau Had Brain Disease When He Committed Suicide*, L.A. TIMES (Jan. 10, 2013), <https://www.latimes.com/sports/la-xpm-2013-jan-10-la-sp-sn-junior-seau-brain-20130110-story.html> [<https://perma.cc/JTM7-2G5G>].

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Daniel Antonius et al., *Behavioral Health Symptoms Associated with Chronic Traumatic Encephalopathy: A Critical Review of the Literature and Recommendations for Treatment and Research*, 26 J. NEUROPSYCHIATRY & CLINICAL NEUROSCIENCES 313, 313 (2014); Matthew Hofkens, *Concussions, Other Brain Injuries and ‘CTE’: How Are They Different? And Is There Any Link to Mental Illness*, HEALTH PARTNERS, <https://www.healthpartners.com/blog/concussions-other-brain-injuries-and-cte/> [<https://perma.cc/R3XX-M4D6>] (last visited Oct. 16, 2021).

⁷⁸ Farmer, *supra* note 74.

⁷⁹ *Id.*

Similar to mental health disorders, concussions are not always visible, and an athlete who does not feel like they can express how they are feeling to their coach or medical staff is often sent back on the field.⁸⁰ By necessity and in response to litigation and ridicule, sport is attempting to address CTE risks and enact protocols, including changes to rules of play to enhance player safety.⁸¹

2. Trauma, Sexual Abuse and Misconduct in Sport

Survivors of sexual abuse experience lasting mental health trauma.⁸² Athletes who compete at elite levels of sport, particularly in individual sports that involve extensive travel and close contact with a coach, may be at high risk of sexual abuse.⁸³ The personal and trusting relationship that can develop between an athlete and coach, athletic personnel, or peer can enable an abuser to gain the trust of the victim and then use that trust to exploit them.⁸⁴

The abhorrent problem of sexual abuse in sport has come to the forefront with shocking cases of serial abuse of athletes, such as the horrific crimes committed by former USA Gymnastics team doctor, Larry Nassar. Nassar was sentenced to up to 175 years in prison after admitting to sexually assaulting his patients over the course of several decades.⁸⁵ Although

⁸⁰ Individuals with repetitive head injuries can function but slowly the brain injury makes the individual more aggressive, irritable, angry, etc. The symptoms come on slowly and athletes may not recognize the onset of this chronic brain injury.

⁸¹ *Health and Safety-Related Changes for the 2017 Season*, NFL PLAYER HEALTH & SAFETY (May 29, 2018), <https://www.playsmartplaysafe.com/focus-on-safety/protecting-players/health-safety-related-changes-2017-season/> [<https://perma.cc/S9AZ-KBTU>].

⁸² Maureen A. Weston, *Tackling Abuse in Sport Through Dispute System Design*, 13 ST. THOMAS L.J. 434, 440 (2017).

⁸³ See *IOC Adopts Consensus Statement on Sexual Harassment and Abuse in Sport* (Feb. 8, 2007), INT'L OLYMPIC COMM., <https://www.olympic.org/news/ioc-adopts-consensus-statement-on-sexual-harassment-and-abuse-in-sport> [<https://perma.cc/8Q95-65A4>] (stating that the prevalence of sexual abuse is higher in elite sport).

⁸⁴ See Darlene Lancer, *How to Know If You're a Victim of Gaslighting*, PSYCHOL. TODAY (Jan. 13, 2018), <https://www.psychologytoday.com/us/blog/toxic-relationships/201801/how-know-if-youre-victim-gaslighting> [<https://perma.cc/2355-F6YR>].

⁸⁵ Hadley Freeman, *How Was Larry Nassar Able to Abuse So Many Gymnasts for So Long?*, THE GUARDIAN (Jan. 26, 2018), <https://www.theguardian.com/sport/2018/jan/26/larry-nassar-abuse-gymnasts-scandal-culture> [<https://perma.cc/2CMR-YKH6>].

complaints had been lodged against Nassar dating back to 1998, nothing was done. During Nassar's trial, an investigation revealed a history of covering up and downplaying complaints to USA Gymnastics about sexual abuse.⁸⁶ Unfortunately, gymnastics coaches and personnel were protected at the expense of their athletes, resulting in numerous survivor victims including Simone Biles, Aly Raisman, McKayla Maroney, and many others.⁸⁷

Male athletes have also been preyed upon. Conrad Mainwaring, a former Olympian and track coach with USA Track & Field, allegedly sexually abused forty-one men over four decades.⁸⁸ Several athletes came forward about the abuse and how it changed their lives. David O'Boyle, a former member of the UCLA track and field team, recalls the impact of the abuse by his former coach, stating, "I trusted this guy, I thought it was OK, but what he did to me f—ed me up for the next 10 years."⁸⁹ Mainwaring used his status as a former Olympian to convince these athletes that what he was doing to them was all part of the training.⁹⁰ The desire to make it on a college team or earn a spot at the Olympics blinded these men to the abuse they were enduring by the man they trusted to get them there. Following the abuse by Mainwaring, some of the athletes turned to alcohol and drugs and even contemplated taking their own lives.⁹¹

Reports from the USA Gymnastics scandal demonstrate that, for many years, athletes had little recourse to report and, even then, to be believed. Even with increased awareness and efforts to educate and facilitate reporting through the U.S. Center for Safe Sport,⁹² an athlete who places trust in their

⁸⁶ *Id.*

⁸⁷ In her 1995 book, *Little Girls in Pretty Boxes*, Joan Ryan discusses the physical and psychological demand that is required by gymnasts and how it takes its toll on the girls and young women. In her statement about the sexual abuse by Nassar she states, "These girls are groomed from an incredibly young age to deny their own experience. Your knee hurts? You're being lazy. You're hungry? No, you're fat and greedy. They are trained to doubt their own feelings, and that's why this could happen to over 150 of them." See Hadley Freeman, *How Was Larry Nassar Able to Abuse so Many Gymnasts for so Long?*, THE GUARDIAN (Jan. 26, 2018), <https://www.theguardian.com/sport/2018/jan/26/larry-nassar-abuse-gymnasts-scandal-culture> [https://perma.cc/FVZ7-H8GS].

⁸⁸ Mike Kessler, *44 Years, 41 Allegations. Now the Past is Catching Up.*, ESPN (Aug. 1, 2019), http://www.espn.com/espn/feature/story/_/id/27244072/44-years-41-allegations-how-caught-former-olympian [https://perma.cc/AD9D-GG47].

⁸⁹ *Id.*

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² *See Report a Concern*, U.S. CTR. FOR SAFESPORT, <https://uscenterforsafesport.org/report-a-concern/> [https://perma.cc/WG2H-7JSQ] (last visited Oct. 16, 2021).

abuser may have difficulty, given the grooming and gaslighting in effect, discerning the abuse and taking the significant step of reporting that individual for legal discipline. Perhaps, had these athletes had access to confidential mental health counseling assistance, the abuse could have been readily identified, named, and stopped.⁹³

3. “Hard Coaching” or Verbal Abuse and Bullying

“Hard Coaching” has been described as “coaching with passion and instilling a great work ethic, integrity and character in the kids through discipline and hard work. Teaching them to go and dig-in even when they mentally don’t feel they can.”⁹⁴ This may be a laudable and effective coaching technique, but, in some cases, “hard coaching” can become harassment and verbal abuse that could mentally and physically harm the athlete.⁹⁵ As sports psychologist Dr. Hillary Cauthen asked, “[h]ave you ever really listened to how coaches speak to their athletes? Sometimes, more often than not, in any other profession these words would get us fired. I surely would lose my job over this. Why do we think it’s OK for a coach to yell in a child’s face or call an adolescent out of their name or shame them in front of their teammates? I ask you, does this culture really build champions?”⁹⁶

Opening up about mental health issues can be challenging, especially when the source of stress comes from someone in a position of trust or authority. University students are fighting back against abuse from an athletic director and coach.⁹⁷ Softball players at the University of Nebraska reported

⁹³ Abuse is part of destigmatizing the issue. Survivors carry this burden throughout their lives. Part of the healing process is in the counseling and availability of for resources for mental health.

⁹⁴ *What’s the Difference Between Hard Coaching and Abusive Treatment?*, BCP NATION (Apr. 7, 2015) <https://bigcountypreps.com/whats-the-difference-between-hard-coaching-and-abusive-treatment> [https://perma.cc/AXX4-ZPFA] (quoting Zephyrhills Christian Head Coach Mike Smith).

⁹⁵ See Chase Williams, *College Athletes Beginning to Rebel Against Abusive Coaches*, GLOB. SPORT MATTERS (Oct. 8, 2019), <https://globalsportmatters.com/health/2019/10/08/college-athletes-beginning-to-rebel-against-abusive-coaches/> [https://perma.cc/6EUX-AKDP] (quoting Scott Brooks, Director of Research for the Global Sport Institute, “When you make comments that are personal to someone or a social group, whether it’s their sexual or racial identity, it crosses the line.”).

⁹⁶ See Cauthen, *supra* note 6.

⁹⁷ See Liam Quinn, *MU Tennis Players Say Coaches Told Them to Play Through Injuries, Ignore NCAA Rules*, COLUMBIA MISSOURIAN (Nov. 15, 2020) https://www.columbiamissourian.com/sports/mizzou_sports/mu-tennis-players-say-coaches-told-them-to-play-through-injuries-ignore-ncaa-rules/article_a816a1f8-10c7-11eb-8343-d39be6be3763.html [https://perma.cc/FY6G-CSJ2]; see also Mark

numerous occasions of verbal abuse by their head coach Rhonda Revelle.⁹⁸ This abuse consisted of fat-shaming, excessive practice times, name-calling, harassment, and a reckless disregard for injuries.⁹⁹

Michael Grabowski, a former University of Arizona track athlete, sued the University for alleged bullying and assault by head coach Fred Harvey and fellow teammates.¹⁰⁰ Grabowski claimed he was subjected to repeated bullying, such as being the only player not to receive a bed at training camp and that his complaints were met the responses that Grabowski just didn't "know the culture yet"¹⁰¹ and that "you can't single out the two top runners on the team[.]"¹⁰² Grabowski claimed that after being forced to run a race while sick, Coach Harvey dismissed him from the team, stating that "[t]here's a certain atmosphere we are trying to establish on this team, and you do not fit in it."¹⁰³ According to the lawsuit, after Grabowski asked for a more detailed explanation, Harvey assaulted him by pinning him to a chair and calling him a "racist and [a] liar."¹⁰⁴ Grabowski passed out and

Long, *Report: Ex-Florida Coach Newbauer Abused Players, Assistants*, OCALA GAZETTE (Sept. 28, 2021), <https://www.ocalagazette.com/report-ex-florida-coach-newbauer-abused-players-assistants/> [https://perma.cc/X22B-GC6F].

⁹⁸ Ben Strauss, *Complaints Against Nebraska Softball Coach Show College Athletes' Limited Options*, WASH. POST (Aug. 30, 2019), <https://www.washingtonpost.com/sports/2019/08/30/complaints-against-nebraska-softball-coach-show-college-athletes-limited-options/> [https://perma.cc/U6MK-RGAU].

⁹⁹ *Id.*

¹⁰⁰ Andrew Howard, *Former University of Arizona Track Athlete Files \$3M Suit over Bullying Allegations*, AZ CENT. (Sept. 17, 2019), <https://www.azcentral.com/story/news/local/arizona-education/2019/09/17/university-arizona-track-athlete-michael-grabowski-sues-bullying-assault-claims/2354782001/> [https://perma.cc/XVD6-3UAL] ("The lawsuit . . . also lists the Arizona Board of Regents and students and coaches from the track and field team as defendants. The former athlete makes multiple claims against the school, including defamation, Title IX violations and assault.").

¹⁰¹ *Id.*

¹⁰² See B. Poole, *Student-athlete Accuses UA Cross-Country Team of Assault, Defamation*, TUCSON SENTINEL (Sept. 17, 2019), http://www.tucson sentinel.com/local/report/091719_ua_runner_suit/student-athlete-accuses-ua-cross-country-team-assault-defamation/ [https://perma.cc/9EWG-7YZZ].

¹⁰³ *Id.*

¹⁰⁴ *Id.*

was taken to the hospital.¹⁰⁵ The case remains pending as of November 2021.¹⁰⁶

Words and tone matter. Ostensible “hard” coaching can cross a line into verbal or emotional abuse where athletes are harmed and discouraged from reporting or seeking help. Coaches are on the front line to notice and impact athlete mental health. Both coaches and sports leadership fail athletes when abusive coaching or training tactics are tolerated.¹⁰⁷

4. Substance Abuse and Addiction

Elite athletes engage in intense physical training and competition that involves wear and tear on the body, exhaustion, focus on physical appearance, dieting, strengthening, and risks to physical and mental health. In some cases, athletes’ desires to recover from or to treat an injury for fear of losing one’s career has led them to cheat by using prohibited doping substances.¹⁰⁸ While sport has instituted anti-doping policies for prohibited substances, some sporting organizations proudly partner with alcohol or tobacco sponsors, and some athletes reach for substances that may be considered performance enhancing or impairing. The “pain management culture” of NFL doctors over-prescribing painkillers is at the center of class actions by NFL players who became addicted to opioids.¹⁰⁹ Former New York Yankees player CC Sabathia cites the “culture of baseball” as one of the reasons for his alcoholism, noting the custom of being on the road, playing games, then having champagne in the locker room, and drinking into the night.¹¹⁰

¹⁰⁵ The University claimed that its personnel review of the athletic department found a disparity between the allegations made in the lawsuit and the concerns that were raised to coaches. The University is contesting any lawsuits based on what it claims are unsubstantiated allegations.

¹⁰⁶ *Grabowski v. Ariz. Bd. of Regents*, No. 4:19-cv-00460-JAS, 2020 U.S. Dist. LEXIS 121666 (D. Ariz. July 7, 2020).

¹⁰⁷ See Daniel Abroms, *Lived Experiences of Psychological Safety: A Phenomenological Study of Interdisciplinary Work Team for Sport Programs at a NCAA Division I University* (June 24, 2021) (Ed.D. Dissertation in Practice, Creighton University) (reporting on the impact of leadership in fostering employee and work teams’ psychological safety to voice ethical concerns and report rule and conduct violations).

¹⁰⁸ Claudia L. Reardon & Shane Creado, *Drug Abuse in Athletes*, 5 *SUBSTANCE ABUSE REHABILITATION* 95, 95 (2014).

¹⁰⁹ See Dylan McGowan, *Pain Mismanagement: The Opioid Problem in the NFL*, 31 *FORDHAM INTELL. PROP., MEDIA & ENT. L.J.* 223, 226 (2020).

