June 8, 2016

President Mark Emmert
National Collegiate Athletic Association
700 W. Washington Street
P.O. Box 6222
Indianapolis, Indiana 46206-6222

Re: An Open Letter to the NCAA Regarding the Endemic Problem of Physical and Mental Abuse by Coaches in College Athletics – ABUSE MUST END

Dear President Emmert,

By way of introduction, my name is Attorney Martin J. Greenberg. I have practiced in the area of sports and real estate law for over forty-five years, and have been a law professor at Marquette University Law School for forty-four years. During my tenure, I founded the National Sports Law Institute at Marquette University Law School.

For over 20 years I have been writing about the legal and economic issues of college coaching on such issues as reassignment, termination for cause, mitigation of damages, liquidated damages, due process, coaching free agency, and salary explosion.1

However, over the last several years my efforts have been mainly focused on coaches' misconduct.

College coaches, administrators and conferences are struggling with the boundaries on what exactly crosses the line in reprimanding, chastising, disciplining, or dishing out what is commonly known as “tough love” to student athletes.

The American public was exposed to the antics of Rutgers Coach Mike Rice (“Rice”) on ESPN Outside the Lines. On April 2, 2013, ESPN aired video clips showing Rice shoving his players, throwing basketballs at their heads, violently grabbing and kicking them, berating them and calling them an assortment of names and utilizing homophobic slurs. Rice's grossly demeaning behavior created a public outrage.

In most work places this conduct would be grounds for immediate dismissal or maybe even prosecution. However, Rice was terminated by Rutgers without cause and given a severance package of approximately $475,000. The Rutgers’ Administration was accused of ignoring, tolerating, and concealing Rice's activities and taking a "slow play" approach due to Rutgers' prospective admission into the Big Ten Conference, which would have raised Rutgers' athletic and academic profile and generated increased revenues.

In December of 2013, Derrick Randall, one of Rice's former players, filed a lawsuit against Rice, Rutgers, and various administrators claiming assault and battery, negligence, breach of fiduciary duty, and violation of civil rights and the Americans with Disabilities Act. In March 2014, former Rutgers players Jerome Seagears and Robert Lumpkins, also filed a lawsuit against Rice claiming they suffered physical, emotional, and mental abuse. The lawsuit also accuses Rice and others of neglect, civil conspiracy, and violation of Rutgers’ Anti-Bullying policies. Randall’s case was recently monetarily settled.

Shortly after the Rice episode, Oakland University's women's basketball coach Beckie Francis (“Francis”) was terminated for cause on June 21, 2013. Francis was allegedly accused of trying to impose her religious belief on players, creating an environment of intimidation and emotional head games, and operating her program on a “pray-to-play” basis and a “no fat sluts” rule. All of this alleged conduct was occurring under the rule of her husband who was President of Oakland.

Holy Cross women's basketball coach Bill Gibbons (“Gibbons”), a 29-year veteran of the game, was sued in October of 2013, along with the University and administrators, by Ashley Cooper, who alleged physical and verbal abuse by her coach, causing Gibbons to be temporarily side-lined. A confidential settlement and voluntary dismissal of the case was announced in August of 2014.

Kelly Greenberg (“Greenberg”) was Boston University’s Head Women’s Basketball Coach from 2004-2013. Greenberg resigned in 2014 amid charges of mentally abusing players. Allegations of mistreatment first surfaced in 2007, when Greenberg admitted she made some serious mistakes that she deeply regretted. However, when four players left the team and relinquished their $60,000 per year scholarships in 2014, an internal investigation undertaken by Boston University concluded that ‘the manner in which Coach Greenberg interacted with many of the players was incompatible with the expectations and standards of University employees, including coaches.’

Former College of Charleston basketball player Trevonte Dixon (“Dixon”) claimed he was physically assaulted by College of Charleston head coach Doug Wojcik (“Wojcik”) twice during the 2012-13 season. Dixon also alleges that Wojcik threw basketballs at players during several practices.

