NAVIGATING THE LEGAL RISK UNIVERSITIES' HEALTHCARE PROVIDERS POTENTIALLY FACE FROM MEDICAL DECISIONS IMPACTING COLLEGIATE ATHLETES' FUTURE NIL INCOME WHILE FOLLOWING THE NCAA'S MENTAL HEALTH BEST PRACTICES

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INTRODUCTION

This Essay is written to address a series of questions encompassing name, image, and likeness (NIL) opportunities available to collegiate athletes in sports where the potential is high for head and other career-ending injuries.[1] Sports performance can produce significant economic value through NIL.[2] Decisions made by team physicians, athletic trainers, or other healthcare professionals may affect a collegiate athlete's[3] potential for financial gains expected through NIL.[4] These physicians, athletic trainers, and other healthcare professionals will have to consider whether they could be held personally liable for health care–related decisions affecting financial gains collegiate athletes could potentially experience from NIL.[5]

A collegiate athlete's mental health is a vital component of their overall health,[6] and is taken seriously by the National Collegiate Athletic Association (NCAA).[7] The NCAA's Sports Science Institute (SSI) has provided guidance and recommendations to the NCAA's member institutions regarding mental health best practices for institutional support of collegiate athletes' mental health.[8] The SSI cautioned the NCAA's members that their "Mental Health Best Practices" "are *not* [intended to be] a *substitute* for the independent clinical and/or medical judgment and care provided by health care professionals to individual collegiate athletes."[9] Therefore, the Mental Health Best Practices and its recommendations should be implemented with

1. Karen Weaver, *College Sports' NIL Era Is Presenting New Challenges for Injured Athletes*, FORBES (Feb. 15, 2023, 9:36 AM), https://www.forbes.com/sites/karenweaver/2023/02/15/college-sports-nil-era-is-presenting-new-challenges-for-injured-athletes/ [https://perma.cc/P7FX-Q3HV] ("'College athletes, especially Power 5 football and basketball players, have financial opportunities linked at least in part to their athletic performance via name, image and likeness (NIL),' Borchers told me via email. 'Team physicians, athletic trainers and other healthcare professionals that work with college athletes will have to deal with the potential for the decisions they are making potentially affecting the financial gains an athlete can experience from NIL.'" (quoting James Borchers, the former head team physician at The Ohio State University and president and CEO of the U.S. Council for Athletes' Health)).

2. *See infra* Part II.

3. I refer to athletes throughout this Essay as collegiate athletes, because being an athlete, whether youth or professional, involves the coming together of intellectual and athletic performance skills. Those skills work together to make the athlete a more complete performer, both academically and athletically.

4. *See infra* Part I.

5. *See infra* Part I.

6. NAT'L COLLEGIATE ATHLETIC ASS'N, SPORTS SCI. INST., MENTAL HEALTH BEST PRACTICES: UNDERSTANDING AND SUPPORTING STUDENT-ATHLETE MENTAL HEALTH 2 (2d ed. 2024).

7. *Id.* ("Further, the NCAA Constitution speaks to the Association's development of guidance based on the consensus of the medical, scientific, sports medicine and sport governing communities for [collegiate] athlete mental and physical health.").

8. *Id.*

9. *Mental Health Best Practices: Understanding and Supporting Student-Athlete Mental Health, Second Edition Questions and Answers*, NAT'L COLLEGIATE ATHLETIC ASS'N (emphasis added), https://www.ncaa.org/sports/2024/2/19/mental-health-best-practices-understanding-and-supporting-student-athlete-mental-health-second-edition-question-and-answers.aspx?path=ssi [https://perma.cc/8UMS-AAWS] (last visited Mar. 7, 2025).

the input and judgment of institutional medical care providers[10] and legal advisors.[11] To minimize the potential liability from the loss of NIL opportunities, educational institutions must determine how best to effectively implement the NCAA's Mental Health Best Practices recommendations.[12]