¹¹⁰ Jackson Thompson, *Baseball’s Alcohol Culture Pushed Former Yankees Pitcher CC Sabathia to Rock Bottom. Now He Has a Message for Players Dealing with Addiction.*, *INSIDER* (June 27, 2021, 12:13 PM), <https://www.insider.com/baseballs-alcohol->

5. Sports Addiction

Addiction is a symptom of mental health issues. While “addiction” is usually associated with alcoholism, drug use, or smoking nicotine, an athlete’s extreme regime and quest for perfection could also become detrimental and diagnosed as exercise or sport addiction. Athletes may ignore injuries because it means they would have to stop training, which can severely harm their body as well as cause psychological damage.¹¹¹ “Sport becomes so much an obsession that such people don’t take time to recover from injuries. Incidence of heart attacks and osteoporosis increase at high levels of exertion, so sports addicts can put themselves at serious risk of harm.”¹¹² A psychological danger of exercise addiction results where athletes continue to push themselves in order to obtain the “high.”¹¹³ Athletes can become addicted to reaching that “high,” and when their bodies become tolerant, they exercise even more in search of the same or an even better “high.”¹¹⁴ When these athletes are not exercising, “they experience withdrawal effects, depression and anxiety.”¹¹⁵

6. Sports Gambling & Esports

Sports gambling and esports can also carry significant risks for sport addiction.¹¹⁶ Sports gambling has become legal in over thirty states and D.C.¹¹⁷ since the 2018 Supreme Court decision in *Murphy v. NCAA* struck down the Professional and Amateur Sports Protection Act (“PASPA”) that

culture-pushed-cc-sabathia-to-rock-bottom-2021-6 [https://perma.cc/Z6XK-Y2TB].

¹¹¹ Nigel Warburton, *How People with Sports Addiction Are Like Drug Addicts*, AEON (Aug. 4, 2016), https://aeon.co/ideas/how-people-with-sports-addiction-are-like-drug-addicts [https://perma.cc/M55N-NS86].

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* This addiction can also put a strain on a person’s social life, such as placing training before friends and family.

¹¹⁶ Reardon, *supra* note 9, at 681 (stating that gambling disorder is regarded as a hidden disorder, and mental health professionals have reported relative lack of awareness and concern about gambling as a potential problem and elite athletes may be particularly at risk for gambling disorder, given high risk demographic of young males, desires for competition, risk taking behaviors, and impulsivity).

¹¹⁷ See *Interactive Map: Sports Betting in the U.S.*, AM. GAMING ASS’N, https://www.americangaming.org/research/state-gaming-map/ [https://perma.cc/495Z-GPTV] (last visited Nov. 22, 2021).

had restricted sports betting to Nevada and a few other states.¹¹⁸ The expansion and ease of legalized sports gambling across the United States portends an increased risk for gambling addiction.¹¹⁹ Sport gambling sites such as FanDuel and DraftKings have rooted themselves into the sports gambling market and enabled online and mobile betting as well.¹²⁰ Athletes are part of the demographic vulnerable to sports gambling; and even though athletes are not necessarily gambling on sports, knowing millions of fans/users have placed financial bets on their game compounds the pressure to perform.

Esports fans have become one of the fastest-growing fan bases in professional sports.¹²¹ Media rights are one of the main revenue streams for esports, such as landmark media rights deals including *Overwatch*¹²² and *League of Legends*,¹²³ with revenue set to reach \$3 billion by 2022. Individual player earnings are another incentive to join the esports movement. For example, a player named Ninja, who live-streams his gameplay, has a monthly income of around \$1M.¹²⁴ Esports gamers span a variety of professional, collegiate, and very young players.

Addiction specialists from the National Centre for Mental Health in Seoul, Korea, have observed that “the top-ranked addiction among young people is game addiction and 90% of the addicts are male teenagers.”¹²⁵

¹¹⁸ See *Murphy v. NCAA*, 138 S. Ct. 1461, 1467 (2018) (“Congress may not simply commandeer[] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program”) (internal quotation marks omitted) (citation omitted).

¹¹⁹ Brett Smiley, *Gambling Rehabilitation ‘Legend’ on Sports Betting Expansion: More People ‘Will End Up Destroying Their Lives’*, SPORTSHANDLE (Dec. 21, 2018), <https://sportshandle.com/gambling-addiction-arnie-wexler-sports-betting/> [<https://perma.cc/P4D4-E63M>] (detailing how, in response to a question about legalizing sports gambling, Arnie Wexler, former sport gambling addict, stated, “Well, when you open up the door to Internet gambling like they just did recently in New Jersey, or when you open up the door to sports betting, you get people that would never try to do something illegal bet with a bookmaker, and now it’s legal so they try it. Some of those people are going to get addicted and some of those people are going to become compulsive gamblers and will end up destroying their lives”).

¹²⁰ See *id.*

¹²¹ *eSports Joins the Big Leagues*, GOLDMAN SACHS, <https://www.goldmansachs.com/insights/pages/infographics/e-sports/index.html> [<https://perma.cc/Q8CN-CWZK>] (last visited Oct. 16, 2021) (stating the audience for esports in 2018 was at 167 million people, and it is set to increase to 276 million by the year 2022).

¹²² *Id.* (stating Activision signed a two-year, \$90M deal with Twitch to distribute *Overwatch League* in North America).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Simon Hattenstone, *The Rise of e-Sports: Are Addiction and Corruption the Price of its Success?*, THE GUARDIAN (June 16, 2017), <https://www.theguardian.com/sport/>

They warn that signs of addiction begin to emerge when children enter into middle school, and “[t]hey lose interest in academic work, friends and family; they stop sleeping; they eat poorly or hardly at all.”¹²⁶ Both the World Health Organization (“WHO”)¹²⁷ and IOC have noted addiction risks of esports gamers.¹²⁸

7. Sex, Sexual Orientation, and Gender Discrimination in Sport

An American Psychological Association study on the general population reports that “[w]omen are more likely to be diagnosed with anxiety or depression, while men tend toward substance abuse or antisocial disorders[.]”¹²⁹ Sport has similar outcomes. Researchers at Drexel University and Kean University reported that female athletes are “two times more likely to experience [depression] symptoms than their male peers.”¹³⁰ The study spanned several sports including “baseball/softball, basketball, cheerleading, crew, field hockey, lacrosse, track and field, soccer and tennis.”¹³¹ Overall,

2017/jun/16/top-addiction-young-people-gaming-esports [https://perma.cc/V2VK-QHVA].

¹²⁶ Dr. Lee Tae Kyung recalls a young man who didn’t eat or sleep because he was constantly playing and ended up dying after finishing his game. Another young man named Choi recalled his experience with esports and how it “alienated him from the real world.” He would play for six hours every day and stopped eating properly, which led him to lose sleep, focus, and even his own identity. Choi said that “he began to confuse his own identity with characters in the games he played. He stopped relating to people.” The games made him focus on killing rather than his family and friends. As Dr. Lee said, many of his patients are children, which means that if they do not become free from their addiction, they could become permanently damaged. *Id.*

¹²⁷ See *Addictive Behaviour*, WORLD HEALTH ORG., https://www.who.int/health-topics/addictive-behaviours#tab=tab_1 [https://perma.cc/2UNU-MNZZ] (last visited Oct. 16, 2021) (noting rise of addiction and risk due to excessive video gaming and gambling).

¹²⁸ See Reardon, *supra* note 9, at 681 (questioning also whether professional esports gamers who spend ten or more hours a day are addicted).

¹²⁹ See *Study Finds Sex Differences in Mental Illness*, AM. PSYCHOL. ASS’N (2011), <https://www.apa.org/news/press/releases/2011/08/mental-illness> [https://perma.cc/X423-AR92] (finding that women tend to internalize their emotions which can result in depression, while men tend to externalize their emotions through aggressive, non-compliant behavior).

¹³⁰ Lauren Ingeno, *Depressive Symptoms Prevalent Among Division I College Athletes*, DREXEL NOW (Jan. 27, 2016), <https://drexel.edu/now/archive/2016/January/Depression-College-Athletes/> [https://perma.cc/H6H4-5YUX].

¹³¹ *Id.*

28% of the females reported depressive symptoms compared to 18% of males.¹³²

At all levels of sport, LGBTQ, trans, and intersex athletes face discrimination or fear disclosing their sexual orientation.¹³³ In certain sports, athletes are subjected to “gender verification” sex testing, and female athletes with naturally high levels of testosterone, such as Caster Semenya, have been disqualified from competition.¹³⁴ Still fighting to have this decision overturned at the European Human Rights Commission, Semenya spoke of the toll of this on her mental health and human dignity.¹³⁵ In 2021, Carl Nassib became the first and only active player in the NFL’s history to reveal that he is gay.¹³⁶

8. Societal Factors

The disruption to both training schedules and plans to compete at the Tokyo 2020 Olympic Games, as well as the financial impacts of the pandemic, posed additional mental health pressures for Olympic athletes.¹³⁷ The police brutality that caused the murder of George Floyd and Breonna Taylor and the shooting of Jacob Blake in Summer 2020 ignited a #BlackLivesMatter movement and had a profound impact on Black athletes in particular.¹³⁸ Both the WNBA and NBA players led a boycott of play, followed

¹³² *Id.*

¹³³ See Nikole Tower, *LGBTQ Students Risk Mental Health When Joining a Sport*, GLOB. SPORT MATTERS (Nov. 27, 2018), <https://globalsportmatters.com/youth/2018/11/27/lgbtq-student-athletes-risk-mental-health-when-joining-a-sport/> [<https://perma.cc/DMY3-MRZD>].

¹³⁴ Nana Adom-Aboagy, *Olympics: Namibia’s Sprinters Highlight a Flawed Testosterone Testing System*, THE CONVERSATION (Aug. 6, 2021, 10:17 AM), <https://theconversation.com/olympics-namibias-sprinters-highlight-a-flawed-testosterone-testing-system-165676> [<https://perma.cc/T4SS-DCSN>].

¹³⁵ Laine Higgins, *Blocked from Her Signature Race, Caster Semenya Won’t Run in Tokyo*, WALL ST. J. (July 1, 2021, 1:09 PM), <https://www.wsj.com/articles/caster-semenya-tokyo-olympics-11625159284> [<https://perma.cc/3V6K-3X33>].

¹³⁶ Britni de la Cretaz, *Carl Nassib, the First Openly Gay Active NFL Player, Could Be Turning Point for Male Sports*, NBC NEWS: THINK (June 22, 2021, 2:50 PM), <https://www.nbcnews.com/think/opinion/first-openly-gay-nfl-player-carl-nassib-could-be-turning-ncna1271896> [<https://perma.cc/JR7E-MLEH>].

¹³⁷ Jay Cohen, *Olympic Athletes Confront Mental Health Challenges*, ASSOCIATED PRESS, (July 12, 2021) <https://apnews.com/article/2020-tokyo-olympics-health-coronavirus-pandemic-olympic-games-mental-health-48d535fdb093ebbb1c5907a1dc301312> [<https://perma.cc/8FZ7-AH6M>].

¹³⁸ See Jemele Hill, *Athletes Will Never Be Quiet Again*, THE ATLANTIC (May 29, 2021), <https://www.theatlantic.com/ideas/archive/2021/05/george-floyd-murder-athletes-sports-public-life/619043/> [<https://perma.cc/ABR4-SGQY>].

by Major League Baseball players. Tennis star Naomi Osaka also refused to play, saying, “Watching the continued genocide of Black people at the hand of the police is honestly making me sick to my stomach.”¹³⁹ Osaka and Kyrie Irving spoke out about the death of George Floyd and the emotional toll it was taking on them, and have since spoke about their mental health struggles.¹⁴⁰

9. Media, Public Pressure and Over-Exposure

Athlete mental health became front and center in Summer 2021 when Osaka refused to participate in post-match press conferences, citing the impact of the unrelenting press and media on her mental health. Media portrayals building up excitement for the Tokyo Olympics games, postponed to 2021, focused heavily on decorated Olympian medal winner gymnast Simone Biles. Biles is regarded as “quite possibly the greatest athlete of all time” (“GOAT”), is known for her signature flips and moves, and was a presumed medal contender for Team USA.¹⁴¹ Biles felt the weight of being the media’s face for Team USA and shocked the sporting world when she withdrew from the competition mid-Games, citing the need to protect her mental health.¹⁴² As journalist Juliet Macur observed, “When [Biles] announced that she would withdraw from the competition to spare her mental and physical well-being, many people embraced her as a brave advocate for mental health, while others labeled her a quitter.”¹⁴³ While social media

¹³⁹ Jill Martin et al., *These Teams and Athletes Refused to Play in Protest of the Jacob Blake Shooting*, CNN (Aug. 27, 2020), <https://www.cnn.com/2020/08/27/us/nba-mlb-wnba-strike-sports/index.html> [<https://perma.cc/ZE4N-7W62>].

¹⁴⁰ Amulya Shekhar, “*When Kyrie Irving Talks About Mental Health Issues, Our Tone is Aggressive*”: NBA Analyst Points out Difference in Treatment for Eccentric Nets Star, SPORTS RUSH (Jan. 21, 2021), <https://thesportsrush.com/nba-news-when-kyrie-irving-talks-about-mental-health-issues-our-tone-is-aggressive-nba-analyst-points-out-difference-in-treatment-for-eccentric-nets-star/> [<https://perma.cc/3L87-MMTC>] (referencing a podcast where Tom Ziller talks about our tone changing when we talk about Kyrie Irving and his mental health issues).

¹⁴¹ Juliet Macur, *Simone Biles Dials Up the Difficulty, ‘Because I Can’*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/2021/05/24/sports/olympics/simone-biles-yurchenko-double-pike.html> [<https://perma.cc/Z3WS-T9GR>] (“The Yurchenko double pike is considered so perilous and challenging that no other woman has attempted it in competition, and it is unlikely that any woman in the world is even training to give it a try.”).

¹⁴² Juliet Macur, *As Biles Rests After Tokyo, Gymnastics Glimpses What Could Be*, N.Y. TIMES (Aug. 7, 2021), <https://www.nytimes.com/2021/08/04/sports/olympics/biles-tokyo-gymnastics-future.html> [<https://perma.cc/7KZJ-HX65>].