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Dixon’s allegations of physical abuse prompted new College of Charleston president Glenn McConnell to launch a second investigation into Wojcik less than a month after the college completed an earlier probe that concluded with a 50-page report that exposed dozens of allegations of Wojcik lashing out at players with obscenities, personal attacks and physical threats. Wojcik was suspended without pay for one month as a result of the first investigation. On August 5, 2014, President McConnell announced that he had made the decision to terminate Wojcik’s employment at College of Charleston for “just cause” pursuant to the terms of his contract effective immediately. To avoid a lawsuit and potentially the responsibility for the three years remaining on Wojcik’s contract, the College settled with Wojcik for and in consideration of a payment of $400,000.00 and a release.

Since the time of my chronicling these examples of abuse in my editorial “Zero Tolerance – Abuse Must End – An Opinion,” there have been reported numerous other accusations of alleged abuse including:

- Illinois, Tim Beckman, football
- Utah, Greg Winslow, swimming
- Rhode Island, Erin Layton, softball
- Illinois, Mike Divilbiss, basketball
- Georgetown, Keith Brown, basketball
- Nebraska, Connie Yori, basketball
- Iowa State, Bill Fennelly, basketball
- Loyola, Sheryl Swoopes, basketball
- Duke, Joanne P. McCallie, basketball
- Wake Forest, Ken Murczek, volleyball
- Arkansas, Scott Norwood, baseball
- Arkansas, Robert Pulliza, volleyball
- Queens College, Darryl Jacobs, basketball
- Rutgers University, Brian Brecht, lacrosse
- Pace University, Andy Rondeau, football
- Indiana, Michelle Gardner, softball

This has taken on an endemic proportion in an environment where there are no rules, no sanctions, and no relief for the student-athletes.

While I have counseled student-athletes, coaches, and parents on a host of issues involving mental and physical abuse in college athletics, I have now become intricately involved in a case of alleged mental and physical abuse in the women’s gymnastics program at Penn State University that has generated national media attention.

I was retained in December of 2015 by Samantha Brown (“Brown”), a Junior Olympic Nationals Champion Gymnast, NCAA All American, and 2 Time NCAA National Team Champion, who had accepted the position of Assistant Women’s Gymnastics Coach at Penn

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Penn State’s response to these letters was telling. They did nothing. The Ethics and Integrity Monitor never even interviewed Brown. My client, with the help of many others, generated a Petition which was signed by 1,435 comprised of various parties including former and current PSU gymnasts and parents, former gymnasts at Auburn University and parents, PSU students and alumni, NCAA current and former gymnasts from various universities, gymnastics club coaches, NCAA current and former athletes of various sports, Olympic athletes, gymnastics judges, and others. A copy of the Petition is attached for your review as Exhibit C along with the Comments, with respect to alleged abuse in the program. The Comments are inflammatory and if true, Penn State University has not only let down its gymnasts, but its alumni and those in the world of college athletics that preach core values. The Petition resulted in the resignation of the Associate Head Coach, and also gave cause for a subsequent letter from me to Penn State dated May 23, 2016, demanding an independent investigation of the program, a copy of which is attached as Exhibit D.

Now that articles have appeared about the mental and physical abuse allegedly perpetrated against the women’s gymnasts at Penn State in both People Magazine and the Washington Post, Penn State has responded as follows:

    We understand that our student-athletes are under great pressure as they balance the rigors of their academic and athletic pursuits," reads the statement to PEOPLE. "It is a highly competitive environment and we work hard to create conditions for their success. Unfortunately, not all student-athletes maintain their roster spots for a variety of reasons – some are cut from the team while others decide to no longer pursue their athletic endeavors.

    When this happens in any sport, we take very seriously the nature of the student-athlete departure. Built into our evaluation process is an 'exit interview' with administration for all student-athletes who are leaving for a variety of reasons – graduation, exhausted eligibility, transfer or other reasons. These interviews help us continue our constant pursuit of an outstanding student-athlete experience. In addition, all student athletes are asked to complete an annual student experience survey, which is yet another important opportunity for student-athlete feedback and evaluation.

