

**IDEAS, PERSPECTIVES, AND ASPIRATIONS:
SUGGESTIONS ABOUT WAYS TO FURTHER PROTECT
THE HEALTH AND SAFETY OF ATHLETES
IN THE FOOTBALL PROGRAM**

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INTRODUCTION

Working closely with University Health Services and the campus administration, the Athletic Department has devoted considerable time and effort over the past two years to developing and implementing policies and procedures that enhance protections for student athletes generally and for members of the football team in particular. The purpose of this paper is to provide Campus leadership with ideas about additional steps that might be taken, in a perfect world, to reduce as much as possible the risks to health and safety that inhere in active participation in competitive Division One football programs.

There is no “perfect world.” None of us lives in such a world. We pursue aspirations shackled by limitations in our knowledge, our intelligence, and our resources. And we are cabined by fierce, relentless competition from other aspirants, aspirants pursuing respect-worthy goals in other arenas. All this we acknowledge -- just as we acknowledge our duty, undiluted by all these facts of life, to try to do better.

In this case, better would not represent an improvement from bad. It would represent an improvement from good. So the ideas and suggestions set forth in this paper imply no criticism. Nor are they based on any unfavorable comparisons with other institutions. Rather, they are the product of research and thinking whose purpose has been to identify a host of means, some small, some more ambitious, that Cal’s leaders might consider as they continue to pursue the shared goal of maximizing, to the extent feasible, the protection and promotion of the health and safety of students engaged in intercollegiate athletics.

The authors of this paper are outsiders. We do not purport to have examined all of the campus rules, policies, procedures, and practices that might already address some of our suggestions. We acknowledge the real possibility that there could be overlap, redundancy, or incompatibility between some of the measures we suggest and the rules or rights already fixed by law, regulation, or, for some employees, by contract.

We also acknowledge that the Athletic Department, over the past three years, has actively reviewed many of the rules, procedures, protocols, and practices that relate to or implicate the health and safety of student athletes. As a result of its internal process, the Department has added, changed, or clarified many important

policies related to health and safety -- all for the better. 1 It is to the credit of the Athletic Department that, despite the initiatives it has undertaken and the improvements it has made, it acknowledges that it has not reached the limits of what could be done, in a more perfect world, 2 to increase the safety of participation in a Division One football program and to protect and promote the health of the athletes.

We have divided the suggestions and ideas that we offer for consideration in this paper into two categories: (1) structural and (2) non-structural. We have not attempted to prioritize or rank in importance the suggestions and ideas in either category -- so readers should not assume that we have attempted to ascribe relative importance (in our minds) to the proposals made here. We intend no particular order of significance, descending, ascending, or otherwise.

PROCESS 3 AND RESOURCES

This report is the product of considerable research, multiple interviews, many informal conversations, and the independent thinking of its authors. This independent thinking has not been done *in vacuo*. Dr. Joy, co-author of this report, is a nationally recognized expert in this field, evidenced by her recent tenure as President of the American College of Sports Medicine. Her experience as a direct provider of medical services to athletes and as a team physician in a Division One institution, coupled with her deep involvement for many years with other medical professionals in this field, has enabled Dr. Joy to identify cutting edge issues, to anticipate needs for protocols, to frame probing, illuminating, and educating questions, to tap the experience of other national experts, and to identify publications or papers to which we could look for information and ideas.

At the outset, it is important to note that the focus of this project changed during the course of its execution as campus leadership made significant changes in key personnel. Important positions were filled by new people during the

¹Among such measures, perhaps most important is the adoption in June of 2016 of the policy statement that addresses the “Role of Cal Intercollegiate Athletics (“Cal Athletics”) Coaches in Medical Care.”

²A more perfect world would include, among many other things, the availability of more financial and personnel resources for pursuing the health and safety goals that the Athletic Department endorses.

³We would like to take this opportunity to express our deep appreciation for the support, always tendered from a distance respectful of the need to preserve our independence, of the late Christopher M. Patti, Chief Campus Counsel, Nils Gilman, former Associate Chancellor, and Dan Mogulof, Associate Vice Chancellor, Public Affairs. We also are grateful to Jane Jackson, Dara Schnoll, and Jenny Kwon for making so many of the logistical and scheduling arrangements that this project required.

considerable period our work covered. Most significantly, the administration has hired a new head football coach, a new strength and conditioning coach for football, and a new Head Athletic Trainer for Football, over the past three years.