Part I of this Essay will consider the NCAA's support for collegiate athletes' mental health well-being as part of collegiate athletes' overall health and the NCAA's recognition that mental health well-being affects the quality of academic, athletic, and social interactions, which is reflective of the NCAA's overall concern for the mental health of collegiate athletes.[13]

Part I will also consider obligations imposed on collegiate institutions by the NCAA's constitution to conduct their intercollegiate athletics programs so as to enhance the physical health, mental health, and overall safety of collegiate athletes.[14]

Part II will consider risk mitigation protocols universities should consider to minimize the risk of astronomical damage awards.[15]

Finally, this Essay will conclude by discussing NIL opportunities available to collegiate athletes in sports where the potential is high for head and other career-ending injuries, thus requiring consideration of the consequence of inadequately treating injuries sustained by collegiate athletes.[16] The potential harm collegiate athletes may suffer during competition or practice may impact future NIL earnings of collegiate athletes. Therefore, medical malpractice committed by university-employed medical professionals, sports rehabilitation personnel, and performance personnel will pose enormous risks to universities and to both university-employed medical personnel and those employed outside universities.

Collegiate institutions must also consider their obligations to conduct their intercollegiate athletics programs so as to enhance the physical health, mental health, and safety of collegiate athletes. The consequence of inadequate treatment of injuries sustained by collegiate athletes and the potential liability of university-employed outside physicians, clinical rehabilitative teams, and sports-performance staff for collegiate athletes' loss of future NIL earnings is too enormous to avoid planning for.

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10. *See, e.g.*, NAT'L COLLEGIATE ATHLETIC ASS'N, SPORTS SCI. INST., *supra* note 6.

11. *See, e.g.*, Timothy L. Neal, Alex B. Diamond, Scott Goldman, Karl D. Liedtka, Kembra Mathis, Eric D. Morse, Margot Putukian, Eric Quandt, Stacey J. Ritter, John P. Sullivan & Victor Welzant, *Interassociation Recommendations for Developing a Plan to Recognize and Refer Student-Athletes with Psychological Concerns at the Secondary School Level: A Consensus Statement*, 50 J. ATHLETIC TRAINING 231 (2015).

12. Ultimately, collegiate institutions have an obligation to their students, including collegiate athletes, to meet the mental health needs of their student population.

13. *See infra* Part I.

14. *See infra* Part I.

15. *See infra* Part II.

16. *See infra* Conclusion.

I. NAVIGATING THE LEGAL RISK UNIVERSITIES' HEALTHCARE PROVIDERS POTENTIALLY FACE FROM MEDICAL DECISIONS IMPACTING COLLEGIATE ATHLETES' FUTURE NIL INCOME WHILE FOLLOWING THE NCAA'S MENTAL HEALTH BEST PRACTICES

The NCAA supports collegiate athletes' mental health, and recognizes that mental health well-being affects the quality of academic, athletic, and social interactions of collegiate athletes.[17] The second edition of the NCAA's Mental Health Best Practices[18] mirrors the essential accord and the collaboration between the twenty-seven members of the NCAA Mental Health Advisory Group[19] (comprised of both external constituency organizations and internal NCAA membership constituents),[20] the Committee on Competitive Safeguards and Medical Aspects of Sports (CSMAS),[21] and the NCAA Sports Science Institute.[22]

A. Importance of Healthcare Providers in University Athletics

Article 1 of the NCAA constitution obligates collegiate institutions to conduct their intercollegiate athletics programs "in a manner designed to protect, support and enhance the physical and mental health and safety of [collegiate] athletes."[23] The NCAA's attestation requirements engage all of

17. *See, e.g.*, Greg Johnson, *Mental Health Issues Remain on the Minds of Student Athletes*, NAT'L COLLEGIATE ATHLETIC ASS'N (May 24, 2022, 12:00 PM), https://www.ncaa.org/news/2022/5/24/media-center-mental-health-issues-remain-on-minds-of-student-athletes.aspx [https://perma.cc/H6WU-7A33].

