



# THE DRAKE GROUP EDUCATION FUND

Realizing The Promise  
Of College Athletics

## FOLLOW-UP NOTES

### “BRAIN TRAUMA – Are We Doing Enough to Protect College Athletes?”

*The Drake Group Education Fund Webinar Series – Critical Issues in College Athletics -- Hosted by 2aDays*

*Thanks for attending or registering for our October 20, 2022 webinar on collegiate athletics faculty issues. A regular feature of our webinar series is “Follow-Up Notes” which provides links to the recorded webinar, answers to questions from the audience which panelists did not have the time to address or those emailed to us from telephone participants, and information on our next webinar.*

#### **1. BRAIN TRAUMA Webinar #17 RECORDING**

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In case you missed any part of the October 20, 2022 webinar, you may access the recorded video here:

[“BRAIN TRAUMA – Are We Doing Enough to Protect the College Athlete” Recording](#)

#### **2. UNADDRESSED QUESTIONS FROM WEBINAR ATTENDEES**

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Following are answers to questions from the audience symposium panelists did not have time to address. Responses are from Drake experts and not from the panelists.

**Q1: What is the significance of the NIH formally acknowledging publicly, for the first time, that CTE is caused by repetitive traumatic brain injuries?**

**A1:** Kudos to the Concussion Legacy Foundation (so ably represented by our panelist Samantha Bureau) for their advocacy work in making this pronouncement happen. Here's the Concussion Legacy Foundation press release:

## **United States National Institutes of Health (NIH) concludes CTE is caused by repetitive traumatic brain injuries**

**The Concussion Legacy Foundation (CLF) successfully petitioned America's top medical research agency based on CLF-led review of the evidence**

(Boston) – The National Institute Neurological Disorders and Stroke (NINDS), part of the United States National Institutes of Health (NIH), is formally acknowledging publicly, for the first time, that the brain disease chronic traumatic encephalopathy (CTE) is caused by repetitive traumatic brain injuries.

The nation's top medical research agency agreed to update its official statement on causation after the Concussion Legacy Foundation (CLF) [sent a letter](#), cosigned by 41 of the world's top experts on CTE and related areas of science, urging them to review the current evidence outlined in the 2022 article [Applying the Bradford Hill Criteria for Causation to Repetitive Head Impacts and CTE](#), published in *Frontiers in Neurology*.

On October 5, Dr. Nsini Umoh, Program Director for Traumatic Brain Injury, responded that the NINDS official statement on CTE causation [has been updated](#) to now say "CTE is a delayed neurodegenerative disorder that was initially identified in postmortem brains and, research-to-date suggests, is caused in part by repeated traumatic brain injuries."

"The National Institutes of Neurological Disorders and Stroke new statement on CTE causation is a landmark moment in the fight to end CTE," said Dr. Chris Nowinski, study lead author and CLF founding CEO. "We thank all the scientists who built the evidence and advocated for this change as well as the families of the brain donors who died with CTE for their important role. The impact of this change will save lives."

The announcement comes just days before the Concussion in Sport Group's (CISG) 6th International Consensus Conference on Concussion in Sport in Amsterdam, where a meeting of doctors, organized by FIFA, the International Olympic Committee, World Rugby, and others, is expected to debate their own position on CTE causation. Their most recent statement claimed, "a cause and effect relationship between CTE and concussions or exposure to contact sports has not been established."

The NINDS joins the US Centers for Disease Control and Prevention in recognizing CTE is caused by repeated traumatic brain injuries." The [CDC fact sheet](#) defines repeated traumatic brain injuries as "concussions, and repeated hits to the head, called subconcussive head impacts."

The NIH and CDC each independently concluding that CTE is caused by repeated traumatic brain injuries, like those suffered by contact sport athletes, military veterans, and victims of abuse, is expected to have significant public policy and medico-legal consequences.

Many international professional sports organizations that are part of the CISG are facing lawsuits from the families of former players diagnosed with CTE and former players

exhibiting cognitive and behavioral symptoms that may be caused by CTE. Some sports organizations have defended those lawsuits by citing the CISG statement on CTE causation.

Dr. Robert Cantu, medical director of the Concussion Legacy Foundation, has served as a coauthor of CISG statement to promote improved concussion care but has been on record disagreeing with their CTE statements. Dr. Cantu served as senior author on the paper that helped inspire NIH to change their statement on CTE causation. After Dr. Paul McCrory resigned as chair of the CISG in March due to allegations, now proven, of serial plagiarism, Dr. Cantu was invited to co-chair the scientific committee of the Amsterdam meeting.