It is against this changed backdrop that the authors undertook the following tasks. We began by gathering information informally about the roles of people in the positions that appeared to have the most direct effect on or responsibility for the health and safety of football players. Then we acquired organizational charts that showed where authority was located and where formal reporting responsibilities ran. Thereafter, we acquired, for a wide range of employees in the Administration, the Athletic Department, and in University Health Services, the formal job descriptions that articulated the multiple responsibilities for each position and specified the percentages of time the person in the position was expected to devote to each separate responsibility.

Using all of the resources described in the preceding paragraph, we set about mapping. We sought to create a picture that graphically captured, for health and safety purposes, authority, responsibility, reporting requirements, and relationships.

Simultaneously, we began systematically researching the considerable volume of information, guidelines, policy statements, and rules -- as related to health and safety of student athletes -- that the NCAA has generated over the past decade. It is important to emphasize here that in recent years the NCAA has been especially pro-active in developing very useful materials about health and safety issues ⁴ -- materials supported by sound citations and expert authority, materials we found to be sophisticated, balanced, thoughtful, and targeted on especially sensitive and difficult issues. ⁵ We urge campus leaders with responsibility for the health and safety of athletes to take full advantage of these resources and to sustain an active commitment to giving full consideration to adoption of the measures in this field that the NCAA recommends.

Our research also included examining materials from other published sources. We reviewed, for example, the “Strength and Conditioning Professional Standards and Guidelines” that were approved and adopted by the National Strength and Conditioning Association in July of 2009, the NCAA 2015-2016 Division One Manual, and multiple publications produced by the National Athletic

⁴We have been especially impressed by the materials produced by the NCAA’s Sport Science Institute and the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports.

⁵For example, the NCAA has produced valuable material not only about concussions and sickle cell trait, but also about the mental health challenges that can take unique shape and develop dangerous intensities in athletes.

Trainers Association. In addition, we reviewed substantial sets of materials that were provided to us by the Athletic Department at Cal (policies, protocols, best practices, organizational charts, articles and guidelines from independent outside organizations, etc.). We also acquired some relevant information about how other universities have been attempting to address issues related to the health and safety of athletes who participate in intercollegiate competition.

During the early phases of our work we also conducted some research into the evidentiary records that were generated during the litigation that followed Ted Agu's death. While the Athletic Department already had made responsible use of the learning that was generated by the litigation arising out of this tragedy, reviewing this material helped sensitize us, as outsiders, to some issues and challenges.

In the fall of 2016 Judge Brazil 6 made a substantial presentation (in person) to all of the football coaches, including, of course, the strength and conditioning coaches, and all of the certified athletic trainers who devoted at least some of their time to the football program. The Athletic Director and an Associate Chancellor also attended. In this presentation, Judge Brazil outlined the purposes of this project, the comprehensive plan for its execution, and the constructive spirit in which it would be undertaken. He emphasized that promoting the health and safety of athletes was a campus-wide responsibility -- a responsibility shared by the administration, counseling professionals, the medical staff in Student Health Services, coaches, certified athletic trainers, and, significantly, the athletes themselves. While acknowledging that the goal of maximizing protections for health and safety presented considerable challenges, Judge Brazil encouraged everyone who would be interviewed, or from whom information might be sought in some other way, not only to share any pertinent concerns or questions they might have, but also, as important, any ideas, suggestions, or insights that might serve as springboards for improvements.

In late January of this year Dr. Joy participated in the inaugural "Interassociation Summit on the Organization and Administration of Athletics Health Care Services in the College/University Environment," an intensive, interactive conference jointly sponsored by the NCAA's Sport Science Institute and the National Athletic Trainers Association. Attended by leaders and experts in this field from all around the country, the Summit demonstrated graphically not only how much thought and effort is being devoted all around this country to

⁶Pressing professional commitments prevented Dr. Joy from flying to California to participate directly in this presentation -- but she had reviewed, in advance, the detailed outline from which Judge Brazil spoke.

improving protections for the health and safety of athletes, but also how many different approaches have been taken to addressing the issues in this field and how much uncertainty there is about which approaches will prove, over time, to be most effective. What was clear, at the end of the Summit, was how much more needs to be done in this field and how pressing its leading issues remain.

Having laid these foundations, Dr. Joy and Judge Brazil began the process of conducting interviews -- a process that ended up consuming several months because there were so many competing demands on the time of the prospective interviewees and the authors. But by mid-July of this year the authors had interviewed virtually everyone they had identified as playing an important role in establishing or supervising the execution of the policies and practices that directly affected the health and safety of student athletes, especially the members of the football team. Appendix A lists people we interviewed or to whom we have spoken in connection with this project.⁷

Research proceeded during the months in which the interviews were conducted -- as did follow-up conversations or second meetings for the purpose of securing additional information.