18. NAT'L COLLEGIATE ATHLETIC ASS'N, SPORTS SCI. INST., *supra* note 6, at 2.

19. *Id.* at 1.

20. *Id.* NCAA committees include the Division I Student-Athlete Advisory Committee (two members), Division II Student-Athlete Advisory Committee (two members), Division III Student-Athlete Advisory Committee (two members), Board of Governors Student-Athlete Engagement Committee, Division I governance, Division II governance, Division III governance, and Committee on Competitive Safeguards and Medical Aspects of Sports (CSMAS). *Id.*

21. *Id.*

22. *About the Sport Science Institute*, NAT'L COLLEGIATE ATHLETIC ASS'N: HEALTH, SAFETY & PERFORMANCE, https://www.ncaa.org/sports/2016/8/23/about-the-ssi.aspx [https://perma.cc/5VAV-UN26] (last visited Mar. 7, 2025) ("Since its inception in 2013, the Sport Science Institute has worked collaboratively with NCAA membership, with the Committee on Competitive Safeguards and Medical Aspects of Sports, with medical and research experts, and with sports medicine and other medical organizations to develop interassociation consensus documents and educational resources to assist member institutions in their effort to provide for student-athlete health and safety. The interassociation documents and educational resources augment the nine strategic priorities of the SSI.").

23. NAT'L COLLEGIATE ATHLETIC ASS'N, NCAA CONSTITUTION, at art. 1(D) (2021) ("Intercollegiate athletics programs shall be conducted by the Association, divisions, conferences and member institutions in a manner designed to protect, support and enhance the physical and mental health and safety of [collegiate] athletes. Each member institution shall facilitate an environment that reinforces physical and mental health within athletics by ensuring access to appropriate resources and open engagement with respect to physical and mental health. Each institution is responsible for ensuring that coaches and administrators exhibit fairness, openness and honesty in their relationship with [collegiate] athletes.

an athletic department's staff, both part-time and full-time, and an institution's registrar, financial aid office, and potentially its admission office.[24]

The obligatory attestation also includes the NCAA's Policy on Campus Sexual Violence adopted in 2017. The attestation requirements reflect three basic principles:[25] (1) the collegiate athletic department and its personnel must be knowledgeable of university policies and procedures for both preventing and addressing sexual and interpersonal violence prevention,[26] (2) the athletic department's obligation to annually review the NCAA's recommendations on sexual and interpersonal violence prevention to ensure the NCAA's guidance is a part of the athletic department's education and training program for both personnel and their collegiate athletes,[27] and (3) the athletic department's support of university-wide sexual and interpersonal violence prevention programs that encourage collegiate athletes to act as leaders on sexual and interpersonal violence prevention matters.[28] Although, to ensure best practices for mental health, collegiate institutions are required "to make mental health services and resources available to its [collegiate] athletes,"[29] a distinction is made between collegiate institutions and their medical and clinical providers. Although the recommendations of the Mental Health Best Practices are to be adopted by member institutions, the recommendations of "[t]he Mental Health Best Practices are not intended to provide guidance about the clinical and/or medical care of individual [collegiate] athletes with mental health symptoms and disorders . . . ."[30]

[Collegiate] athletes shall not be discriminated against or disparaged because of their physical or mental health.").

24. NAT'L COLLEGIATE ATHLETIC ASS'N, DIVISION I 2024-25 MANUAL 328 (2024), https://web3.ncaa.org/lsdbi/reports/getReport/90008 [https://perma.cc/FZV2-NMYG] ("The director of athletics has attested annually to an understanding of the institutional obligations and personal responsibilities imposed by the NCAA constitution (Principle of Institutional Control; Rules, Compliance and Accountability) and that all athletics department staff members (full-time, part-time, clerical, volunteer) and other institutional staff members (e.g., registrar, admissions, financial aid) whose roles or responsibilities directly or indirectly support athletics compliance are aware of the institutional obligations and personal responsibilities imposed by the NCAA constitution.").