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4  http://www.ipetitions.com/petition/demand-independent-investigation-into-penn-state
A full review of the gymnastics program was conducted by the University's Office of Ethics & Compliance in December and January, following information Penn State received earlier this academic year. The Athletics Department reviewed the report and noted that while some student athletes reported behaviors they found personally objectionable no instances of abuse were identified.

We believe we have addressed the issues identified and are optimistic about the future of the program. Our goal, as always is to create an environment that facilitates the best possible student athlete experience for all.

We of course don't discuss the confidential details of our processes but we can tell you our review has been thorough and inclusive. Regardless of our method of evaluation or inquiry, our ultimate goal is always an accurate, balanced picture of the environment in which our student-athletes learn, train and compete. We look forward to working with Jeff Thompson as our head coach, as well as our current and future rosters to ensure a first class experience.5

In response to this statement, I sent a follow-up demand letter on June 2, 2016 to Penn State, a copy of which is attached as Exhibit E.

Julie Del Giorno ("Del Giorno"), Penn State’s Director of Athletics Integrity and Investigative Services, was evidently charged with the investigation. How could Penn State possibly arrive at their conclusion? Del Giorno never interviewed my client, Brown, who had compiled a journal of well over forty pages of examples of abuse and complaints. No one from that office ever interviewed her regarding the events she witnessed when she was in the Assistant Coach position at Penn State. Obviously, the investigation needed to complete itself so the Integrity Monitor could dissipate. Brown was ultimately terminated. If Del Giorno would have done an independent and objective investigation she could have concluded much more than the statement to People Magazine.

And herein lies the difficulty with internal investigations by university personnel, especially situations wherein the coaches are husband and wife and work to protect each other by virtue of non-reporting. The investigations simply end in a whitewash, and are typically conducted in a manner that actively protects the name and reputation of the university, the program, its revenues, and its administration.

The coach-athlete relationship involves an inherent imbalance of power. The sports establishment has long been well aware of the alleged conduct and abuses undertaken by such sports legends as Woody Hayes and Bobby Knight. Maybe this form of conduct has been ongoing for a long time, but it has been just recently exposed. Abuse may not be isolated in college sports. While abuse is inexcusable, it is certainly understandable why a coach could cross the lines in college athletics, with its “win now” culture, with a premium on chasing the

revenues and star system recruits, with the coaching carousel and security of the job, and with the expectations of job performance and the stress that goes with it.

Rice's public disgrace offers a fair warning to the coaching fraternity that coaching buffoonery will no longer be allowed. Coaching techniques characterized by “in your face,” “dominate your enemy,” and “win at all costs” are probably from a past era. Physical and verbal abuse and bullying should be grounds for immediate termination with cause. Every university needs to adopt a zero-tolerance policy. The NCAA needs to take the leadership in this area. To date, nothing or little has been done. Abusive behavior by high-profile university employees toward student-athletes doesn't merely merit a time-out and second chance, it merits dismissal.

The effects of abuse on an individual are well known. It is perhaps more insidious when this abuse occurs in a trusted relationship like that of coach and student-athlete. In a 2014 publication by the American Psychological Association, collaborative researchers found that college athletes with abusive coaches were more willing to cheat in order to win than players with more ethical coaches based on surveys from almost 20,000 student athletes at more than 600 colleges across the country.6

Additionally, a 2007 Penn State study found that the trauma endured by bullied children results in physical changes and concluded that levels of cortisol, the stress hormone, were elevated in the saliva both of children who had been bullied recently and in those children who were anticipating being bullied in the near future. “Ironically, when cortisol levels spike, our ability to think clearly, learn or remember goes right out the window. So those coaches who rely on fear and intimidation ensure their athletes won’t recall any of what they said while they are ranting and raving.”7