¹⁴³ *Id.*

affords athletes a platform for voicing their views, social media's vast public reach, forum for comments and criticism, and incessant access present their own risks to mental health.¹⁴⁴

D. Sport Culture Impact on Athlete Mental Health

Sport, by definition, lauds winners. To excel in sport, an athlete must commit to the demands of both extensive physical exertion and mental discipline.¹⁴⁵ The "win at all costs" message in sports can foster deleterious impacts, such as pressures that can lead to not only cheating, doping, toxic or lost relationships, obsessive behavior, addiction, and self-sabotage, but also a cost to the mind.¹⁴⁶ The sport culture, intense media exposure, and expectations even for extraordinary athletes can provoke or exacerbate athlete mental health issues. The stigma often associated with mental illness may cause many affected people to refuse to seek treatment.¹⁴⁷ Athletes too are "especially prone to remaining silent about their personal and emotional struggles."¹⁴⁸

1. Athletes Opening Up

While many suffer in silence, athletes are increasingly speaking out to raise awareness, destigmatize, and promote institutional change regarding mental health in their respective sports.

¹⁴⁴ See Christopher Labos, *Cell Phones, Teens, and Mental Health*, Montreal Gazette (Oct. 15, 2019), [HTTPS://MONTREALGAZETTE.COM/OPINION/COLUMNISTS/CHRISTOPHER-LABOS-CELL-PHONES-TEENS-AND-MENTAL-HEALTH](https://montrealgazette.com/opinion/columnists/christopher-labos-cell-phones-teens-and-mental-health) [HTTPS://PERMA.CC/9EN4-FQDM]; see also Kira E. Riehm et al., *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, 76 JAMA Psychiatry 1266, 1266 (2019) (FINDING SOCIAL MEDIA USE A RISK FACTOR FOR MENTAL HEALTH PROBLEMS IN ADOLESCENTS),

¹⁴⁵ See Chang, *supra* note 9.

¹⁴⁶ *Id.* at 91 ("While participation in athletics has many benefits, the very nature of competition can provoke, augment or expose psychological issues in athletes. Certain personality traits can aid in athletic success, yet these same traits can also be associated with MH disorders. Importantly, the athletic culture may have an impact on performance and psychological health through its effect on existing personality traits and MH disorders.").

¹⁴⁷ *Id.*

¹⁴⁸ Parham, *supra* note 8.

a. *Kevin Love*

Five-time NBA All-Star, Kevin Love, played an important part in the Cleveland Cavaliers' 2016 NBA title run led by LeBron James and Kyrie Irving. In November 2017, only ten games into the 2017-18 NBA season, Love had an on-court panic attack, causing him to leave the game.¹⁴⁹ He began therapy and, in March 2018, authored *Everyone is Going Through Something* for *The Players' Tribune*, discussing the panic attack and his personal battle with anxiety.¹⁵⁰ Love was one of the first NBA players to speak openly about his mental health challenges. In this compelling story, Love relates that:

I've never been comfortable sharing much about myself. . . . [F]or pretty much 29 years of my life I have been protective about anything and everything in my inner life. I was comfortable talking about basketball — but that came natural. It was much harder to share personal stuff, and looking back now I know I could have really benefited from having someone to talk to over the years. But I didn't share — not to my family, not to my best friends, not in public. Today, I've realized I need to change that. I want to share some of my thoughts about my panic attack and what's happened since. If you're suffering silently like I was, then you know how it can feel like nobody really gets it. Partly, I want to do it for me, but mostly, I want to do it because people don't talk about mental health enough. And men and boys are probably the farthest behind.¹⁵¹

Love adds that “[m]ental health is an invisible thing, but it touches all of us at some point or another.”¹⁵²

¹⁴⁹ Kevin Love, *Everyone Is Going Through Something*, PLAYERS' TRIB. (Mar. 6, 2018), <https://www.theplayerstribune.com/en-us/articles/kevin-love-everyone-is-going-through-something> [https://perma.cc/DLJ6-U2ZQ].

¹⁵⁰ *Id.*

¹⁵¹ *Id.* (noting that Love chose to tell his story “because people don't talk about mental health enough. And men and boys are probably the farthest behind.”).

¹⁵² The Kevin Love Fund was established in September 2018 “[t]o inspire people to live their healthiest lives while providing the tools to achieve physical and emotional well-being.” The trust contributes to foundations and programs promoting mental wellness for high school and college students and student-athletes. See *The Kevin Love Fund*, EIF, <https://www.eifoundation.org/partners/the-kevin-love-fund/> [https://perma.cc/NN4V-UQBP] (last visited Oct. 29, 2021).

b. *Michael Phelps*

Michael Phelps is the most decorated Olympian of all time, totaling twenty-eight medals over four Summer Games.¹⁵³ At the 2008 Beijing Summer Games, he won eight gold medals, breaking the record for the most gold medals at any single Olympic Games.¹⁵⁴ In September 2014, a DUI arrest led to a six-month suspension from USA Swimming.¹⁵⁵ Phelps later said, “I can tell you I’ve probably had at least a half dozen depression spells that I’ve gone through. And the one in 2014, I didn’t want to be alive.”¹⁵⁶

c. *Even LeBron, and More*

More athletes, including NBA star LeBron James, are sharing their stories, inspiring and promoting the importance of valuing mental fitness as well as physical health.¹⁵⁷ Liz Cambage, Australian Olympic bronze medalist and center for the Las Vegas Aces in the Women’s National Basketball Association (WNBA), suffered a severe post-game anxiety attack in July 2019. She later revealed that she had been on suicide watch in 2016 after battling severe depression and anxiety.¹⁵⁸ She equated dealing with mental illness as a current “dragging you out into the ocean.”¹⁵⁹ NFL player Brandon Brooks, who was officially diagnosed with an anxiety disorder, missed

¹⁵³ Rory Jiwani, *The Most Decorated Summer Olympians of All Time, Through Time*, OLYMPIC CHANNEL (Nov. 14, 2019), <https://www.olympicchannel.com/en/stories/features/detail/most-decorated-summer-olympians-all-time-phelps/> [https://perma.cc/XY4V-AGJJ].

¹⁵⁴ Paul Newberry, *AP Was There: 2008 Beijing Olympics—Phelps Wins 8 Golds*, ASSOCIATED PRESS (Aug. 16, 2020), <https://apnews.com/article/beijing-tokyo-2020-tokyo-olympics-jason-lezak-olympic-games-ab5fce1bc5ad1dc462772a9d931e00c7> [https://perma.cc/2VKG-MK4F].

¹⁵⁵ Joseph Zucker, *Michael Phelps Details Struggles with Anxiety and Depression on Twitter*, BLEACHER REPORT (May 26, 2019), <https://bleacherreport.com/articles/2838142-michael-phelps-details-struggles-with-anxiety-and-depression-on-twitter> [https://perma.cc/QX2S-D6BZ].

¹⁵⁶ *Id.*

¹⁵⁷ See Tim Daniels, *LeBron James Talks Mental Health, Says He Lost ‘Love for the Game’ in 2011*, BLEACHER REPORT (Dec. 10, 2019), <https://bleacherreport.com/articles/2866319-lebron-james-talks-mental-health-says-he-lost-love-for-the-game-in-2011> [https://perma.cc/NZ36-HMPH].

¹⁵⁸ David Mark, *Liz Cambage Reveals Full Extent of Mental Health Struggle in Emotional Players’ Tribune Article*, ABC NEWS AUSTRALIAN BROADCAST (Aug. 12, 2019), <https://www.abc.net.au/news/2019-08-12/liz-cambage-details-mental-health-struggles/11404818> [https://perma.cc/8LGP-SKVZ].

¹⁵⁹ *Id.*

two games during the 2016 NFL season due to anxiety attacks.¹⁶⁰ In 2019, he again missed a game due to anxiety attacks and took to Twitter to share his experience in a brief post. He detailed the nausea and vomiting which kept him off the field but made a point to note that he was not ashamed or embarrassed by his struggles with anxiety.¹⁶¹ Brooks suffered some physical injuries in 2020 but has been able to continue his over ten-year NFL career.¹⁶² Former NBA player Keyon Dooling suppressed for over twenty-five years that he had been sexually assaulted as a child and consequently suffered severe paranoia and anxiety throughout his adult life, despite his athletic success.¹⁶³ Keyon credits the Celtics organization, saying that Doc Rivers arranged for him to receive help from top specialists. Following his recovery, Keyon became the director of a new NBA Players Association mental health program.¹⁶⁴

A 2020 HBO documentary “The Weight of Gold” explored athlete depression and suicide and features Olympians including Phelps, Apollo Ohno, Jeremy Bloom, and Lolo Jones, as well as the story of Jeret Peterson, who committed suicide nearly a year after having won the silver medal in 2011.¹⁶⁵ As journalist Amanda Lee Myers notes:

¹⁶⁰ Tim McManus, *Eagles’ Brandon Brooks Brings Recognition of Battle with Anxiety*, ESPN (Nov. 25, 2019), https://www.espn.com/blog/philadelphia-eagles/post/_/id/24284/eagles-brandon-brooks-brings-winning-battle-against-anxiety [https://perma.cc/VHM3-CK4R].

¹⁶¹ Tyler Conway, *Eagles’ Brandon Brooks Explains Anxiety Kept Him from Playing vs. Seahawks*, BLEACHER REPORT (Nov. 25, 2019), <https://bleacherreport.com/articles/2864203-eagles-brandon-brooks-explains-anxiety-kept-him-from-playing-vs-seahawks> [https://perma.cc/K332-6HSN].

¹⁶² Dave Spadaro, *Brandon Brooks: ‘There Isn’t any Doubt in my Mind’*, (May 27, 2021), <https://www.philadelphiaeagles.com/news/brandon-brooks-there-isnt-any-doubt-in-my-mind> [https://perma.cc/F5BM-LM7J].

¹⁶³ Keyon Dooling, *Running from a Ghost*, PLAYERS’ TRIB. (May 1, 2018), <https://www.theplayertribune.com/en-us/articles/keyon-dooling-the-ghost> [https://perma.cc/UQ4S-3AB4].

¹⁶⁴ See David MacKay, *Keyon Dooling Director of New NBPA Mental Health Program*, CELTICS WIRE (May 25, 2018, 2:36 PM), <https://celticswire.usatoday.com/2018/05/25/keyon-dooling-mental-health-program-nbpa/> [https://perma.cc/5GUE-WFJP]; see also Garen Staglin, *Mental Health in the Locker Room*, FORBES (Dec. 13, 2019, 1:12 PM), <https://www.forbes.com/sites/onemind/2019/12/13/mental-health-in-the-locker-room/#56e348f06d11> [https://perma.cc/4TQF-HE9R] (discussing NBA Mental Health Program).

¹⁶⁵ Amanda Lee Myers, *Michael Phelps Opens Up About Mental Health in New Doc*, DETROIT NEWS (Aug. 11, 2020, 10:15 AM), <https://www.detroitnews.com/story/entertainment/television/2020/08/10/michael-phelps-apollo-ohno-open-suicide-documentary-hbo/112875854/> [https://perma.cc/7GU5-YLHB].

The vast majority of Olympians spend most of their childhoods competing in their given sport. As they progress, competition becomes the main focus of their lives before family, friends, school or fun. For years they work toward that goal for what amounts to a competition that lasts minutes or mere seconds. The difference between winning and losing can be a fraction of a second, and millions are watching.”¹⁶⁶

These compounding pressures can be the source of mental health struggles for athletes. While some athletes deal with mental health challenges, expressly or silently, all have in common a desire to control the narrative, tell their own story, and raise awareness to destigmatize mental health challenges.¹⁶⁷

2. Overcoming Stigma

In her TED Talk *Toxicity of Sport Culture on Athletes' Mental Health*,¹⁶⁸ Dr. Hillary Cauthen states that “[w]e currently romanticize our athletes, our Olympians and professional athletes we think are superhuman and superheroes. And yes, they do pretty amazing things with their bodies, but we don’t allow them to be breakable. This environment makes them be stoic and can be toxic with the bracketed morality.”¹⁶⁹

Victoria Garrick spoke of her struggle to balance the academic rigors as a student with life as a Division I athlete on the USC Women’s Volleyball Team.¹⁷⁰ Victoria experienced depression, anxiety, and a binge-eating disorder.¹⁷¹ She described this time, saying that “I had this dark cloud over my head and it followed me everywhere . . . when I woke up, it was there when I went to sleep, it was there in practice every day passing balls.”¹⁷² In Garrick’s view, “[t]he culture of athletics preaches, where there’s a will there’s a way, the best don’t rest, unless you puke, faint or die, keep going. Mental

¹⁶⁶ *Id.* (quoting Phelps saying that “we’re just products. . . [i]t’s frightening. It’s scary. And it breaks my heart. Because there are so many people who care so much about our physical well-being, but I never saw caring about our mental well-being.”).

¹⁶⁷ See *Tell Your Story, ATHLETES AGAINST ANXIETY & DEPRESSION*, <https://www.aadf.org/tell-your-story> [<https://perma.cc/F5TB-HHGN>] (last visited Oct. 16, 2021).

¹⁶⁸ See Cauthen, *supra* note 6.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

illness is associated with weakness. To appear weak is the last thing an athlete wants.”¹⁷³

After getting help from an on-campus sports psychologist, Garrick wanted to tell her story to help others in the same situation. She explained that it took a long time to accept her mental health issues because of the stigma society places on mental illness. She quotes Dr. Jeffery Liberman, who defined stigma as “dishonor” or “disgrace,” and that it is “like the scarlet A that Hester Prynne is forced to wear or the mark on Cain in the Bible. It’s this label that outcasts you from everyone else.”¹⁷⁴ She felt the same concerns associated with mental health.

Many athletes are afraid to talk about mental illness or to admit that they are dealing with it because they might be labeled as weak. Victoria woke up every morning with fear and anxiety, constantly worried about getting through the day.¹⁷⁵ Game days were worse. She stated that during games “[t]here were times I would feel this knot in my stomach and my skin start to crawl and my hands start to shake and eyes well with tears because I was so afraid to play and make a mistake because at an elite level mistakes are costly.”¹⁷⁶ As Dr. Parham has noted, “[a]thletes are as vulnerable to mental-health challenges as the general public, and their battles with stigma remain a powerful force stopping them from seeking help and support.”¹⁷⁷

III. LEGAL CONSIDERATIONS REGARDING ATHLETE MENTAL HEALTH

The foregoing discussion identified aspects of sport that pose risks for athlete mental health, as well as the fact that many athletes, like the general population, experience mental health struggles and disorders. The following section explores legal considerations regarding athlete mental health. For example, do athletes with mental health disorders qualify for protection under federal law, such as the Americans with Disabilities Act? If so, what accommodations are reasonable in competitive sport? Do sport governing bodies and teams have duties to identify, provide access to treatment, and *accommodate* athlete mental health issues? What privacy and confidentiality

¹⁷³ TEDx Talks, *Athletes and Mental Health: The Hidden Opponent* — Victoria Garrick — TEDxUSC, YOUTUBE (June 2, 2017), <https://www.youtube.com/watch?v=sdk7pLpbIls> [<https://perma.cc/4DWN-RTEF>].