25. Timothy O'Brien, *Prepare to File New, Expanded Attestation Form to the NCAA in Time for May Deadline*, 20 COLL. ATHLETICS & L. 6, 6 (2023).

26. *Id.*

27. *Id.*

28. *Id.*

29. NAT'L COLLEGIATE ATHLETIC ASS'N, SPORTS SCI. INST., *supra* note 6, at 2.

30. *Id.* It is expected that primary athletics health care providers and licensed mental health providers will provide evidence- and consensus-based health care that is consistent with standards of care for ongoing licensure in their profession. Rather, the Mental Health Best Practices provide the membership with recommendations for team, athletics, campus, and community-based approaches to supporting, promoting, and managing collegiate athlete mental health concerns. Additionally, these recommendations provide guidance on how member schools may prepare for and respond to mental health emergencies.

B. Emergence and Impact of NIL Earnings for Collegiate Athletes

Susceptibility to sports-related injuries increases when the athlete trains and competes at the elite level.[31] Researchers have noted that, compared to nonathletes, there are increases in degenerative changes to both spines and joints of these athletes.[32] A former competitive athlete's general feeling of well-being and their contentment with life is referred to as health-related quality of life (HRQOL).[33] The current focus on HRQOL will assist clinicians in reaching knowledgeable decisions "when returning the patient . . . from a severe injury,"[34] thereby enhancing the opportunity for collegiate athletes to effectively extend their playing days and increase prospects for future NIL income.

C. Overview of Potential Legal Risks and Liabilities for Universities and Healthcare Providers

In the current landscape of college athletics, high-profile athletes are beginning to earn financial compensation for the use of their NIL.[35] This is long overdue, and college athletes are finally receiving a share of the financial rewards that universities, conferences, and the NCAA have been earning. When collegiate athletes take the field, they are aware of the dangers of contact sports and rely on their universities and the institutions' medical experts employed to treat injuries that occur during competition and practice.[36]

The experience of professional and collegiate athletes, similar to what National Football League (NFL) player Chris Maragos experienced, should be taken note of. Maragos filed a medical negligence lawsuit against the medical team of the Philadelphia Eagles that should trigger the clarion call for universities and other colleges to learn of their potential liability for injuries sustained by collegiate athletes.[37]

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31. Katlyn Cowee & Janet E. Simon, *A History of Previous Severe Injury and Health-Related Quality of Life Among Former Collegiate Athletes*, 54 J. ATHLETIC TRAINING 64, 64 (2019).

32. *Id.* ("Former athletes experience increased degenerative changes in their joints and spine compared with nonathletes. Injuries sustained during collegiate competitive years may contribute to degenerative changes in joints and other health problems that can interfere with performing tasks of daily living.").

33. *Id.* ("Health-related quality of life is often thought of as an individual's contentment with life and general feeling of personal wellbeing. Health-related quality of life includes several health components: the physical, psychosocial, and social aspects that are affected by the individual's experiences, expectations, beliefs, and perceptions.").

34. *Id.*

35. *See, e.g.*, Lomit Patel, *NIL College Athlete Earnings: A New Era in College Sports*, LOMITPATEL.COM (Oct. 2, 2024), https://www.lomitpatel.com/articles/nil-college-athlete-earnings/ [https://perma.cc/95Q6-HZAB].

36. *See* Maragos v. Bradley, No. 191100972, 2023 WL 10946746 (Pa. Ct. Com. Pl. Dec. 19, 2023), *aff'd*, 326 A.3d 475 (Pa. Super. Ct. 2024) (unpublished table decision).

37. *See* Maragos v. Bradley, 326 A.3d 475 (Pa. Super. Ct. 2024) (unpublished table decision) (denying reargument on November 7, 2024).