A 2003 study by Dr. Stephen Joseph at University of Warwick found that “verbal abuse can have more impact upon victims’ self-worth than physical attacks, such as punching…stealing or the destruction of belongings.” Verbal attacks such as name-calling and humiliation can negatively affect self-worth to a dramatic degree. Rather than helping them to “toughen up,” 33 percent of verbally abused children suffer from significant levels of post-traumatic stress disorder (PTSD). This is the same disorder that haunts many war veterans and victims of violent assault.8

Student-athletes, as you can see, are a vulnerable group at a university. Abusive coaches who win typically have strong support from the university and the community. Because of the atmosphere of fear that abusive coaches can create, student-athletes “avoid speaking up for fear of being seen as a complainer or a troublemaker, injuring their opportunity to play. The player's parents fear speaking up for fear of making a bad situation worse for their son or daughter, or...

8 Id.
invite censure from other parents who support the program. “\textsuperscript{9} This however means that the situation never gets addressed and the abuse continues because of the silent consent of those who fear the coach. For many student-athletes, abusive coaching practices “cause psychological trauma, which has a cumulative effect on the person and may not be noticed until significant emotional damage has already occurred. Many athletes want to quit a sport in which they are very talented in order to avoid the coach.”\textsuperscript{10} Student-athletes having to “give up,” so that they can preserve their physical and mental health, is a situation that the NCAA should be actively invested in preventing.

Unfortunately, as was the case with Brown, there is currently little or no affordable recourse. Student-athletes who are on scholarship with parents who are barely paying for their child’s academic matriculation can hardly afford to fight a university, its legal counsel and large law firms in these types of cases. There must be penalties and sanctions built into the system wherein if abuse is found it becomes an automatic monetary claim against the university in which the coach will be required to financially participate.

There are several actions I believe that the NCAA can undertake to ameliorate this endemic and systemic issue of coaching abuse:

1. Governing bodies such as the NCAA and Conferences should require participating universities to employ anti-bully, anti-abuse regulations that cite the need to protect a student-athlete from abusive coaching techniques which includes an oversight system of checks and balance to recognize non-compliance and hold administrators, as well as coaches, accountable for failures to comply. Those regulations must include punitive measures for coaches at all levels, along with stiffened penalties for apathy, concealment, or non-reporting. Coaches and university administrations should not be allowed to abdicate responsibility to student-athlete welfare; to the health and safety of complainants; and to university values. Universities should be eager to adopt rules and regulations that ensure the safety and wellbeing of their student-athletes and that promote values such as integrity, respect, responsibility, discovery, excellence, and community.

2. The NCAA and Conferences also need to take the threat of loss of athletic scholarship out of the coaches’ hands in some way, shape or form. This alone creates a huge power vacuum wherein a student-athlete may not report abuse for fear of losing their scholarship. Coaches can inspire athletes in other ways beyond the base tactic of threatening a student’s very existence at an academic institution. Unless a student-athlete has a known medical ailment, the university should honor their commitment. This could also help slow down early recruiting of student-athletes at such a young age. Coaches and universities should be responsible for the student-athletes they recruit.

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3. NCAA and Conference student-athletes subjected to an abusive coach should be allowed to immediately transfer without any loss of eligibility. Coaches can make or break the student-athletes' college experience. Our athletes deserve a healthy environment to learn and grow without penalty.

4. The NCAA and Conferences should require that coaching contracts include specific language making physical and verbal abuse and bullying a basis for termination for cause. It is unjust for coaches to be fired for cause, or be allowed to resign, and then have the ability to collect money for the remainder of their contract term due to poor contract drafting — especially in cases where abuse is the foundation for the termination. Universities need to employ the use of coaching contracts with stronger language regarding expectations of their relationships with their student-athletes, including language that includes a for cause termination upon finding of abuse regardless of whether it is physical, mental, or sexual. Coaches found to be engaging in abusive or bullying activities should be required on some prorated basis to participate in an action for damages monetarily, much the same way that Penn State’s former Women’s Basketball Coach was fined at least $10,000 in 2007 for discriminatory practices.