**About the Concussion Legacy Foundation:**

The Concussion Legacy Foundation is a 501(c)(3) nonprofit organization based in the United States with chapters in Australia, Canada, and the United Kingdom. It was founded by Robert Cantu, MD, and Chris Nowinski, PhD to support athletes, veterans, and all affected by concussions and CTE to promote smarter sports and safer athletes through education and innovation and End CTE through prevention and research. CLF is a proud supporter of and collaborator with the Boston University CTE Center. For more information, please visit [ConcussionFoundation.org](http://ConcussionFoundation.org).

The issue of causation of CTE and what the NCAA and its member institutions knew or should have known is at the heart of many concussion lawsuits. Follow the [Matthew Gee case](#) currently being heard in Los Angeles Superior Court in which the NCAA argues that “there is nothing the NCAA could have done to prevent Gee’s death.”

**Q2: Are athletes who sign the “liability release” forms before they play a college sport provided with education so they can make an informed consent? Do the parents of high school athletes sign similar forms before their children are allowed to play school-sponsored sports? Do the students even know what their parents may be signing? If I as a faculty member wanted to take my students on an educational field trip during which students would incur injury rates and head trauma at the same rate as athletes on my schools sport teams, I would be laughed at by administrators who would flatly deny my request with good reason. What makes sport different than such an educational field trip?**

**A2:** The NCAA, conferences, schools and colleges routinely utilize “waiver” or “release from liability” and “assumption of risk” forms for participation in athletics and other events.

In some cases, courts have upheld "waivers" and in other cases they have not. There's a difference between a "waiver of liability" agreement and "assumption of risk" or "informed consent" participant agreement. The former is a release from liability for negligence while the latter asks the participant to acknowledge that he or she understands and accepts the inherent physical risk of sports participation, unrelated to accepting responsibility for third party negligence.

In some cases, a minor signing a “waiver,” which is a contract, can be problematic because that minor could act to void the contract in the case of injury. Also, a parent or guardian cannot waive 3<sup>rd</sup> party negligence on the child’s behalf.

In the case of an "assumption of risk" document, if the minor is sufficiently mature to know and understand the nature of the risks, the assumption of risk agreement may, in many jurisdictions, provide protection for the program provider, if the assumption of the risk was voluntary. Assumption of risk is a defense which does not require that the participant be an adult. Also, with regard to an "assumption of risk", a parent or guardian can consent for the child.

Neither document will protect the organization or sports team from a lawsuit, but such documents might help if the organization is sued, depending on the facts of the case. When organizations take the trouble to issue such documents and require them for participation, the courts are more likely to believe that the organization has been responsible with regard to educating participants about risk and the possible consequences of sports participation. Likewise, the extent to which the organization educates or explains the risk to the athlete or parent would be a consideration. Regardless of the acknowledgment of assumption of risk, organizations will be at risk of liability if they do not have adequate medical coverage by licensed, trained, qualified medical professionals.

To the point of the question, few athletics governance organizations, school districts or higher education institutions educate athletes about the risks for injury and concussion. This is at issue in many court cases – what did the school or governance organization know about concussion risks and when and was this information given to the athlete or the parents of the athlete. Another issue raised is whether such contracts or agreements are “contracts of adhesion” -- a contract where the parties are of such disproportionate bargaining power that the party of weaker bargaining power could not have negotiated for variations in the terms of the contract.

The bottom line is that such documents are advisable, they should be drawn up or reviewed by an attorney qualified to provide advice in the states in which the organization operates. They should never be a replacement for the responsibility of a sports organization to provide a safe participation environment or specific education about injury risks that might differ by sport. It should also be noted that the construction and validity of a waiver document is a matter of state law. A valid waiver in California may not be a valid waiver in Connecticut. Additionally, certain states allow waivers with respect to region-specific activities (i.e., snow or equestrian events).

**Q3: Do any of the major universities, nearly all of which have top medical schools, use the faculty resources at those schools to provide athletes with information about head trauma and its implications in their lives? If not, why not?**

**A3:** Most schools still don't utilize their medical programs like they should. It is a valid question to ask whether athletic programs, educational institutions or the NCAA think it is within their best financial or legal liability interests to fully educate athletes and their parents. (See discussion of the Gee lawsuit above.) Even the CARE Consortium program, a research and education collaboration between the U.S. military and higher education institutions, has raised questions of

such conflict of interests.<sup>1</sup> Whether institutions are doing all they can to address traumatic brain injury in sport even intersects with the issue of racial exploitation in sport. When the NCAA and the U.S. Dept. of Defense started talking about collaborating on traumatic brain injuries, there was discussion about which schools and their respective medical programs would be considered as bases for research. Despite having, in many cases, superior medical programs and directors, HBCUs were excluded from the list in favor of Predominantly White Institutions (PWI). Given the still prevalent application of race-based medical care and treatment of CTE and TBI, it is troubling that schools like Howard or Morehouse were not given adequate consideration as key participants in the CARE Consortium.