Maragos was a professional football player who grew up in Wisconsin and played football as a walk-on for both Western Michigan University and University of Wisconsin–Madison[38] before signing as an undrafted free agent with the San Francisco 49ers.[39] Maragos played on San Francisco's special teams for two NFL seasons before being cut from the team.[40] Maragos then signed a two-year contract with the Seattle Seahawks,[41] where he played every game on special teams and played intermittently as a safety when the Seattle Seahawks won the 2013 Super Bowl.[42] Maragos then signed a three-year free agent contract with the Philadelphia Eagles, at the time worth about $4,000,000, making him one of the highest-compensated special teams players in the NFL.[43] During his three years with the Philadelphia Eagles, his contract was extended for another three years for $6,000,000, retaining his status as the highest-paid special teams player in the NFL.[44] During his time with the Philadelphia Eagles, he was a three-time selection for the Pro Bowl and was elected team captain.[45]

Maragos's fortunes changed on October 12, 2017, when he hyperextended his knee during the Eagles game against the Carolina Panthers.[46] On October 13, 2017, the day after Maragos's injury, Dr. Peter DeLuca (the Philadelphia Eagles's team physician) received the report from the magnetic resonance imaging (MRI) scan that he had ordered.[47] The report informed Dr. DeLuca that Maragos had a torn posterior cruciate ligament (PCL), torn meniscus, and torn lateral collateral ligament (LCL) that required surgery.[48] Instead of contacting the physicians Dr. DeLuca recommended, Maragos choose Dr. James Bradley, the Pittsburgh Steelers's team doctor, to perform the surgery.[49] In hindsight, choosing Dr. Bradley was ill-advised. After undergoing surgery on November 8, 2017, Dr. Bradley informed Maragos that the surgery was a success and represented that the meniscus did not need to be repaired.[50] Dr. Bradley's report was contrary to what Dr. DeLuca learned from the MRI taken following the game, which stated, "[T]here [wa]s a complex, predominantly radial tear involving the posterior root attachment of the medial meniscus with a tiny 4 mm nondisplaced meniscal fragment."[51]

38. *Maragos*, 2023 WL 10946746, at *1.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. Maragos v. Bradley, 326 A.3d 475 (Pa. Super. Ct. 2024) (unpublished table decision) (denying reargument on November 7, 2024).
48. *See id.* ("Dr. Peter DeLuca[] reviewed the MRI results with Plaintiff and explained that Plaintiff had a complete tear of his posterior cruciate ligament (PCL), a partial tear of the lateral collateral ligament (LCL), and 'a tear of the posterior horn root of the medical meniscus [with] mild extrusion' and recommended surgical intervention.").
49. *Maragos*, 2023 WL 10946746, at *1.
50. *Id.*
51. *Maragos*, 326 A.3d at 475.

Maragos returned to Philadelphia and, after his body had sufficiently healed,[52] his rehabilitation advanced to include running on an antigravity treadmill that makes the athlete feel weightless while running (known as an AlterG Anti-Gravity Treadmill machine).[53] During his rehabilitation, Maragos reported feeling pain in his knee and was initially informed that the pain and discomfort were normal and that he needed to push through the pain.[54] During the rehabilitation session on May 10, 2018, Maragos felt a click or a snap in his right knee while walking from one area where rehabilitation was being conducted to another location in the same room.[55] Maragos also informed the medical team that he felt a vibration running up his leg.[56] Another MRI was ordered, and Maragos immediately scheduled an appointment with Dr. Bradley who diagnosed the pain as a posterior root tear of the meniscus in his right knee.[57] Maragos had no recollection of Dr. Bradley ever letting him know about the meniscus tear before this incident.[58] Maragos received injections to help with the pain and continued his rehabilitation therapy with Dr. Bradley until he saw the Philadelphia Eagles's new team physician, Dr. Christopher Dodson.[59] Contrary to what Dr. Bradley and Dr. Deluca had told him, Dr. Dodson instructed Maragos to cease rehabilitation to let his knee heal.[60] Maragos was again told to push

52. *Id.* ("Initially, Plaintiff's rehabilitative activities included muscle-strengthening exercises and, six weeks post-surgery, using a stationary bike. By January 2018, Plaintiff was walking unaided and putting his full body weight onto his knee.").