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Parham, *supra* note 8.

issues are raised by such reporting and data collection programs? How does player mental health issues impact contractual obligations and discipline?

A. Federal Disability Law

Federal legislation, through the Rehabilitation Act of 1973, which applies to federally funded programs (such as universities), and the Americans with Disabilities Act of 1990 (“ADA”),¹⁷⁸ whose broader coverage reaches most private employer¹⁷⁹ and private entities constituting places of public accommodations,¹⁸⁰ prohibits discrimination on the basis of disability. Discrimination is defined to include, *inter alia*, “the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability . . . [and] a *failure to make reasonable modifications* in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.”¹⁸¹ These laws obligate covered entities to provide reasonable accommodations that will enable qualified individuals with disabilities to access and to participate in the program or activity. A goal of these laws, which apply to virtually all sports teams and organizations, is to assure the equality of opportunity and full participation for individuals with disabilities. An exception to this obligation exists if such accommodation causes undue hardship or requires a fundamental alteration of the program involved.¹⁸²

To invoke the ADA, an individual has to establish that (1) the person is “disabled” within the meaning of the statute; (2) the person is “otherwise qualified” to participate in the sports program with or without reasonable accommodations; (3) the person was discriminated against or excluded “because of” the person’s disability; and (4) the requested accommodation

¹⁷⁸ 29 U.S.C. § 794(a) (“No otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

¹⁷⁹ 42 U.S.C. § 12112(a) (“No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”).

¹⁸⁰ 42 U.S.C. § 12182.

¹⁸¹ 42 U.S.C. § 12182(b) (emphasis added); *see also* 42 U.S.C. § 12102(1) (defining disability to mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such impairment; or (c) regarded as having such an impairment).

¹⁸² 42 U.S.C. § 12182(b).

would not fundamentally alter the nature of the program or, as here, the sport or competition.¹⁸³ As a prerequisite, the defendant must be subject to the law as either a recipient of federal funds (Rehabilitation Act);¹⁸⁴ a “covered entity” under the ADA, such as a public entity (ADA Title II); a place of public accommodation (ADA Title III); or an employer of the individual claimant (ADA Title I).¹⁸⁵

1. U.S. Sport Organizations Are “Covered Entities” Under the ADA

Professional sports teams which “employ” players are subject to compliance with Title I of the ADA. Educational institutions and other sport organizations, including the NCAA, are “places of public accommodation” subject to Title III of the ADA.¹⁸⁶ In *PGA Tour, Inc. v. Martin*, the Supreme Court held that the Professional Golf Association (“PGA”), which sponsors golf tournaments, was a “place of public accommodation” under the ADA.¹⁸⁷ International sporting organizations and events (such as the French Open) may be covered by the non-discrimination mandates of their respective governing body charters and applicable laws.¹⁸⁸

2. When Do Mental Health Conditions Constitute a “Disability”?

Not all mental health situations qualify for statutory protection. The ADA defines “disability” as: (a) a physical or mental impairment that substantially limits one or more of the major life activities of the individual.¹⁸⁹

¹⁸³ See *Woolf v. Strada*, 949 F.3d 89, 93 (2d Cir. 2020) (identifying elements of an ADA prima facie case); *Martin v. PGA*, 532 U.S. 661, 676 (2001).

¹⁸⁴ 29 U.S.C. § 794(a) (Rehabilitation Act),

¹⁸⁵ The ADA is codified under five titles. Title I applies to employment, Title II applies to public programs and services, and Title III to private entities constituting places of public accommodation. 42 U.S.C. § 12112, 12132, 12182.

¹⁸⁶ See *Tatum v. NCAA*, 992 F. Supp. 1114, 1121 (E.D. Mo. 1998) (finding that the NCAA “operates” a place of public accommodations in terms of the entity’s power to control, manage, or regulate the place and conditions causing the alleged discrimination); *Shultz by & Through Schultz v. Hemet Youth Pony League*, 943 F. Supp. 1222, 1225 (C.D. Cal. 1996) (holding that a youth baseball league and its organizing body were covered by the ADA and that “Title III’s definition of ‘place of public accommodation’ is not limited to actual physical structures with definite physical boundaries”).

¹⁸⁷ 532 U.S. 661, 666-667 (2001).

¹⁸⁸ Article 30 of the U.N. Convention on the Rights of Persons with Disabilities (CRPD) provides a similar nondiscrimination mandate and right to sport and has been adopted by over 187 countries.

¹⁸⁹ 42 U.S.C. § 12102(1) (defining disability).

“Mental impairment” includes “[a]ny mental or psychological disorder, such as . . . emotional or mental illness.”¹⁹⁰ The Equal Employment Opportunity Commission guidance on psychiatric disabilities cites the following conditions as examples: “major depression, bipolar disorder, anxiety disorders (which include panic disorder, obsessive compulsive disorder, and post-traumatic stress disorder), schizophrenia, and personality disorders.”¹⁹¹ The regulations clarify that “[e]ven if a condition is an impairment, it is not automatically a ‘disability.’ To rise to the level of a ‘disability,’ an impairment must ‘substantially limit’ one or more major life activities of the individual.”¹⁹² This determination considers the severity of the limitation and the length of time it restricts a major life activity, and “[s]hould be based on information about how the impairment affects that individual and not on generalizations about the condition.”¹⁹³ Thus, whether a mental impairment qualifies under the ADA requires an individualized assessment of its severity and impact on the individual.¹⁹⁴

3. Reasonable Accommodation or Fundamental Program Alteration?

An athlete with a recognized mental impairment is legally entitled to a reasonable accommodation of program requirements,¹⁹⁵ unless such accommodation requires a fundamental alteration of the program.¹⁹⁶ In *Martin*, the

¹⁹⁰ Enforcement Guidance on the ADA and Psychiatric Disabilities, U.S. EQUAL EMP. OPPORTUNITY COMM’N (Mar. 25, 1997), <http://www.eeoc.gov/policy/docs/psych.html> [<https://perma.cc/4BRQ-6KXD>].

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ See *Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights*, U.S. EQUAL EMP. OPPORTUNITY COMM’N (Dec. 12, 2016), www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights [<https://perma.cc/DSG9-CZL9>].

¹⁹⁵ *Enforcement Guidance*, *supra* note 190, at Questions 23, 29 (noting that accommodations for individuals with mental impairments may involve changes to workplace policies, procedures, or practices, time off from work or a modified work schedule, physical changes to the workplace or equipment, modifications to a workplace policy, adjustments to supervisory methods, providing a job coach, or job reassignment.); see also *Sharing the Dream: Is the ADA Accommodating All?*, U.S. COMM’N ON CIVIL RIGHTS (Oct. 2000), <https://www.usccr.gov/pubs/ada/ch5.htm> [<https://perma.cc/S7JY-G55M>] (discussing critiques of EEOC Psychiatric Guidance regulations).

¹⁹⁶ 42 U.S.C. § 12113(b) (“[T]he term ‘qualification standards’ may include a requirement that an individual shall not pose a direct threat to the health and safety of other individuals in the workplace”).

Supreme Court posited the central issue as “whether allowing the plaintiff, given his individual circumstances, the requested modification of using a cart in tournament competition would fundamentally alter PGA . . . golf competitions.”¹⁹⁷ Golfer Casey Martin, due to a progressive degenerative circulatory disorder, requested a waiver of the PGA’s “no cart” rule.¹⁹⁸ In deciding whether the accommodation must be granted, the Court considered the two ways Martin’s use of the golf carts might “fundamentally alter the nature” of the sporting event: either the modification would alter an essential element of the game or the modification may give the disabled player an advantage over others.¹⁹⁹ The Court found that using golf carts is not “inconsistent with the fundamental character of the game of golf,” that the “essence of the game has been shot-making,” and ultimately that the walking rule is “not an essential attribute of the game itself.”²⁰⁰ The ADA also requires that a disabled individual’s need be evaluated on an individual basis, and in Martin’s case, the walking rule was in place to subject players to fatigue, something Martin was already experiencing at a greater level than his competitors.²⁰¹

a. Royce White and the NBA

Former NBA Houston Rockets player Royce White, due to his diagnosed generalized anxiety disorder, panic attacks, and obsessive-compulsive disorder, has a fear of flying.²⁰² White made a formal request for accommodations, including permission to drive rather than fly to games and to determine his own mental health treatment through the use of an independent physician.²⁰³ White asserted that “Rockets management is ‘unqualified’ to make determinations about his health because they are not mental health professionals[.]” He sought for the Rockets to implement new mental health protocols including a mental health professional who would treat him and decide if he was fit to play. The Rockets claimed that they tried to accommodate his fear of flying but indicated that White did not show up to practice. In response, White said, “[s]ome player doesn’t show up for prac-

¹⁹⁷ PGA Tour, Inc. v. Martin, 532 U.S. 661, 668, 677 (2001).

¹⁹⁸ *Id.* at 669.

¹⁹⁹ *Id.* at 682.

²⁰⁰ *Id.* at 683-85.

²⁰¹ *Id.* at 690.

²⁰² Ben Golliver, *Royce White: I Would Be ‘Risking My Life’ by Playing Without Health Protocol*, SPORTS ILLUSTRATED (Jan. 19, 2013), <https://www.si.com/nba/2013/01/19/rockets-royce-white-mental-health-protocol-hbo> [https://perma.cc/6APV-EWX5].

²⁰³ *Id.*

tice because of his knee, they say he didn't show up to practice because of his knee. [In my case,] they just say he didn't show up for practice [and it sounds like] it's your fault."²⁰⁴

Does the law provide protection for White? Does his condition constitute a "disability"? Are these accommodations "reasonable" to require of the NBA?²⁰⁵ White did not file a formal lawsuit and has since not been able to find work in the NBA.²⁰⁶ White spent some time playing in the NBL, the Canadian professional basketball league.²⁰⁷ In 2018, White decided to train for MMA (Mixed Martial Arts).²⁰⁸ White believes his fear of flying will not take a toll on his MMA career because MMA is primarily an individual sport in which he can make travel decisions on his own.

b. Naomi Osaka and Press Conferences

Had a court analyzed Royce White's request to drive rather than fly to NBA games, or Naomi Osaka's request to modify press conference obligations due to mental health concerns, the central questions to be addressed would be (a) whether the athlete's mental health constituted a "disability"; and (b) whether the requested accommodations to drive rather than fly to games, or to forgo press conferences, respectively, impacted essential elements of their professional sporting competitions. Although the French Open event is not subject to the ADA, similar nondiscrimination rights under international law can apply. The U.S. Open, like the PGA, would be considered a "place of public accommodation."

Osaka has been open about her struggle with depression.²⁰⁹ To invoke ADA protection, for example to waive press conference obligations, Osaka's

²⁰⁴ *Id.*

²⁰⁵ See McCann, *supra* note 17 (noting that the Rockets attempted to provide special travel arrangements for White but, after he refused to show up at practice, the Rockets suspended him).

²⁰⁶ See McCann, *supra* note 17; Robert Silverman, *How the NBA Finally Learned to Start Taking Mental Health Seriously*, DAILY BEAST (Mar. 19, 2018, 1:07 AM), <https://www.thedailybeast.com/how-the-nba-finally-learned-to-start-taking-mental-health-seriously> [<https://perma.cc/8T5T-RPRY>].

²⁰⁷ See Mary Pilon, *"I'm F***ing Weird": How Royce White Became the Most Important Basketball Player Alive*, ESQUIRE (May 7, 2017), <https://www.esquire.com/sports/a54756/royce-white-im-fucking-weird/> [<https://perma.cc/AVB5-2472>].

²⁰⁸ Jon Wertheim, *Royce White Takes on MMA*, SPORTS ILLUSTRATED (Apr. 13, 2020), <https://www.si.com/mma/2020/04/13/royce-white-takes-on-mma> [<https://perma.cc/3UJA-G2K6>].

²⁰⁹ Matthew Futterman, *Naomi Osaka Quits the French Open After News Conference Dispute*, N.Y. TIMES (May 31, 2021), www.nytimes.com/2021/05/31/sports/tennis/naomi-osaka-quits-french-open-depression.html [<https://perma.cc/7HBX-KTG7>].

condition would need to be evaluated on an individual basis. Depression is recognized as a disability, although the ADA protection does not extend to generalized mental health issues that do not restrict major life activities.²¹⁰ An individual seeking ADA accommodation would need to provide request or notice of reason, although the program or employer should otherwise honor confidentiality.²¹¹ Osaka's Twitter announcement did not constitute the formal notice and request for ADA accommodations, and she admits she could have presented her request differently.

Regarding whether allowing Osaka to skip press conferences would "fundamentally alter" the nature of tennis tournaments, either by altering the game or giving her an unfair advantage, press conferences can help promote the sport and event but are hardly essential to the game of tennis. This is a more obvious case than the walking rule deemed peripheral in *Martin*.

4. Duties to Disclose and Request Accommodations

Treatments for mental health disorders may involve psychiatric medication.²¹² Athletes are subject to the strict anti-doping restrictions of the World Anti-Doping Code ("WADC"), which prohibits certain medications. The decision to take psychiatric medications involves consultation with a medical doctor and consideration of potential negative impact on athletic performance, potential therapeutic performance-enhancing effects, ergogenic effects, and safety risks.²¹³ Sports' governing bodies are most concerned with ergogenic effects and the possible advantages an athlete may gain over their competitors. For example, stimulants are the only class of psychiatric drugs classified as prohibited substances because they can enhance performance beyond a therapeutic effect.²¹⁴ Bupropion, a medication used to treat depression, is currently on the World Anti-Doping Agency's monitoring program because it may allow athletes to improve performance by pushing themselves to higher core body temperatures.²¹⁵

U.S. Olympian Justin Gatlin sued the U.S. Olympic Committee, the U.S. Anti-Doping Agency, USA Track & Field, and the International Association of Athletics Federations ("IAAF"), claiming his rights under the

²¹⁰ *Enforcement Guidance*, *supra* note 190, at Question 5; *see also supra* Sec. III.A.2.

²¹¹ *Depression, PTSD*, *supra* note 194.

²¹² Reardon, *supra* note 9, at 669.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* at 672.