**Q4: While it is clear that reducing repetitive hits to the head in youth sports can reduce the risk for brain trauma, what can be done at the college level?**

**A4:** The Drake Group has made recommendations related to changes in NCAA policy and college rules of games in our position statement, "[College Athlete Health and Protection from Physical and Psychological Harm](#)" with our key points being:

*The NCAA controls the rules of play in every sport, thereby influencing any health risk associated with such rules. Yet, the NCAA has been relatively passive in this regard because member institutions and coaches resist change. The reasons for the resistance range from nostalgia to maintaining the “entertainment value” of sport even though we know we can take a great deal of contact out of football, ice hockey, lacrosse, soccer, and rugby with fairly simple rules changes. We also know we can impose rules on the conduct of practices, such as reducing the number of days in which teams are allowed to conduct contact drills, prohibiting tackling to the ground, and reducing full-field scrimmages. Many of these possible changes are recommended via consensus sport science statements, or we know they will work because they are the result of experimentation and research, with much of this experimentation being performed by the Ivy League. It is fair to say that an aggressive pursuit of such changes outside the Ivy League doesn’t exist.*

*In addition, the NCAA has full knowledge of the causes of and how to prevent physical and mental harm because it obtains information from sport-science authorities, collects and analyzes injury and other information from member institutions, commissions research studies, and employs a chief medical officer. The NCAA monitors both risk and best practices recommended by medical authorities and appoints committees of experts and stakeholders (Committee on Competitive Safeguards and Medical Aspects of Sport) to address the need for governance action. The NCAA also requires its members to report*

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<sup>1</sup> See The Drake Group’s [November 7, 2019 press release](#) announcing that it had submitted a request to the Inspector General of the U.S. Department of Defense to lead an international panel of expert bio-ethicists and neuroscientists in an independent investigation to determine the veracity of UNC concussion-related research deficits upon which much of the CARE Consortium’s work depended. Also see Broglio, et. al “A National Study on the Effects of Concussion in Collegiate Athletes and US Military Service Academy Members: The NCAA – DoD Concussion Assessment, Research and Education (CARE) Consortium Structure and Methods.” *Sports Med* 2017 retrieve at: [https://ncaaorg.s3.amazonaws.com/ssi/concussion/SSI\\_CAREPaper\\_03292017.pdf](https://ncaaorg.s3.amazonaws.com/ssi/concussion/SSI_CAREPaper_03292017.pdf); The Drake Group has raised issues questioning the integrity of this initiative. See

*fatalities, near-fatalities, and catastrophic injuries on an annual basis and to participate in an annual college athlete health and safety survey. But it does not even require its members to participate in the NCAA Injury Surveillance Program, the preeminent data-collection mechanism used to produce peer-reviewed research on college athlete injuries. Similarly, the NCAA regularly convenes experts to produce consensus statements defining “best practices,” but it does not require members to follow these “best practices,” even though it could. In the case of athlete health and safety, the NCAA consistently shirks governance responsibility.*

***How should the NCAA carry out its responsibility for athletes’ health, safety, and well-being?*** We know national organizations are unable to directly supervise athletics programs at the institutional level. Rather, the national organization exercises its duty of care through the adoption and enforcement of rules that require (a) compliance with certain conditions of initial and continuing institutional or conference membership, (b) the adoption of specific policies and procedures by all member institutions and (c) adherence by all athletic department employees to behavioral or professional preparation or certification standards. It is simply not enough for the NCAA to state a constitutional “principle” without adopting an enforceable rule that defines specific “do’s and don’ts” in these three areas. It must govern.

One of the main issues The Drake Group identified is that the NCAA **recommends rather than requires** conformance with consensus medical positions. For example, look at the extensive consensus document: [Year-Round Football Practice Contact for College Student-Athletes Interassociation Consensus Recommendations](#) that addresses the specific "hits to the head issue" discussed during the webinar. Within this document, the NCAA clearly states:

***Are college football programs required to implement the interassociation consensus recommendations?***

*The consensus recommendations are not legislated, therefore compliance with the recommendations is not mandated. Coaches and sports medicine staff should be aware, however, that actions that are divergent from an established standard of care may put their program at a legal and ethical risk.*

### **3. OUR NEXT WEBINAR #18 - “STUDENTS, EMPLOYEES OR BOTH? Is There an Alternative Educational Model for College Sport?”**

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**Thursday, November 17, 2022 – 2:00-3:30 p.m. EST**

[\*\*REGISTER HERE\*\*](#)

As calls for college athlete compensation and unionization heat up, how do we defend the education model "student" priority? What are the pros and cons of the solutions being discussed

in the courts, Congress and beyond? Is there a new social contract that is an alternative to unionization which would give college athletes organizing power to achieve greater health and safety, compensation, and other benefits.