53. *Maragos*, 2023 WL 10946746, at *2.

54. *Id.* ("As the rehab continued to become more intense, Plaintiff began to feel aches, pains, and other discomfort in his knee. He made this clear to the trainers and physicians who were supervising his rehab and they told him that it was normal and he needed to push through the discomfort to fully heal. Plaintiff continued to push through and continued to have pain and setbacks in his rehab. On May 10th, 2018, Plaintiff was rehabbing under Defendant ROA's physicians [sic] supervision when he felt a 'click/snap' in his right knee. This click occurred when Plaintiff turned to walk towards the AlterG and sent a jolt sensation up his leg." (citation omitted)).

55. *Id.* During the rehabilitation session on May 10, 2018, Maragos felt a click or a snap in his right knee while walking from one area where rehabilitation was being conducted to another location in the same room. *Id.*

56. *Maragos*, 326 A.3d at 475 ("Around April 11, 2018, Plaintiff reported that he was 'feeling great' after running at 10 MPH on 65% of his body weight, 'but still ha[d] some pinching . . . .' On May 1, 2018, Plaintiff was unable to complete a lower body lift as part of his rehabilitative workout due to knee tightness, soreness, and fatigue . . . . On May 10, 2018, while warming up in the weight room before a workout, Plaintiff twisted his knee and immediately felt 'a jolt . . . in [his] knee and [a] pinching or catching [feeling.]'" (first, fifth, sixth, and seventh alterations in original) (citations omitted)).

57. *Maragos*, 2023 WL 10946746, at *2. According to the "MRI Medial Compartment notes, '[t]here [was] a complex, predominantly radial tear involving the posterior root attachment of the medial meniscus with a tiny 4 mm nondisplaced meniscal fragment. This tear is new since the prior MRI from meniscal extrusion.'" *Maragos*, 326 A.3d at 475 (first alteration in original).

58. *Maragos*, 2023 WL 10946746, at *2.

59. *Id.*

60. *Id.* ("Plaintiff saw Dr. Dodson, a new team physician for the Eagles, and Dr. Dodson told Plaintiff that he should shut down his rehab to let his knee heal which confused Plaintiff since Defendant Bradley and Dr. Deluca had continued to tell him to push through the discomfort.").

through the discomfort and was returned to full body weight running on land in August 2018.[61] After months of rehabilitative therapy, during which he experienced varying levels of pain, an MRI was ordered, and Dr. Dodson informed Maragos a bone bruise had returned and rehabilitation would temporarily cease.[62] In December of 2018, Maragos sought the medical opinion of Dr. Robert LaPrade who confirmed Dr. Dodson's diagnosis that his knee was destroyed, and his NFL career was over, and he would need further surgery to reduce the pain he was experiencing.[63]

On November 5, 2019, Maragos filed a lawsuit against Dr. Bradley, University of Pittsburgh Medical Center Community Medicine Inc., and Reconstructive Orthopaedic Associates II ("Rothman Orthopedic Associates" or ROA).[64] After jury selection on January 26, 2023, the eleven-day trial started on January 30, 2023.[65] The jury awarded Maragos $43,500,000.[66] According to the jury award, ROA was liable for 33 percent of the $43,500,000 liability.[67] Sixty-seven percent of the liability was allocated to Dr. Bradley.[68] The jury award included recovery for future NIL value lost because Maragos would no longer earn future income because the possibility of a continued NFL career no longer existed.[69]

As was the case with Maragos, for collegiate athletes who may file medical malpractice lawsuits against their institution's medical team, including sports-performance trainers, juries will consider future loss of NIL earnings in determining damages. The potential liability risks could be enormous if one considers the top ten collegiate athlete NIL earners as of 2024:

(1) Shedeur Sanders, the quarterback for the University of Colorado's football team, is valued at $4.64 million;

(2) Livvy Dunne, women's gymnastics team member for Louisiana State University, is valued at $3.9 million;

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61. *Id.* ("After shutting down for a month, Plaintiffs [sic] knee felt better but the discomfort returned as he returned to rehab. Plaintiff continued to push through as directed by the physicians. In August of 2018, Plaintiff finally began to run on dry land again, putting full body weight onto his knee. After working out for several months with varying degrees of intensity, all while enduring the pain, Plaintiff received a final MRI." (citation omitted)).