ADA were violated.²¹⁶ Gatlin argued that he was discriminated against for taking prescribed medication to treat his Attention Deficit Disorder (“ADD”), which led to his first two doping violations.²¹⁷ His second violation resulted in suspension that kept him from competing in the 2004 Beijing Olympic Games to defend his gold medal.²¹⁸ A federal judge dismissed Gatlin’s request for injunctive relief to compete in the 2008 Olympics on jurisdictional grounds, as the case was subject to international arbitration; the judge wrote that “[n]onetheless, the result of this determination is quite troubling because Mr. Gatlin is being wronged, and the United States Courts have no power to right the wrong perpetrated upon one of its citizens.”²¹⁹ The Court of Arbitration for Sport rejected Gatlin’s appeal and argument that his use of medication that resulted in a positive doping test was protected under the ADA.²²⁰ Should Justin Gatlin have been suspended for taking prescribed medication? The CAS found that the violation was clearly unintentional, but it also determined that he should have sought an exemption for his medication before competing.²²¹ After serving the suspension, Gatlin returned to track and field in 2010, competed at the 2012 Olympics, and won a silver medal.

Athletes may request a Therapeutic Use Exemption (“TUE”) which is “a process that allows athletes to request permission to take a medication that is on the WADA prohibited list,” as a possible accommodation when medication may help with mental health.²²² An athlete can apply for a TUE through their national anti-doping agency or international federation, and the TUEs are only granted if no unfair advantage is given to the athlete.²²³ Although the TUE process is intended to be confidential to protect the athlete’s privacy, in 2016 a hack revealed that Simone Biles and Venus and Serena Williams, among others, obtained TUEs in order to take prescribed

²¹⁶ *Gatlin Finalizing Lawsuit with Officials*, ESPN (Apr. 15, 2009), <https://www.espn.com/olympics/trackandfield/news/story?id=4071037> [<https://perma.cc/88C3-8CKB>].

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Gatlin v. United States Anti-Doping Agency, Inc.*, No. 3:08-cv-241/LAC/EMT, 2008 U.S. Dist. LEXIS 112850 (N.D. Fla. June 24, 2008)

²²⁰ *Justin Gatlin v. United States Anti-Doping Agency*, Court of Arbitration for Sport, 2008/A/1462 at 9 (award of June 6, 2008) (Hober, Arb.).

²²¹ *Id.*

²²² Reardon, *supra* note 9, at 672.

²²³ James Masters, *When Athletes Can Take Drugs. What Are Therapeutic Use Exemptions?*, CNN (Sept. 14, 2016, 11:44 AM), www.cnn.com/2016/09/14/sport/therapeutic-use-exemptions-explainer/index.html [<https://perma.cc/F9GT-U5M2>].

medication.²²⁴ Biles sought medication to treat her ADHD.²²⁵ Biles was granted a TUE, but in 2002, Justin Gatlin was not because the IAAF indicated it would not grant “applications for athletes with [ADD] who seek an exemption on medical grounds to use amphetamines during competition.”²²⁶ Gatlin, who still tested positive though he had stopped taking the medication before the competition as required by the IAAF, could have avoided any suspension had he received a TUE. Was Biles granted an exemption because the culture and conversation surrounding mental health has changed since Gatlin’s 2002 suspension? Did decisions like *PGA v. Martin* emphasize the need for reasonable accommodations in sport?

B. Athlete Privacy and Confidentiality

The obligation to disclose a need for mental health accommodation or to screen athletes for mental health risks must also be considered in light of athlete privacy and confidentiality concerns. A prerequisite to sports participation generally involves physical examinations and disclosure of physical injuries to the team. In certain sports, player physical injuries are also disclosed to the public.²²⁷ Should athlete mental health be treated similarly? Do teams and potential employers have a right to know an athlete’s mental health history or condition or to disclose publicly such conditions? Athlete privacy rights must also be considered with programs that have procedures to identify and refer at-risk athletes for mental health treatment and other data collection and tracking systems.²²⁸ Athletes are often required to waive privacy rights regarding health status by contractual waiver or under a collective bargaining agreement as a condition of playing the sport. What does

²²⁴ Rebecca R. Ruiz, *Simone Biles and Williams Sisters Latest Target of Russian Hackers*, N.Y. TIMES (Sept. 14, 2016), <https://www.nytimes.com/2016/09/14/sports/simone-biles-serena-venus-williams-russian-hackers-doping.html> [https://perma.cc/NHU4-6BPH].

²²⁵ *Id.*

²²⁶ Zaheer Clarke, *Gatlin Is Not a Two-Time Drug Cheat*, JAMAICA OBSERVER (Aug. 13, 2017), https://www.jamaicaobserver.com/the-agenda/gatlin-is-not-a-two-time-drug-cheat_107565 [https://perma.cc/U2W4-B6DJ].

²²⁷ Christopher R. Deubert et al., *Comparing Health-Related Policies and Practices in Sports: The NFL and Other Professional Leagues*, 8 HARV. J. SPORTS & ENT. L. (Special Issue) 1, 18-19 (2017) (noting injury reporting policies in major professional sports).

²²⁸ See *infra* Section III.A. (discussing NCAA Mental Health Best Practices to determine student-athlete informed consent to authorize clinician communication with sports staff and college administration regarding athlete participation in counseling).

this mean in terms of an athlete's privacy and confidentiality and willingness to seek treatment?

Team owners may assert their need to know the complete physical and mental health of their teams' players in order to protect their financial investments and team safety.²²⁹ Elite athletes' medical histories are vital sources of information when it comes time for recruiting, contract negotiations, free agency, or playing time. For example, coaches and teams are aware of player's injuries; in the NFL an offseason injury can cost a player salary money or even get them cut.²³⁰ Most athletes must submit to preparticipation physical evaluations to ensure medical eligibility for sports participation.²³¹ Some of these questionnaires include screening for mental health concerns. Without policies in place for athlete mental health privacy, these athletes will have more than their physical injuries shared with their employers, the media, and fans.

Federal laws provide only limited protection for athlete health information in the sports context.²³² The Health Insurance Portability and Accountability Act of 1996 ("HIPAA")²³³ regulates the privacy, security, and disclosure of an individual's "protected health information" ("PHI"), which includes the "past, present or future physical or mental health or condition of an individual."²³⁴ But HIPAA only applies to "covered entities," such as healthcare providers, health plans, healthcare clearinghouses, and related business associates.²³⁵ Thus, healthcare providers and health insurance plans are precluded from disclosing an athlete's PHI to employers, such as a sports

²²⁹ See Alfi Ahmed, *The NBA Needs to Stay Out of Its Players' Mental Health Records*, MEDIUM (Aug. 27, 2018), <https://medium.com/grandstandcentral/the-nba-needs-to-stay-out-of-its-players-mental-health-records-kevin-love-demar-derozan-94b9d6736ea0> [https://perma.cc/UUS8-242Q].

²³⁰ See Travis Walker, *The Price of Health Privacy in Sports*, UNIV. OF UTAH: S.J. QUINNEY COLL. L., (Nov. 15, 2015), <https://law.utah.edu/the-price-of-health-privacy-in-sports/> [https://perma.cc/6KKH-4LS5].

²³¹ See Chris G. Koutures, *How to Screen Athletes for Mental Health Risk While Protecting Confidentiality*, AAP NEWS (Mar. 19, 2020), <https://www.aapublications.org/news/2020/03/19/focus031920> [https://perma.cc/WQT8-MMZB] (recommending provider separate medical eligibility form from confidential medical history information).

²³² See James B. Hike, *An Athlete's Right to Privacy Regarding Sport-Related Injuries: HIPAA and the Creation of the Mysterious Injury*, 6 IND. HEALTH L. REV. 47, 64 (2009).

²³³ See Health Insurance Portability and Accountability Act of 1996, 42 U.S.C § 201.

²³⁴ *Id.* (requiring Health and Human Services to issue privacy and security regulations).

²³⁵ *Id.*

team, or to the public.²³⁶ Doctors and therapists are also ethically and legally bound to respect patient confidentiality.²³⁷

Employers and educational institutions are exempt from HIPAA. Professional sports organizations generally are not “covered entities” under HIPAA, and team physicians and trainers employed by the organization fall under the employer exemption as they are providing care to the athletes within an employment context.²³⁸ Team trainers can reveal an athlete’s health information to coaches, managers, and owners without violating HIPAA, as these are also traditional operations.²³⁹ Teams may be partially subject to HIPAA when they act as “health care providers” such as if a team outside-doctor bills, charges, or transmits PHI to an insurance plan.²⁴⁰ Thus, when an athlete goes to a medical provider not employed by a sports organization, HIPAA applies to that medical provider because they are a covered entity.²⁴¹

Intercollegiate athletic programs, as part of educational entities, are regulated by the Family Education Rights and Privacy Act (“FERPA”), which protects student educational records.²⁴² FERPA exemptions to HIPAA do not apply when a university is participating in non-traditional

²³⁶ Neal, *supra* note 36, at 42 (“The guiding philosophy behind legal and ethical safeguards for confidentiality is that clients have the right to determine who will have access to information about them and their treatment. If the client does not trust that the information they provide to their therapist will be kept private, they may be reluctant to share relevant information with their treatment provider, thus negatively impacting the potential treatment success.”).

²³⁷ *See id.*

²³⁸ *See* Donovan Dooley, *Do HIPAA Laws Apply to Athletes?*, DEADSPIN (June 28, 2020, 12:44 PM), <https://www.deadspin.com/do-hipaa-laws-apply-to-athletes-1844195531> [<https://perma.cc/J53F-DQQN>].

²³⁹ Hike, *supra* note 232, at 54.

²⁴⁰ Barbara Osborne & Jennie L. Cunningham, *Legal and Ethical Implications of Athletes’ Biometric Data Collection in Professional Sports*, 28 MARQ. SPORTS L. REV. 37, 52-53 (2017) (concluding that federal regulations authorize professional sport team waivers from HIPAA and player health records thus part of the employment record that can be disclosed).

²⁴¹ Dooley, *supra* note 238.

²⁴² *See* Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232(g); *see also* *Understanding FERPA*, NATA NEWS (Dec. 5, 2017), <https://cpbus-w2.wpmucdn.com/sites.udel.edu/dist/d/3615/files/2017/07/Understanding-FERPA-1dxvbg6.pdf> [<https://perma.cc/W5YM-PDF6>] (“FERPA allows school records to be shared in certain cases. Medical information kept by an athletic trainer employed by the school is considered part of the student’s educational records, therefore subject to FERPA standards. . . . [FERPA] is a complex Federal law that protects the privacy interests of parents and students with regard to education records.”).

operations (those falling outside the traditional realm of treatment).²⁴³ An example of non-traditional operations is when an athletic trainer gives medical information to the media; if the trainer only reported the information to an athlete's coaches, this would be a traditional operation and HIPAA would not apply, but because the report is made to the media, FERPA does not exempt the university from HIPAA.²⁴⁴

Mental health information is included within HIPAA's protected personal health information, meaning the current system in place would allow teams and organizations to reveal a player's mental health information similarly to how they can make public sports-related injuries. Whether or not HIPAA applies (and there is ambiguity about its application to sports organizations), professional sport contracts typically require athletes to submit to medical examinations, to disclose medical records, and to provide notice of injury or medical illness.²⁴⁵ These waivers and attendant medical records become part of the employment record. Once the sports organization is aware of the athlete's health information, because of these contractual waivers, the organization can reveal the information to the media, unless otherwise contracted. HIPAA does not apply to the media as they are not covered entities.²⁴⁶

Confidentiality may be bargained for, such as the major professional sports league substance abuse policies.²⁴⁷ Historically NFL teams have chosen not to reveal the nature of physical injuries that were not sustained in relation to sports.²⁴⁸ For example, the Indianapolis Colts offered no insight into the nature of Corey Simon's non-sport related 2006 injury.²⁴⁹ The Colts cited Simon's privacy and federal medical privacy laws in making this decision.²⁵⁰ Mental health issues are not always sports-related. Sports organizations could follow this example and choose not to make public the mental health reasons an athlete might take time off or miss a game or practice when these struggles are not sports-related. The NBA Players Association has negotiated for restrictions on disclosure of athlete mental health history.²⁵¹

²⁴³ Hike, *supra* note 232, at 53.

²⁴⁴ *Id.* at 54.

²⁴⁵ *Id.* at 59.

²⁴⁶ *Id.*

²⁴⁷ See Deubert, *supra* note 227, at 41.

²⁴⁸ Hike, *supra* note 232, at 64.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ See *Mental Health & Wellness Department, NAT'L BASKETBALL PLAYERS ASS'N*, <https://nbpa.com/mentalwellness> [<https://perma.cc/92SF-TGFP>] (last visited Oct. 16, 2021).

Public disclosure of athlete mental health issues carries a significant risk for athletes to be subjected to stigma, discrimination, career jeopardy, and public opinion. Respect for athlete privacy and promotion of treatment justify the confidentiality of athlete mental health, regardless of legal rights to disclose otherwise.²⁵² Limits on contractual waivers of physical and mental health should be provided by contract or proposed legislation.

C. *Contractual Implications*

Showing up for practice and competition is express if not implicit in athletic contracts at any level. An athlete's abrupt refusal to compete on "mental health" grounds, absent seeking coverage under disability discrimination law, may be grounds for a claim of breach of contract, termination, disciplinary violations, or sending the athlete home from the Olympics. The Grand Slam event organizers issued such a warning to Naomi Osaka for her refusal to participate in press conferences per her contract at the French Open. At the Tokyo 2020 Olympics, Simone Biles withdrew from multiple events, including the all-around competition. Osaka's sponsor Nike, as perhaps the USOPC's response to Biles, could have cited these contractual rights and obligations. Nike chose not to do so. The USOPC also supported Biles who was able to recompose and compete in her final Olympic event, winning a bronze medal. The public was largely in support of both Osaka and Biles and applauded the courage of these athletes to prioritize their mental health. The optics demanded that these athletes be listened to and given time, to say nothing of the fact that it was the sheer right thing to do.

As the issue of athlete mental health becomes more prominent, sport entities and commercial sponsors may consider legal remedies when an athlete decides not to compete or participate in press conferences, appearances, or the like. For example, a sport entity may consider drafting or invoking contractual rights to recoup, suspend, or terminate payment or eligibility where an athlete withdraws from competition due to mental health.²⁵³ Yet, an athlete may not be similarly penalized for withdrawing due to physical injury. Even if a sport authority has legal recourse against an athlete for not

²⁵² See Ahmed, *supra* note 229 and accompanying text (citing experts in agreement that the "NBA Needs to Stay Out of its Players' Mental Health Records").