#### **4. ACCESS RECORDINGS OF PREVIOUS WEBINARS**

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**[CLICK HERE](#) to enter The Drake Group Education Fund Video Library for recordings of all previous webinars.**

WEBINAR #1 -- "Wild West or Brave New World – National Experts Share Their Thoughts on College Athlete Compensation"

WEBINAR #2 -- "Millionaires or Minimum Wage? Current and Former College Athletes Speak on Athletes' Compensation"

WEBINAR #3 -- "Experts Speak Out on College Athletes' Mental Health"

WEBINAR #4 - "The Transgender Athlete in Girls' and Women's Sports: The Collision of Science, Law, and Social Justice Explained"

WEBINAR #5 -- "Title IX and the NIL Marketplace: Subterfuge or Opportunity to Remedy Historical Inequities?"

WEBINAR #6 -- "Keeping Everything We Love About Collegiate Sport While Fixing Its Failed Governance Structure"

WEBINAR #7 -- "A Continuing Disgrace: Addressing Intercollegiate Athletics Race Issues"

WEBINAR #8 -- "The Disintegration of the NCAA: The Price of Rejecting National Governance"

WEBINAR #9 -- "Lack of Accountability for Athlete Abuse in College Athletics"

WEBINAR #10 -- "College Athletes' Freedom of Speech and Expression – or the Lack Thereof"

WEBINAR #11, #12, #13, #14 -all sessions of the May 19, 2022 The Allen Sack National Symposium – Advancing Integrity in College Sport,

WEBINAR #11 --SESSION 1 -- “GIVING COLLEGE ATHLETES THE RIGHT TO UNIONIZE”

WEBINAR #12 -- SESSION 2 -- “MANDATING A COLLEGE ATHLETES’ BILL OF RIGHTS”

WEBINAR #13 -- AWARDS LUNCHEON -- “A VISION FOR THE FUTURE”

WEBINAR #14 -- SESSION 3 -- “NAME, IMAGE, AND LIKENESS – CHAOS OR OPPORTUNITY?”

WEBINAR #15 -- “Critical Issues for Athletic Programs at Historically Black Colleges and Universities”

WEBINAR #16 -- “College Athletics Reform – Where Are the Faculty?”

## 5. THANKS TO OUR WEBINAR #17 PANELISTS

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**MODERATOR – KATIE LEVER, B.A., M.A.**, a doctoral candidate at the University of Texas at Austin, Moody College of Communication, where she studies NCAA discourse in the field of rhetoric and language; her research focuses on athlete rights, issues in intercollegiate athletics, and college sports reform; her work has been featured in *Tropics of Meta*, *FanSided*, *Extra Points*, and *Forbes*; author of *Surviving the Second Tier*; a former Division I athlete and two-time Sun Belt Conference champion in indoor and outdoor track and field.



**SAMANTHA BUREAU, Ph.D., Director of Programs, Concussion Legacy Foundation.** Dr. Bureau is the former Assistant Executive Director and Senior Director of International Research at the Concussion Legacy Foundation Canada; completed her Ph.D. in neuroscience from Carleton University; former dual sport NCAA athlete who captained her Franklin Pierce University ice hockey team and competed in track as a 400m specialist.



**CHRISTIAN DOTSON-PIERSON, Ph.D.**, is a co-author of *CTE, Media, and the NFL: Framing a Public Health Crisis as a Football Epidemic*, and a contributing author to *American Sport in the Shadow of a Pandemic: Communicative Insights*; her dissertation topic focused on grassroots efforts of concussion education and why media advocacy is needed; her research interests include media studies (pop culture), sports and health communication, and issues related to race and gender.





**ANNIE WELCH, Division I soccer player at Yale University** where she is pursuing a degree in Architecture. A committed teammate and a passionate athlete, Annie started 7 games her freshman year and enjoyed every minute of her first season. She suffered a major concussion during the off-season and chose to medically withdraw and take a semester off of school; Annie is a former intern and current freelancer at 2aDays.com.

## 6. WAYS YOU CAN HELP

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If you believe **The Drake Group Education Fund** is doing good work, please also consider making a tax-deductible donation to support our webinars and educational research and programs work. You can donate and learn what we do [HERE](#).

Interested in becoming a change agent by working with **The Drake Group**, a sister organization of The Drake Group Education Fund? We need volunteers to contact their senators and representatives to advance collegiate athletics reform legislation. Learn about legislation and [VOLUNTEER/JOIN HERE](#).