62. *Id.* In the final MRI, Dr. Dodson observed "the bone bruise had returned and Plaintiff had to be shut down again. Finally, Plaintiff sought another opinion and saw Dr. LaPrade in Colorado in December 2018. At this visit, Plaintiff heard that his dream career in the NFL was over: his knee was destroyed. Plaintiff was going to need career-ending knee surgery to attempt to reduce the pain he was feeling." *Id.* (citations omitted).

63. *Id.* "[Maragos] decided to meet with Dr. Robert LaPrade, a Colorado orthopedic surgeon who had been recommended as a potential surgeon for [his] initial surgery. Doctor LaPrade told [Maragos] that the reconstruction of his PCL had 'failed,' that his 'knee was destroyed[, his] career was over at that point,' and that he needed surgery immediately to fix his rapidly deteriorating cartilage." *Maragos*, 326 A.3d at 475 (fourth alteration in original).

64. *Maragos*, 2023 WL 10946746, at *1.

65. *Maragos*, 326 A.3d at 475.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Maragos*, 2023 WL 10946746, at *2–3.

(3) Arch Manning, the quarterback for the University of Texas football team, is valued at $2.8 million;

(4) Travis Hunter, the cornerback for the University of Colorado's football team, is valued at $2.7 million;

(5) Quinn Ewers, the quarterback for the University of Texas at Austin's football team, is valued at $1.9 million;

(6) Jalen Milroe, quarterback for the University of Alabama's football team, is valued at $1.6 million;

(7) Carson Beck, the quarterback for the University of Georgia's football team, is valued at $1.6 million;

(8) Jaxson Dart, quarterback for the University of Mississippi's football team, is valued at $1.5 million;

(9) Dillon Gabriel, quarterback for the University of Oregon's football team, is valued at $1.4 million;

(10) Cooper Flagg, men's basketball player for Duke University, is valued at $1.4 million.[70]

To meaningfully adjust to the current landscape of extraordinary financial compensation collegiate athletes earn through NIL, collegiate institutions and their medical and performance training staff should follow risk mitigation protocols.

II. RISKS ASSOCIATED WITH UNIVERSITY-EMPLOYED MEDICAL CARE PROVIDERS

A. Consequence of Inadequate Treatment of Injuries Sustained by Collegiate Athletes

Risk mitigation may be achieved by employing thorough and robust management protocols.[71] Compliance with all policies of the university is another mitigating factor.[72] All communications concerning collegiate athletes' progress should be documented.[73] Long-term health of collegiate athletes should also be prioritized over return to play (RTP).[74] Finally,

70. Shelby Hodge & Josh Anderson, *NIL Rules Increase Malpractice Risk for Sports Doctors*, CRC GRP. WHOLESALE & SPECIALTY, https://www.crcgroup.com/Portals/34/NIL%20Rules%20Increase%20Malpractice%20Risk%20for%20Sports%20Doctors.pdf [https://perma.cc/MVF8-U7QW] (last visited Mar. 7, 2025).

71. *See id.* at 4 ("Many malpractice claims start with a divergence between medical care and university policy. A healthcare provider may offer advice or treatment that differs from the stated policy of the university athletic department. When providers diverge from department policy, they often shift the liability from the university to themselves, thus increasing their own risk. Similarly, careful management of, and adherence to, contracts and collective bargaining agreements is also key.").

72. *See id.*

73. *Id.* ("Many claims also start with differing accounts of communication and advice. For example, an athlete may say they were advised to return to play or begin rehab before they were ready. Healthcare providers need to document all advice, treatment, and recommendations clearly to ensure there is a written, physical record if a claim is filed.").