²⁵³ See Edgardo Muñoz & Otavio Delavi, *The Impact of Athlete Mental Health on Sponsorship Contracts*, LINKEDIN (Aug. 24, 2021) [https://www.linkedin.com/pulse/impact-athletes-mental-health-sponsorship-agreements-edgardo-mu%C3%B1oz/\[https://perma.cc/R296-F8EJ\]](https://www.linkedin.com/pulse/impact-athletes-mental-health-sponsorship-agreements-edgardo-mu%C3%B1oz/[https://perma.cc/R296-F8EJ]) (noting that most sponsorship contracts have provisions and stipulated remedies addressing when athletes withdraw due to injury, ineligibility, and suggesting that mental health grounds could be treated similarly).

competing on mental health grounds, a better approach not only from a brand optics and image perspective would be to support the athlete, guide them to professional resources, and negotiate a strategy to welcome them back once ready.

In an extensive study on NFL Football Player Health, *Comparing Health-Related Policies and Practices in Sports: The NFL and Other Professional Leagues*,²⁵⁴ researchers cited the impact compensation systems can have on players' physical or mental health decisions, such as when to retire and whether to disclose or play through physical and mental struggles.²⁵⁵ Players are concerned that disclosures about their mental health issues could affect their playing time and compensation. Guaranteed salary player contracts may also correlate with player health.²⁵⁶ Players should be assured that accommodations or breaks needed due to mental health concerns will not jeopardize their compensation or contracts, including the excusing of players, such as the NFL's "Beast Mode" Marshawn Lynch, who reluctantly participated in post-game press conferences, repeatedly answering questions with the statement "I'm just here so I don't get fined."²⁵⁷

Negotiation power and collective bargaining agreements ("CBA(s)") are one method elite athletes can use to ensure mental health protections in their respective sports.²⁵⁸ In professional team leagues, player associations protect their members by ensuring mental health accommodations through the CBA.²⁵⁹ Few individual athletes have substantial bargaining power to negotiate alternatives or accommodations for mental health. Notably, Osaka felt bound to withdraw due to the specter of sanction, while Biles chose when to return to competition. Individual sports organizations should provide assurances and set forth a process to help athletes in a mental health crisis.

²⁵⁴ See Deubert, *supra* note 227, at 22 ("In their efforts to maximize their earnings (and sometimes, eligibility for various benefits), some players might sacrifice their short- and/or long-term physical and mental health. The compensation structures dictate when or if a player faces such a trade-off.").

²⁵⁵ *Id.*

²⁵⁶ See Dom Cosentino, *Why Only the NFL Doesn't Guarantee Contracts*, DEADSPIN (Aug. 1, 2017, 11:38 AM), deadspin.com/why-only-the-nfl-doesnt-guarantee-contracts-1797020799 [<https://perma.cc/P2ZM-7UXR>].

²⁵⁷ Kyle Newport, *Marshawn Lynch at Super Bowl Media Day: "I'm Here So I Won't Get Fined"*, BLEACHER REPORT (Jan. 27, 2015), <https://bleacherreport.com/articles/2344416-marshawn-lynch-at-super-bowl-media-day-im-here-so-i-wont-get-fined> [<https://perma.cc/E8T6-358H>].

²⁵⁸ See *id.*

²⁵⁹ Deubert, *supra* note 227, at 19.

Many athletes savor the limelight and media attention, while the same can cause trauma for others. Sport rules and contracts should provide accommodation in these circumstances, perhaps similar to a TUE process with fair notice to sport organizers to modify non-essential obligations such as press conferences; allocating “sick days”, as Osaka proposed; or negotiating an alternative press contract in which sick days and schedule commitments can be individualized based on each individual’s health history. Negotiation power and collective bargaining agreements are one way that elite athletes and their players’ unions can protect themselves and work mental health protections into their respective sports.

D. *Duties of Care*

Inherent in running a sport program is a duty of care to the athletes. Safety includes physical and mental health.²⁶⁰ Commentators have argued that a university’s special relationship with a student-athlete may create a duty to provide them with mental health services.²⁶¹ The following section analyzes what sport organizations are doing with respect to this duty.

IV. SPORT PROGRAMS ON ATHLETE MENTAL HEALTH

Sports organizations have only recently begun to acknowledge and address athlete mental health concerns through various programs. Individual elite athletes have also been coming forward with new initiatives and partnerships that work to destigmatize and to promote the importance of mental health.

A. *College – NCAA*

The NCAA Sports Science Institute convened a taskforce to identify and advance mental health best practices.²⁶² Its 2016 publication, *Mental Health Best Practices*, set forth a set of recommended guidelines “designed to provide athletics and sports medicine departments . . . with recommendations for supporting and promoting student-athlete mental health.”²⁶³ The

²⁶⁰ Mawdsley, *supra* note 63, at 244.

²⁶¹ *Id.*

²⁶² *Id.* at 250.

²⁶³ See *Mental Health Best Practices: Inter-Association Consensus Document: Best Practices for Understanding and Supporting Student-Athlete Mental Wellness*, NCAA SPORTS SCI. INST. 4 (2016), <https://sites.tntech.edu/athleticscompliance/wp-content/uploads/sites/89/2018/08/MentalHealthBestPractices.pdf> [<https://perma.cc/4UK5-UHCT>].

report identified four “key components” for understanding and supporting student-athlete mental health. The first guideline, *Clinical Licensure of Practitioners Providing Mental Health Care*, recommends that student-athlete mental health concerns be coordinated and managed by athletic trainers and team physicians, licensed practitioners qualified to provide mental health services who are easily accessible to student-athletes, including through the establishment of a self-referral process.²⁶⁴ The second recommends the implementation of *Procedures for Identification and Referral of Student-Athletes to Qualified Practitioners*, which includes role-specific training and a referral process for stakeholders to help support the identification and referral for emergency and routine mental health referrals.²⁶⁵ This report notes, but does not define, how to address considerations regarding student confidentiality and informed consent.²⁶⁶ The third guideline provides that student-athletes be provided a *Pre-Participation Mental Health Screening*.²⁶⁷ The fourth guideline, *Health Promoting Environments That Support Mental Well Being and Resilience*, recognizes the athletics environment at a university can help support positive mental health among student-athletes by “normalizing care seeking and fostering experiences and interactions that promote personal growth, self-acceptance, autonomy and positive relations with others.”²⁶⁸ The report recommends that the primary athletics health care providers and licensed mental health practitioners meet on an annual basis to discuss the institutional protocols regarding mental health. Additionally, coaches, faculty athletics personnel, and fellow student-athletes (among others), should have educational mental health information communicated to them regarding topics such as stress management practices, signs and symptoms of mental health disorders, and financial support.²⁶⁹

The NCAA has taken additional steps. In 2019, NCAA member schools of the Power 5 autonomous conferences agreed to provide access to mental health care for their student-athletes.²⁷⁰ Mental health was also a

²⁶⁴ *Id.* at 7.

²⁶⁵ *Id.* at 10.

²⁶⁶ *Id.* at 11.

²⁶⁷ The National Athletic Trainers’ Association recommends a series of nine questions, which serves as a starting point for the screening. An answer of “yes” to any of the nine questions leads to a follow up discussion with the student-athlete and relevant personnel to determine whether the student-athlete should be referred to a licensed practitioner. *Id.* at 13.

²⁶⁸ *Id.* at 14.

²⁶⁹ *Id.*

²⁷⁰ Michelle Brutlag Hosick, *Access to Mental Health Services Guaranteed by Autonomy Conferences*, NCAA (Jan. 24, 2019), <https://www.ncaa.org/about/resources/me>

focus of the NCAA's 2020 Convention,²⁷¹ where NCAA Chief Medical Officer Dr. Brian Hainline stated that "the NCAA is emphasizing mental health among its top priorities . . . We're doing a lot, including generating awareness, programming and other educational resources for members and students, and we understand that we must continue to build on these efforts going forward."²⁷² Following the tragic suicides of two high-profile student athletes²⁷³ in 2018, the NCAA implemented a formal policy and guidebook entitled *Mind, Body & Sport—Understanding and Supporting Student-Athlete Mental Wellness* (2021), in which Dr. Hainline notes the urgency of addressing student mental health.²⁷⁴ This handbook has chapters including personal narratives of student-athletes and explanations of stressors on student-athlete mental health.²⁷⁵ The handbook is a significant resource for addressing student-athlete mental health for institutions, although, these guidelines are not requirements, and a school's decision to implement them is voluntary. The NCAA's Sports Science Institute website includes *Mental Health Educational Resources* and *Implementation Tools* with links to various resources and implementation tools to assist conference offices, schools, and campus stakeholders.²⁷⁶ At the time of this writing, the links led to pages that no longer exist.²⁷⁷ While these guidelines identify best practices, evidence of their implementation and effectiveness warrants further study.²⁷⁸

dia-center/news/access-mental-health-services-guaranteed-autonomy-conferences [https://perma.cc/D9P3-38WB].

²⁷¹ *Id.*

²⁷² *Mental Health Is Key Focus at NCAA Convention*, NCAA, <https://www.ncaa.org/about/resources/media-center/news/mental-health-key-focus-ncaa-convention> [https://perma.cc/49LJ-RFK5] (last visited Dec. 2, 2021).

²⁷³ Born, *supra* note 51, at 1221.

²⁷⁴ *Id.* at 1242-43.

²⁷⁵ *Id.* (citing examples such as "transition, performance, injury, academic stress and coach relations; experts on student-athlete depression, anxiety, eating disorders, substance abuse and gambling").

²⁷⁶ *Mental Health Educational Resources*, NCAA, <https://www.ncaa.org/sport-science-institute/mental-health-educational-resources> [https://perma.cc/UJ66-MT44] (last visited Oct. 29, 2021).

²⁷⁷ *Id.*

²⁷⁸ Andrea Stamatis et al., *Can Athletes Be Tough Yet Compassionate to Themselves?*, PLOS ONE (Dec. 31, 2020), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0244579> [https://perma.cc/JLH3-9CLB] (stating that the NCAA's "best practices provide general goals, but they do not clarify the specific skills and education needed for their realization").

B. U.S. Major Professional League Sports

In recent years, U.S. professional sports leagues have begun to recognize the need for formal athlete mental health programs.

1. National Basketball Association

Although NBA players garner fame and average \$7 million dollar salaries, NBA Commissioner Adam Silver addressed athlete mental health acknowledging that “[a] lot of these young men are genuinely unhappy.”²⁷⁹ In 2018, the National Basketball Players Association (“NBPA”) announced its own mental health and wellness program and named Dr. William D. Parham as its first Director for Mental Health.²⁸⁰ The NBPA program connects players in each city with independent mental health professionals.²⁸¹ In 2019, the NBA held a mandatory health and wellness meeting for team executives and mental health providers in Chicago, where new formal requirements were set for all 30 NBA teams.²⁸² All NBA teams are required to have a full-time mental health professional—a psychologist or behavioral therapist on staff, and a psychiatrist retained to assist as needed.²⁸³ Additionally, teams must draft a “written action plan,” outlining the steps to be taken in the event of mental health emergencies. The plan must inform team and staff members of the measures taken to ensure the privacy and confidentiality of all mental health matters.²⁸⁴ The goal of this new program is to change the narrative surrounding mental health and provide resources, including mental health professionals in every NBA city, for players.²⁸⁵

²⁷⁹ Sean Ingle, *Elite Sport is Gradually Waking Up to Widespread Mental Health Issues*, THE GUARDIAN (Mar. 4, 2019), <https://www.theguardian.com/sport/blog/2019/mar/04/elite-sport-mental-health> [https://perma.cc/KS76-HWVF].

²⁸⁰ Mary Pilon, *The NBPA’s First Mental Health Director Has an Ambitious Plan for the Future*, BLEACHER REPORT (June 27, 2018), <https://bleacherreport.com/articles/2783189-the-nbpas-first-mental-health-director-has-an-ambitious-plan-for-the-future> [https://perma.cc/ME7K-3XA2].

²⁸¹ *Id.*

²⁸² Elijah Shama, *NBA Adopts New Rules Requiring Teams to Add Full-Time Mental Health Staff for 2019-2020 Season*, CNBC (Sept. 19, 2019), <https://www.cnbc.com/2019/09/19/nba-now-requires-teams-to-add-full-time-mental-health-staff.html> [https://perma.cc/3VRF-L92Q].

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *New NBPA Program Focuses on Mental Health*, NIH MEDLINE PLUS MAG. (Nov. 6, 2019), <https://magazine.medlineplus.gov/article/new-nba-program-focuses-on-mental-health> [https://perma.cc/8WV2-2VUF].

As part of the NBA Together campaign, the “NBA Mind Health” program “supports [NBA] fans, families and communities by promoting healthy minds and bodies and increasing awareness around emotional well-being.”²⁸⁶ The program has free resources on its website for youth players, coaches, and parents, including a helpline for free and confidential support, and partnerships with companies like Kaiser Permanente, Headspace, and the Child Mind Institute.²⁸⁷ Overall, the basketball community’s goal is to get people thinking about mental health the same way they think about physical health.²⁸⁸

2. National Football League

The NFL started its NFL Total Wellness initiative to promote wellness and to “assis[t] players, legends, and their families before, during and after their playing experiences.”²⁸⁹ The program’s objective is to have players think about their mental health from day one in the NFL.²⁹⁰ The program’s website includes information related to resource provision, education, support systems, and governance. Rookie orientation includes a three-day mandatory program for all drafted and undrafted rookies, with eight psychoeducational modules on mental health topics like stress management and maintaining healthy relationships.²⁹¹ The initiative also connects players to outside resources such as free counseling sessions for players and any member of their household.²⁹² Training is also provided to team staffers, including athletic trainers, security personnel, and administrative staff, to teach them how to connect with people in crises and address the situation.²⁹³

In 2019, the NFL and NFL Players Association instituted a Mental Health and Wellness Committee to develop educational programs on mental health for teams, players, and players’ family members.²⁹⁴ Each team

²⁸⁶ *Mind Health*, NBA CARES, <https://cares.nba.com/mind-health/> [<https://perma.cc/5BHB-R8JT>] (last visited Dec. 1, 2021).

²⁸⁷ *Id.*

²⁸⁸ Shama, *supra* note 282.

²⁸⁹ See *NFL Total Wellness*, NFL FOOTBALL OPERATIONS, <https://operations.nfl.com/the-players/nfl-total-wellness/> [<https://perma.cc/ESL8-5HU5>] (last visited Oct. 29, 2021).

