

THOUGHT LEADERSHIP

LEGAL UPDATES

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Arrington Concussion Settlement: Important Deadline Around the Corner

National Collegiate Athletic Association (NCAA) member institutions have a fast approaching deadline (May 18, 2020) to comply with certification requirements under the *Arrington* class action settlement agreement. Because an institution may significantly reduce its potential exposure in subsequent litigation by making the certifications identified in that settlement, it is important to determine whether it has met the member obligations identified in the relevant portion of the *Arrington* settlement and, if so, to timely make the required certification.

The *Arrington* case challenged the NCAA's management of concussions in student-athletes participating in athletic programs prior to July 15, 2016. While individual institutions were not named in the lawsuit, every NCAA school may enjoy the protection of a release for related claims that might otherwise be brought by members of the settlement class, if the institution complies with the requirements set forth in the settlement agreement.

The description of member obligations can be found in Section IX of the settlement agreement. These obligations generally fall into three areas related to the management of concussions in student athletes: return to sport, academic accommodations, and instructional and educational requirements. In addition, the member obligations apply to institutions participating at all levels of NCAA competition (Division I, II and III).

While the settlement agreement was negotiated directly with the NCAA and not its member schools, the agreement provides that an institution must certify in writing that it has complied with all the member obligations in order to receive the benefit of the release of related claims. These requirements include:

Preseason baseline concussion testing

Protocols for concussion diagnosis

Requirements for physician clearance for return to play

Concussion management training for medical personnel

Trained medical personnel at all defined practice activities

Academic accommodations provided with faculty education and compliance

Annual NCAA approved concussion education training

In order for an institution to enjoy the release of liability for related claims, it must certify to the program administrator by May 18, 2020, that the relevant requirements of the settlement agreement have been met.

Of course, after certifications are made, institutions should continue to update their concussion management policies and guidelines to include best practices. These institution-specific plans should address, at a minimum, the management, diagnosis and treatment of concussions for student athletes in the areas covered by the *Arrington* certification discussed above. Such plans should be reviewed and updated, as necessary, on an annual basis. Collaboration with external experts in concussion management, athletic healthcare administration, quality assurance, event reporting and athlete safety also can help to ensure the *Arrington* requirements and evolving best practices are appropriately addressed in such policies and guidelines. Finally, institutions also should provide regular training and internal or external monitoring to ensure their updated plans are being implemented with fidelity.

Husch Blackwell and Dr. Jim Borchers, founder of the U.S. Council for Athletes' Health (USCAH), have partnered together to serve as a resource for your institutions in this area. If you have questions, please contact Hayley Hanson, John W. Borkowski, your Husch Blackwell attorney or USCAH.