5. The NCAA and Conferences should require that coaching contracts include language that makes it clear that resignation cannot be utilized as a means to skirt an investigation. Universities should not angle to be portrayed in a better light by letting coaches resign at the contract’s end and wander off into the sunset to another university where this process might be repeated. The investigation should stand and continue regardless of the employment status of the accused coach. Universities need to take a hard line on the protection of the student-athletes. After all, first and foremost, universities are supposed to be a safe learning environment.

6. The NCAA and Conferences should require that where there is an accusation of abuse, the university immediately involves an independent investigator that has no interest in the outcome, but is willing to do an objective and complete investigation regardless of the consequences.

7. Abusive coaching may have worked for another generation, but not now. Universities should have rules and contract clauses that address administrators who tolerate, are indifferent to, or who conceal this type of abusive behavior. They, too, must face the firing squad. Every time an administrator looks the other way or issues a dismissive punishment, it's like dispatching an abuser back into the home of a domestic violence victim. To ensure accountability for all, there must be rules adopted by the university that effect administrators including contract language that provides for termination when they fail to report alleged abuse.

8. Whistle blowing must be encouraged, not discouraged. When a student-athlete steps out of the darkness and reports abuse, above all, they must be taken seriously. In order for them to feel they can come forward, there must be steps taken to ensure there will be no retaliation or retribution from the alleged abuser. The NCAA and Conferences should have anti-retaliation rules for these situations. Student-athletes bring in a lot of crowds and money to universities and

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the NCAA, as such they should be afforded some protection. The university should create a culture that ensures that the reporting, investigation, and disciplinary actions involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus and that coaches are held accountable to the same standards as all university personnel.

9. In a post-Sandusky environment this bears repeating, every university needs to adopt a zero tolerance policy. Abusive behavior by high profile university employees who coach student-athletes doesn’t merely merit a time out and second chance, it merits dismissal. Abusive coaching may have been given a pass for another generation, but not now, and not in an age where research has proven the tolls that physical and mental abuse has on a person. We know better, we should do better.

10. Discussions between university psychologists and student-athletes should remain confidential. In the case of Penn State, I found numerous instances where the sports psychologist reported back to the gymnastics coaches about their discussion with the student-athlete. Where was the safe place for a student-athlete to express her concerns and gain insight into her dealings with their coaches? Why are university psychologists not required to automatically report to administration in cases where they suspect alleged abuse? Doctor-patient confidentiality should be sacrosanct, regardless of the personal relationships that a sports psychologist may have with coaches.

Finally, not only are the allegations of an abusive coach a public embarrassment, but also costly. Abusive coach scandals involve crisis communication expenses, investigation expenses, attorney fees, buyouts for the coach, and settlements for the student-athletes, which can become extremely expensive for the university. Universities need be more concerned with protecting their student-athletes from an abusive coach than protecting themselves from legal action. Abuse is not good coaching, even when it results in winning. Placing winning games or revenues above sportsmanship, decency, fairness, and ethics is out of the question. The NCAA must take a stronger stance and provide rules sanctions for such kinds of conduct.

“The difference between a demanding coach and an abusive coach is not a thin line that someone can drift over if he or she loses focus for a second before peeling back to the other side. It's a wide gap -- a mile wide -- and it takes a long time for a coach to get from one side to the other and back again.”12

“Good coaches are like magicians, turning self-doubt into confidence. They don't try to separate and chase away those perceived as weak -- because dividing the weak from the strong is herding, not coaching.”13

“Good coaches shoot arrows around the feet of their players, keeping them on edge while teaching them how to dance.”14

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13 Id.
14 Id.
The NCAA needs to take immediate action to stem the outbreak of alleged mental and physical abuse in college athletics. It is critically important that the NCAA act now to protect the physical and mental wellbeing of our student-athletes.

Sincerely,

Martin J. Greenberg

MJG/daw
Enclosures
cc: Samantha Brown