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Dan Graziano, *NFL, NFLPA Announce Mental Health Initiative*, ESPN (May 20, 2019), https://www.espn.com/nfl/story/_/id/26788730/nfl-nflpa-announce-mental-health-initiative [<https://perma.cc/5C7H-R4HV>].

is required to have a behavioral health clinician onsite at the team facility for a minimum of eight hours a week to coordinate player mental health.²⁹⁵ The goal is to help players with issues both on and off the field.²⁹⁶

After the high-profile deaths of several former NFL players such as Junior Seau and other reports concerning the long-term effects of concussions and CTE,²⁹⁷ the NFL instituted its Life Line program to address suicide prevention for both current players who can be under significant pressure and former players who can struggle with transitioning from superstar status.²⁹⁸ NFL Life Line is a free, confidential hotline for current and former players, coaches, team and league staff members, and family members to connect with licensed mental health providers who have received specialized training on NFL culture and resources.²⁹⁹ The NFL has also enacted a strict policy regarding the safety rules and treatment of head trauma in an effort to prevent and lessen the long-term effects of CTE and concussions.³⁰⁰

3. Major League Baseball

Major League Baseball (“MLB”) has several programs to address players’ mental health. Like many other employers, the MLB has an Employee Assistance Program (“EAP”) to help players and their family members manage personal problems.³⁰¹ EAP consultations can include medical evaluations, counseling, or referrals to other programs.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ See Mark Fainaru-Wada & Steven Fainaru, *Seaus to Opt out of Concussion Deal*, ESPN (Sept. 3, 2014), https://www.espn.com/espn/otl/story/_/id/11457306/junior-seau-relatives-reject-proposed-settlement-nfl-former-players [<https://perma.cc/GK42-P9GK>]; see also Parham, *supra* note 8 (noting other NFL players who died by suicide).

²⁹⁸ Rebecca A. Clay, *A New NFL Playbook: Enhancing Mental Health*, 48(1) MONITOR ON PSYCHOL. 22 (2017).

²⁹⁹ *Id.*

³⁰⁰ See *Legal Issues Relating to Football Head Injuries (Part I and II): Hearing Before the H. Comm. on the Judiciary*, 111th Cong. 31-37 (2009) (statement of Roger Goodell, Commissioner, National Football League); see also Daniel J. Kain, “It’s Just a Concussion:” *The National Football League’s Denial of a Causal Link Between Multiple Concussions and Later-Life Cognitive Decline*, 40 RUTGERS L.J. 697, 731 (2009) (discussing the history of the NFL’s “concussion problem” and suggesting that players may file a lawsuit alleging the NFL wrongfully concealed studies about the effects of multiple concussions and failed to warn players of the risks).

³⁰¹ Christine Armstrong, *Athletes and Mental Illness: Major League Baseball Steps Up to the Plate*, NAT’L ALL. ON MENTAL ILLNESS (Nov. 1, 2010), <https://>

In 2010, MLB added an injury list designation (then called the “disabled list”) for emotional disorders.³⁰² This was a rare move amongst the professional sports leagues as any missed time for mental health issues was usually considered a “Did Not Play—Coaches Decision” or something similar.³⁰³ To qualify for the designation, the player must be “evaluated and diagnosed by a qualified mental health professional as suffering from a mental disability that prevents a player from rendering services.”³⁰⁴

In 2018, twenty-seven of the thirty MLB teams employed “mental skills coaches” to help players with mental issues.³⁰⁵ At least one MLB player, however, took issue with this program’s effectiveness. In 2019, former Mariners pitcher Rob Whalen decided to retire from the MLB to focus on his battle with mental health and accused the Mariners of not doing enough to get him the help he needed.³⁰⁶ Whalen had previously struggled to get out of bed and go to workouts and would wake up with cold sweats and his mind running through everything that could go wrong when he hit the mound. The Mariners “mental skills coach” recommended that Whalen seek professional treatment.³⁰⁷ Whelan stated however, that the Mariners head of player development, Andy McKay, initially offered to give him a week off to deal with his anxiety but then texted Whalen a few days later that he would be replaced if he didn’t return immediately.³⁰⁸ After struggling through several starts and following a disappointing performance, Whalen packed up his things and booked a flight home.³⁰⁹ He was placed on the restricted list and received contact information for a professional but was never contacted by his coach or other players.³¹⁰ During the offseason,

www.nami.org/Blogs/NAMI-Blog/November-2010/Athletes-and-Mental-Illness-Major-League-Baseball [<https://perma.cc/E7BE-5DS3>].

³⁰² *Id.*

³⁰³ *See id.*

³⁰⁴ *Id.*

³⁰⁵ Kristen Weir, *A Growing Demand for Sport Psychologists*, 49(10) AM. PSYCHOL. ASS’N 50 (2018).

³⁰⁶ Hannah Keyser, *Rob Whalen’s Retirement an Example of How Some MLB Teams Are Failing to Address Mental Health Issues*, YAHOO! SPORTS (Apr. 15, 2019), <https://sports.yahoo.com/rob-whalens-retirement-an-example-of-how-some-mlb-teams-are-failing-to-address-mental-health-issues-170601773.html> [<https://perma.cc/PLH9-843Q>].

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ The Mariners claim that a staff member contacted Whalen and talked with him for four hours to ensure he was safe and connect him with a professional. Whalen, however, claims the call was much shorter than that and he told the team that he needed to get help and that he was “not in a good place mentally.” *Id.*

³¹⁰ *Id.*

he worked with a therapist and started to feel better, ultimately returning and making a great first appearance,³¹¹ after which Mariners manager Scott Servais told reporters, “[y]ou gotta tip your cap to everybody in our player development system. A player goes through what he went through last year, hitting the lows, the things he went through off the field, our organization wrapped our arms around him and really allowed him to turn it around.”³¹² Whalen certainly did not feel that the Mariners had “wrapped their arms around him” and said he felt very much alone during the process.³¹³ The game ended up being Whalen’s last in the major leagues as he was sent back to Triple-A and then Double-A after another issue with anxiety. Soon after, he retired.³¹⁴

4. National Hockey League

National Hockey League (“NHL”) teams sponsor #HockeyTalks annual initiative to raise awareness about mental health, including fans and players in the discussion through social media.³¹⁵ Currently, fifteen of the thirty-one NHL teams host “Hockey Talks” nights during which fans can receive mental health information through public service announcements, information tables, and social media posts.³¹⁶ The initiative started in 2013, and is dedicated to the legacy of Rick Rypien, an “enforcer” (the bruising, tough guy of each NHL team who often gets into fights and lays big hits) of the Vancouver Canucks, who struggled with depression while on the team, and ultimately died by suicide.³¹⁷ Since Rypien’s death, the Canucks organization has been a leader in raising mental health awareness around the league and in Canada.³¹⁸

³¹¹ Whalen decided not to take anti-anxiety medication because of MLB’s restrictions on prescription drugs and the long process to get an exemption. *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ See *Hockey Talks: Mental Health Awareness*, FOUNDRY, <https://foundrybc.ca/stories/what-is-hockey-talks/> [<https://perma.cc/DZ8K-HN6S>] (last visited Oct. 16, 2021); Bob Condor, *Break the Stigma*, NHL.COM: SEATTLE KRACKEN (Jan. 28, 2021), <https://www.nhl.com/kraken/news/break-the-stigma/c-320797134> [<https://perma.cc/F3Q8-Y9BA>].

³¹⁶ Derek Jory, *Hockey Talks*, NHL.COM: VANCOUVER CANUCKS (Jan. 31, 2013), <https://www.nhl.com/canucks/news/hockey-talks/c-653292> [<https://perma.cc/8H5V-3K37>].

³¹⁷ *Id.*

³¹⁸ See *Hockey Talks: Mental Health Awareness*, *supra* note 315; see also Stephen Whyno, *Blades of Steel: Johns Spotlights Mental Health in Hockey*, AP NEWS (June 27,

The NHL also has a confidential substance abuse and behavioral health program. Players may use this voluntarily, although the League can reach out and suggest it. A former NHL player relayed on a podcast called “Dropping the Gloves” that the League will usually do so after a drug test returns a positive for a substance that is harmful yet not prohibited by the rules. The League suggests the program directly to players, not the organizations, so that teams cannot use it against players in contract negotiations.

An NHL-supported program at The Meadows that helps with trauma and addiction aided Robin Lehner, the goalie for the New York Islanders, after he suffered from a severe panic attack during a game due to his substance abuse. Lehner revealed his battle with addiction, bipolar disorder, and thoughts of committing suicide while on stage accepting the Bill Masterton Memorial Trophy at the NHL Awards. “I’m not ashamed to say I’m mentally ill, but that doesn’t mean mentally weak,” Lehner said after dealing with depression beginning in 2018. He turned to “self-medicating by ‘drinking a case of beer’ and taking pills.” Lehner revealed that “[t]he battle playing hockey was nothing compared to the battle inside my brain.” After several weeks of treatment, Lehner returned to the NHL, and now he is speaking out to end the stigma surrounding mental illness.³¹⁹

C. *International and Olympic Sports*

Each year, the International Olympic Committee Medical and Scientific Commission adopts a consensus statement on a “prominent issue that affects the well-being of athletes.”³²⁰ In 2019, the topic was the mental health of elite international athletes.³²¹ The report makes several suggestions to reduce the barriers of entry for elite athletes to treat their mental health, including destigmatizing mental health issues, continuing to educate athletic stakeholders and research athletic subculture, and even designing Olympic and Paralympic villages with sleep hygiene in mind.³²²

2021), <https://apnews.com/article/dallas-stars-mental-health-hockey-nhl-health-3bdb5086fb2d60387da3f664637c924b> [<https://perma.cc/2HHV-WNXN>].

³¹⁹ Robin Lehner, *I Could Not Stand Being Alone in My Brain: Islanders Goalie Robin Lehner Opens up About His Addiction and Bipolar Diagnosis*, THE ATHLETIC (Sept. 13, 2018), <https://theathletic.com/522117/2018/09/13/islanders-goalie-robin-lehner-opens-up-about-his-addiction-and-bipolar-diagnosis-i-could-not-stand-being-alone-in-my-brain/> [<https://perma.cc/74L7-Z9H9>].

³²⁰ *Tackling Mental Health in Olympic Health*, INT’L OLYMPIC COMM. (Apr. 14, 2019), <https://olympics.com/ioc/news/tackling-mental-health-in-olympic-sport/> [<https://perma.cc/3MTZ-2ZHT>].

³²¹ See Reardon, *supra* note 9, at 667.

³²² *Id.* at 671-85.

In the United States, the U.S. Olympic & Paralympic Committee (“USOPC”) created an Athlete Service Division in February of 2019 and organized a Mental Health Taskforce in February of 2020 to develop best practices for athlete mental health, along with three Mental Health Officers. The Team USA Mental Health Resource Guide includes access to a mental health support line, Safesport Helpline, and a registry of mental health providers. Eligible athletes have access to year-round confidential counseling.³²³ Athletes and their dependents have access to unlimited phone counseling and up to six in-person sessions with a local provider at no cost.³²⁴ The USOPC also offers all Team USA athletes and coaches access to sport psychologists.³²⁵ Team USA sport psychologists travel with the athletes to international competitions, often practicing mindfulness—in individual and group settings—before competition.³²⁶ Team USA also has a training space dedicated to psychophysiology at the Olympic & Paralympic Training Center in Colorado Springs to help athletes better understand the mental aspect of competition.

While the program is seemingly helpful, former USOPC Vice President of Sports Medicine Dr. Bill Moreau filed a whistleblower retaliation lawsuit against the USOPC alleging he was fired in retaliation for urging better responses to athlete safety, sexual abuse, and mental health, and citing the slow response to an Olympic athlete on medical leave who later took her own life, saying their response to mental health is more like sports injury, using staff trained in sports injuries, not psychiatry.³²⁷

³²³ See *Athlete Services: Mental Health*, TEAM USA, <https://www.teamusa.org/MentalHealth> [<https://perma.cc/L44K-G4JY>] (last visited Oct. 29, 2021).

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Joshua Schultz, *CPJ Spotlight: Sport Psychology Allows Team USA Athletes to Achieve Peak Performance*, SOC’Y OF CONSULTING PSYCHOL. (July 16, 2020), https://www.societyofconsultingpsychology.org/index.php?option=com_dailyplanet_blog&view=entry&year=2019&month=07&day=15&id=28:cpj-spotlight-sport-psychology-allows-team-usa-athletes-to-achieve-peak-performance [<https://perma.cc/4X35-6B4M>].

³²⁷ Jon Lapook, “*This is an Emergency*”: *Whistleblower Says Olympic Committee Needs to Do More to Address Mental Health*, CBS NEWS (Feb. 13, 2020, 7:43 PM), <https://www.cbsnews.com/news/whistleblower-says-olympic-committee-needs-to-do-more-to-address-mental-health/> [<https://perma.cc/X92P-HZGU>]; see also Sam Tabachnik, *Top U.S. Olympic Doctor Says He Was Fired for Trying to Protect Athletes from Sexual Abuse, Lawsuit Says*, DENVER POST (Feb. 5, 2020), <https://www.denverpost.com/2020/02/05/usa-olympics-abuse-lawsuit-william-moreau/> [<https://perma.cc/QHX2-7622>].

D. Athlete Partnerships with Mindfulness Apps

As prominent athletes have come forward to advocate for mental health awareness, tech companies with mindfulness app products have seen the opportunity to promote their services to a wider audience. Among athletes who have partnered with mindfulness apps are Kevin Love, Michael Phelps, and LeBron James.

In December 2019, James announced a new partnership with Calm, a meditation and sleep app, hoping to bring attention to mental fitness and its importance in an athlete's career.³²⁸ His "Train Your Mind" series features segments on mental fitness and managing emotions. James is helping make the Calm app available to youth organizations across the country.³²⁹ James commented that it "[i]s all about mental fitness. It's something I've always prioritized, and it's just as important to my game, my career, and my life than anything I can do physically."³³⁰

In 2018, Phelps partnered with online therapy and counseling platform Talkspace to increase access to professional therapy for the people who need it and to encourage people to discuss openly about mental health.³³¹ Phelps also sits on the Growth & Advocacy Board of Medibio, a mental health technology company.³³² In 2020, during the trying time of the COVID-19 pandemic, Michael Phelps teamed up with Talkspace to help the company provide free therapy to frontline medical workers.³³³

Kevin Love's Fund donated 850 Headspace mindfulness app subscriptions and team mental training sessions to UCLA Athletics for all student-athletes and coaches. Love chose UCLA, his alma mater, with the hopes of sending the message that mental health is just as important as physical

³²⁸ See Daniels, *supra* note 157.

³²⁹ *Id.*

³³⁰ Simon Ogus, *LeBron James Partners with Unicorn App Calm That Focuses on Your Mental Fitness*, FORBES (Dec. 25, 2019, 10:00 AM), <https://www.forbes.com/sites/simonogus/2019/12/25/lebron-james-partners-with-unicorn-app-calm-that-focuses-on-your-mental-fitness/?sh=6927836f37d3> [https://perma.cc/7T99-3FRW].