74. *Id.* ("In college sports, there is often a conflict between a quick return to play and treatment for long-term health. For many reasons, it's essential to prioritize long-term health.

diligent insurance shopping for the best insurance coverage will minimize the likelihood of universities finding themselves with insufficient insurance coverage for its collegiate athletes, the institution, and its inside and outside medical and clinical professionals.[75]

B. Potential Harm to Collegiate Athletes by Removal from Play and Premature Return to Competition or Practice

In a study published in *Sports Psychiatry: Journal of Sports and Exercise Psychiatry*,[76] Professor Carla Edwards reviewed academic literature which studied collegiate athletes' removal from play (RFP) and return to play decisions for concussion and musculoskeletal injuries.[77] Professor Edwards also considered the academic literature regarding RFP and RTP decisions traceable to mental health factors, including "depression, anxiety, and eating disorders."[78]

Although physical injuries to collegiate athletes may be commonplace in the sense that medical and clinical professionals frequently encounter these injuries,[79] mental health symptoms, although uncommon, can nevertheless interfere with sports performance.[80] Mental health symptoms, although less understood, may affect sports performance "in ways that are poorly understood or recognized by non-mental health professionals."[81] Misdiagnosis of mental health and premature RFP[82] or RTP[83] pose these

From a liability perspective, it's important to recognize that significant future earnings could be sacrificed if a player is rushed back too soon." (citations omitted)).

75. *Id.* ("As recently as a few years ago, malpractice coverage for college sports physicians was not a complicated market. However, the NIL rules have changed everything. If a physician has not reviewed their coverage in several years, now is likely a good time to do so. Many carriers and policies are not robust or comprehensive enough to cover a significant claim that includes lost NIL earnings as damages.").

76. Carla D. Edwards, *Mental Health Considerations for Athlete Removal from Play and Return to Play Planning*, 3 SPORTS PSYCHIATRY: J. SPORTS & EXERCISE PSYCHIATRY 125 (2024).

77. *Id.* at 125.

78. *Id.*

79. *Id.*

80. *Id.* ("Primary mental health symptoms and disorders (including symptoms of mood disorders, anxiety disorders, eating disorders and psychotic disorders) can also interfere with sports and exercise participation.").

81. *Id.* ("Symptoms and disorders may be experienced episodically and be influenced by sport-specific factors. While physical activity and sports are known to have positive general effects on mental health, certain individual- and sport-specific factors may result in the opposite being true for some groups of athletes." (citations omitted)).

82. *Id.* at 126 ("*Removal from play*: synonymous with exclusion or withdrawal from play, this concept refers to intentional prevention of an athlete from participating in training or competition. This can occur during the course of competition (i.e. when an athlete is removed from a competition due to injury or illness) or outside of competition. Removal from play may be partial (i.e., participation in training or competition with defined restrictions and monitoring) or complete (i.e. no form of training or competition permitted)").

83. *Id.* ("*Return to play*: clearance for an athlete to return to training and competition. This may be graduated (i.e., gradual increase with monitoring and benchmarks), partial, or complete.").

same liability risks to universities and their employed inside and outside mental health treatment professionals.

CONCLUSION

NIL opportunities available to collegiate athletes in sports where the potential is high for career-ending injuries requires consideration of the consequence of inadequately treating injuries sustained by collegiate athletes. The potential harm collegiate athletes may suffer during competition or practice may impact their future NIL earnings. Therefore, medical malpractice committed by university-employed medical professional, sports rehabilitation personnel, and performance personnel will pose enormous risks to universities and to both university-employed medical personnel and those employed outside universities.

Collegiate institutions must also consider their obligations to conduct their intercollegiate athletics programs so as to enhance the physical health, mental health, and safety of collegiate athletes. The consequence of inadequate treatment of injuries sustained by collegiate athletes and the potential liability of university-employed outside physicians, clinical rehabilitative teams, and sports-performance staff for collegiate athletes' loss of future NIL earnings is too enormous to avoid planning for.