³³¹ *Michael's Mental Health Story*, TALKSPACE, <https://www.talkspace.com/michael> [https://perma.cc/26ED-KKFK] (last visited Oct. 29, 2021).

³³² *Medibio Announces New Board Members and Establishes Growth & Advocacy Advisory Board*, MEDICAL ALLEY, <https://medicalalley.org/2019/09/medibio-announces-new-board-members-and-establishes-growth-advocacy-advisory-board/> [https://perma.cc/D5BB-G7BT] (last visited Nov. 14, 2021).

³³³ *Michael Phelps Donation Adds to Talkspace Program Providing Free Mental Health Services to Frontline Medical Workers*, BUS. WIRE (Apr. 6, 2020, 10:46 AM), <https://www.businesswire.com/news/home/20200406005545/en/Michael-Phelps-Donation-Adds-Talkspace-Program-Providing> [https://perma.cc/7AAN-6RFR].

health and that schools should provide access to programs and tools to help students and athletes improve mental health.³³⁴ Headspace is a leading meditation and mindfulness company with over thirty-two million users in 190 countries and is known for its meditation app and suite of online features.³³⁵ Love stated, “I am really excited to partner with Headspace to bring an invaluable tool to the Bruin family. It is incredibly important to the mind as well as the body to be at peak performance in all aspects of life, and Headspace makes it so easy for student-athletes to integrate mental training into their everyday regimens.”³³⁶

Team USA has offered athletes access to sports psychologists who use various methods, including mindfulness, competitive simulation, and virtual reality to help athletes prepare for big events.³³⁷ At the 2016 Summer Games in Rio de Janeiro, Team USA used mindfulness through guided meditation and imagery.³³⁸ Team USA athletes are “coached to take a mindful approach to their sport, to be in the present moment, with the motto ‘one point (or jump, or dive, etc.) at a time.’”³³⁹

One might question athletes’ corporate partnerships with the app tech companies and whether these companies are using the vulnerabilities of the athletes to promote their businesses to a desirable demographic. The apps can track users and their data and should be protected. Evidence that these apps are effective is in nascent stage, but certainly practices and tools that help promote mental health, such as meditation and mindfulness can be helpful.³⁴⁰ The apps provide a helpful resource but should not be regarded as a substitute for mental health disorder treatment.³⁴¹

³³⁴ *The Kevin Love Fund Donates Headspace Meditation + Mindfulness Training to UCLA Student-Athletes and Coaches*, BUS. WIRE (Oct. 10, 2018, 9:08 AM), <https://www.businesswire.com/news/home/20181010005549/en/The-Kevin-Love-Fund-Donates-Headspace-Meditation-Mindfulness-Training-to-UCLA-Student-Athletes-and-Coaches> [https://perma.cc/6U9K-BVSE].

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ Schultz, *supra* note 326.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ Robin Scholefield et al., *Athlete Mindfulness: The Development and Evaluation of a Mindfulness Based Training Program for Promoting Mental Health and Wellbeing*, NCAA, <https://www.ncaa.org/about/resources/research/athlete-mindfulness-development-and-evaluation-mindfulness-based-training-program-promoting-mental> [https://perma.cc/N34F-NABZ] (last visited Dec. 1, 2021).

V. THE NEED FOR SPORT TO RESPOND: WHAT MORE CAN SPORT DO?

Mental health is a part of, not apart from, athlete health.³⁴² Mental health exists on a continuum, with resilience and thriving on one end of the spectrum and mental health disorders that disrupt an athlete's functioning and performance at the other. Whether similar to or more than the general population, athletes are experiencing mental health issues. Mental health is a vital concern for sports/athletics. Although the culture of sport has long inhibited disclosure, players have begun speaking out, and the sports world needs to respond.³⁴³

A. *A Culture of Care*

Dr. Hillary Cauthen is a clinical sport psychologist and certified mental performance consultant specializing in mental health treatment for athletes, coaches, and parents.³⁴⁴ She was a competitive youth and Division I collegiate athlete, and remembers the struggle she went through having to deal with the stress and anxiety of being a top Division I athlete.³⁴⁵ Cauthen explains that in her experience, “[c]hampions are strong not weak, and feelings of being lost and scared are not champion qualities.”³⁴⁶ Dr. Cauthen created a process she calls a “culture of care for a culture of champions”³⁴⁷ with three steps that parents and coaches should consider to help their athletes with mental illness.³⁴⁸ Step one is to create a culture of care.³⁴⁹ Create a friendly and inviting environment for athletes to feel comfortable sharing their fears, concerns, and anxieties, and “[t]each them that it’s ok to fail and ask for help.”³⁵⁰ Second, educate the coaches.³⁵¹ Coaches, for the most part, do not intend to overwhelm their athletes, but it’s the “culture of winning

³⁴² *Id.*

³⁴³ Chang, *supra* note 9, at 65.

³⁴⁴ See Cauthen, *supra* note 6.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.* (“It’s time to re-examine our culture of sport, we can no longer blame, punish or shame our adolescence for having emotional outbursts or having difficulty struggling with their athletic endeavors and balancing life. Instead, we should be curious to examine and explore how we can help them express their emotions and help them learn to live within this culture.”).

³⁵¹ *Id.*

and winning all costs that becomes problematic.”³⁵² Coaches need to be trained and educated on how to address the issue of mental illness.³⁵³ Dr. Cauthen provides six life skills that have been proven to help reduce mental illness and increase wellness.³⁵⁴ The six life skills are “goal setting, coping, communication, time management, leadership, and problem solving.”³⁵⁵ Coaches are in a position to help implement these life skills and provide a healthy environment for their athletes.³⁵⁶ Lastly, teach athletes how to feel and express their emotions and learn how to use them to better performance.³⁵⁷

B. Access to Sport Mental Health Experts

Sport psychologists have been used to help athletes overcome mental blocks and improve performance, increase focus, enhance team communication, and return from injuries.³⁵⁸ Sport psychologists’ role has expanded to include treating athletes’ interpersonal issues and personal mental health problems such as anxiety, depression, and eating disorders.³⁵⁹ They address other pressures common among athletes, such as violence and anger issues.³⁶⁰ Among male athletes, factors such as adoption of traditional male roles, groupthink, and “locker room talk” can lead to increased risks of violent behavior and sexual misconduct.³⁶¹ Sport psychologists can help assist in the prevention and assessment of risk of these behaviors.³⁶² Importantly, sport psychologists also serve as a resource to identify and help navigate the range of emotional traumas athletes can experience.³⁶³

Sport psychology’s increasing impact is evident at various levels of sport. For example, in 2018, twenty-seven of the thirty MLB teams employed a “mental skills coach” to help players.³⁶⁴ At the collegiate level,

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ Weir, *supra* note 305; see also *Sport Psychologists Help Professional and Amateur Athletes*, AM. PSYCHOL. ASS’N, <https://www.apa.org/topics/sport-psychologists> [<https://perma.cc/RH6D-7MS8>] (last visited Oct. 16, 2021).

³⁵⁹ Weir, *supra* note 305.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

sport psychology is an “ideal resource” to support student-athlete mental health.³⁶⁵ The NCAA recommends that colleges either employ a full-time sport psychologist on staff, retain an external consultant or counseling center, or use a referral model to help athletes address psychological issues.³⁶⁶ Even at the high-school and junior levels, athletes are beginning to train their minds, with mental skills coaches like Graham Betchart becoming increasingly sought after.³⁶⁷ Betchart has coached a number of NBA stars (*e.g.*, Aaron Gordon, Zach LaVine, Andrew Wiggins, etc.) before they were drafted, using his “Play Present” program to teach athletes to stay focused on the task at hand and to move onto the next play immediately.³⁶⁸

C. *Post-Play Transition Programs*

Although programs and initiatives have been implemented in the last few years, many players continue to deal with mental health issues after retirement. Combined studies show that athletes are particularly likely to suffer from mental health issues during career transitions. Lack of athlete identity can be a cause of psychological disorders. Depression, stress, and anxiety are all likely to be highest within six months of retiring. The study also shows athletes experience better cognitive and emotional results when planning ahead for transitions.³⁶⁹ A poll of 800 retired players revealed that 50% “did not feel in control of their lives within two years of finishing their careers.”³⁷⁰ Three reasons identified include: a loss of control, loss of identity, and the struggle to find a new purpose outside of their sport.³⁷¹ Fear of losing control can be a sign of the onset of mental health issues such as anxiety and depression. During their time as elite athletes their life is

³⁶⁵ Chris Carr & Jamie Davidson, *Mind, Body and Sport: The Psychologist Perspective*, NCAA, <http://www.ncaa.org/sport-science-institute/mind-body-and-sport-psychologist-perspective> [<https://perma.cc/34VY-HTNM>] (last visited Oct. 16, 2021).

³⁶⁶ *Id.*

³⁶⁷ Matthew Giles, *Meet the Sports Psychologist Training the Minds of the NBA's Top Draft Prospects*, VICE (June 23, 2016, 10:10 AM), https://www.vice.com/en_us/article/z4a4ay/meet-the-sports-psychologist-training-the-minds-of-the-nbas-top-draft-prospects [<https://perma.cc/5BFL-DJ4C>].

³⁶⁸ *Id.*

³⁶⁹ *Athlete Transition and Mental Health Research*, CROSSING THE LINE (June 19, 2017), <https://crossingthelinesport.com/story/athlete-transition-and-mental-health-research/> [<https://perma.cc/65KZ-6428>].

³⁷⁰ Joe Davis, *How Can We Prevent Rather Than Fix the Athlete Mental Health Epidemic?*, ROCHEMARTIN (June 26, 2018), <https://www.rochemartin.com/blog/can-prevent-rather-fix-athlete-mental-health-epidemic/> [<https://perma.cc/623T-SAUZ>].

³⁷¹ *Id.*

planned down to the minute including when to train, eat, and sleep, in order to perform at a high level. However, this degree of certainty disappears in the life of retirement.

Also, leaving their sport behind can cause them to question who they are without their team, or the sport that they have been so involved in for such a long time. They are no longer elite athletes. So, who are they? What do they do now? All these unknowns can cause severe anxiety and depression at a time they no longer have the resources they had as an elite athlete. Programs need to be put in place so that mental health resources can be accessed by not only current players but also retired players.³⁷²

D. Athlete Mental Health Bill of Rights

The legal protections for mental health (as broadly defined, as opposed to a narrower condition for a diagnosed mental illness) are inadequate. The ADA standard for “disability” requires that the impairment “substantially limits a major life activity.” Not all mental health situations fit that standard, nor should they have to be at that level of severity to receive accommodation and guarantees against discrimination. Sports organizations are paying more attention to the importance of athlete mental health and wellness. As noted above, the NCAA, professional sports leagues, and Olympic Movement are making strides in providing resources and education towards athlete mental health. One critique is that the programs currently in place lack uniformity; mental health treatment options can be buried in traditional health insurance or EAP programs, and finding appropriate treatment and counseling can be bureaucratically challenging. One commentator has proposed federal regulation of student-athlete mental health.³⁷³ State legislatures can also pass laws creating programs that focus on mental health in youth and collegiate sports.

The basic elements of a mental health program should be to establish the “culture of care” that prioritizes athlete mental and physical wellness. This message has to start from the top, with leadership, coaches, athletic personnel, and stakeholders (including parents) establishing an environment conducive to athletes feeling comfortable asking for and seeking help, demonstrating respect and assurances of safety, confidentiality, and non-retaliation for an individual athlete in need. This culture and education must start in youth sports and throughout. Coaches are pivotal to notice when athletes

³⁷² *Id.*

³⁷³ Born, *supra* note 51, at 1234-35; 1241 (arguing federal regulation is preferable and would provide more effective and uniform policy than state or institutional regulation).

may be struggling and should be trained accordingly for mental health screenings, such as ones required as part of the compliance paperwork students fill out before trying out for sports.³⁷⁴ Athletes should be provided with easy access to mental health education, resources, confidentiality, and a process for requesting accommodation due to mental health protection. Athletes should have access to professional help, at no cost, that is confidential and accessible, and they should be allowed a break or accommodation that does not intrude upon the essential aspects of the team or sport.

Rather than Simone Biles being sent home, she was able to stay and cheer on her teammates, including Sunisa Lee, who rose up with one another to win a gold medal. When she was ready, Biles went on to perform and won a bronze medal on the beam, modeling fortitude and demonstrating she may very well deserve the GOAT distinction in gymnastics.

VI. CONCLUSION – SPORT CAN DO MORE

The past few years have evidenced a dramatic shift towards athlete empowerment. College athletes have challenged entrenched institutional rules on eligibility and limitations on athlete's publicity and endorsement rights. Athletes are demanding attention to mental health. The prevalence of mental health struggles at all levels of athletics shows just how important it is to ensure athletes have access to resources and support from their respective sport organizations and the community. The issue is front and center.

It is time for a cultural shift and awakening to the importance of mental health in sports and in society. Reframe, no shame, no stigma, tools and resources to identify and get help. What players, fans, and the media love about sports, the gritty "win at all costs," "push through the pressure" culture, needs revamping. Sports culture needs to give athletes space to be human, to realize it is okay to not be okay and to know help is available. Kevin Love's biggest break-through when it came to his mental health was feeling like it was okay to just be himself, not the NBA star Kevin Love, not the NBA Champion Kevin Love, just Kevin. He noted there was no achieving your way out of depression, a concept sport culture needs to recognize and validate if it wants to ensure the health and wellbeing of its players.³⁷⁵

Sports organizations are already taking steps towards making mental health a priority, but more can be done. Athletes should be taught the value

³⁷⁴ Neal, *supra* note 36, at 8.

³⁷⁵ Kevin Love, *To Anybody Going Through It*, PLAYERS' TRIB. (Sept. 17, 2020), <https://www.theplayerstribune.com/en-us/articles/kevin-love-mental-health> [https://perma.cc/7TYM-NYB7].

of prioritizing mental health from an early age, with the message of support and resources available throughout and after an athlete's career. Athletes should grow up in a "culture of care," with access to mental health providers, and learning from coaches and support personnel who check in and give their players the information and the support they need. And when athletes retire, they should be taught how to transition out of their career and how to adjust mentally to a new lifestyle, and they should be reminded that they still matter, even if they are no longer active players.

Beyond changing the culture, sport's governing bodies need to continue providing and expanding concussion and safety protocols. They need to ensure athletes can access and use their mental health medications. Athlete confidentiality needs to become a priority, especially when the information relates to non-sport related mental health concerns. Teams or professional tournaments should have sports psychologists and certified mental health providers on staff. These are all active, tangible steps that leagues and athletic bodies can easily instate.