The authors began drafting some of the sections of this report during the Spring of 2017. Ideas were added and, in some instances, refined or elaborated, in subsequent iterations. Final editing was completed by mid-March, 2018.

THEMES

- The health and safety of its student athletes is the *responsibility of the Berkeley campus as a whole*, not solely of the professionals in the Athletic Department and University Health Services. To fulfill its responsibilities in this arena, the campus administration should:

- Take an active role in assuring that systems are in place that will deliver to all of the professionals in athletics and health services the most current information, research results, insights, policy developments, and best practices in this field.

- Establish systems to review and monitor how the professionals in the Athletic Department and in University Health Services acquire and

⁷The list in Attachment A does not include the names of any current or former members of the football team -- as we honor confidentiality promises.

implement cutting edge learning and policies in this field. Central to this is a system that ensures transparency and accountability to all key stakeholders.

→Commit *campus* 8 resources to funding at least one new full time position that will be devoted exclusively to assuring that student athletes learn about and actually receive the full range of needed physical and mental health services, both preventative and reactive.

● Professionals with *medical* licenses and degrees must have in theory, *and must meaningfully exercise in fact*, complete and unchallengeable control over all health care related matters in athletics.

→To enable licensed medical professionals to meet these responsibilities, greater percentages of their time (as reflected in their job descriptions and employment contracts) should be allocated to developing, and then to monitoring compliance with, policies, procedures, and practices (including workout designs) that will maximize protection of the health and safety of student athletes.

→Certified athletic trainers must work closely and collaboratively with medical doctors to ensure the health and safety of athletes. Systems should be established that appropriately limit and focus the responsibility for health and safety decisions that may be delegated appropriately to certified athletic trainers, who do not have medical licenses in the State of California (Athletic Trainers are currently licensed and/or regulated in 49 states. Bill AB 3110 is currently in the California legislature and if passed will license athletic trainers in this state as medical professionals).

● Cooperative, inter-disciplinary, team approaches to developing policies and protocols should be required -- *but ultimate responsibility* for the essential elements of policy, for the specific content of practices, and for assuring compliance must be located in clearly designated *individuals*, individuals who understand that they bear this ultimate responsibility.

Diffusing responsibility dilutes it. Diffusing responsibility dulls the acuity edge that makes responsibility real. Diffusing and diluting responsibility increases

⁸We use the phrase “campus resources” self-consciously. The money to pay for this additional full-time employee should not be squeezed out of the budgets of health services or athletics, but should be provided directly by central campus.

the risk that rules will not always be honored or and that protocols will not always be strictly followed.

Ultimate responsibilities should be stated clearly in the job descriptions and the employment contracts of the specific individuals on whom the responsibilities are imposed.

- *Perhaps the greatest single challenge* the campus community will face in the coming years is assuring the *delivery of needed and appropriate mental health services* to student athletes.⁹ The constancy of the emphasis on ‘toughness’ in athletes (unaccompanied, even indirectly, by more nuanced messages or approaches) exacerbates this challenge. Creative approaches and substantial, sustained efforts should be devoted to developing and implementing sophisticated means to break through the multiple barriers to mental health self-awareness, and mental health honesty, that college athletes, and young people generally, erect or have erected for them.

Ensuring both identification of athletes with mental health concerns, and access to mental health services, should be prioritized, and, while fully honoring every patient’s privacy rights, a system should be in place to make sure that services in this arena that are available in theory are delivered in fact (to persons who decide they want such services). A comprehensive system in this critical arena also should include trying to collect information about outcomes after mental health services are delivered.

- *Monitoring for compliance* with policies also presents a considerable challenge. Policies and protocols, handsome on their face, mean little unless systems for vigorously assuring compliance are solidly in place. Readily accessible means (confidential, if appropriate) must be established for staff and students to communicate concerns and to report violations of policies. Incentives must be in place to encourage such communication and reporting. The duty to report violations must be made clear -- repeatedly -- and failures to meet reporting obligations must be disciplined.

- *Persuading the athletes that they are essential sources of information* about their own health -- *and that they bear their share of responsibility* for it -- represents yet another significant challenge to building an effective system in this arena. It is especially important, and especially difficult, to get student athletes, at least those in the football program, to volunteer information about mental and physical

⁹See, e.g., the June 2017 issue of *Sports Health*.

problems or concerns, or to take initiative in seeking medical services. Again, the constant emphasis on “toughness” -- without more -- makes this problem more acute. There is a great need to devise ‘protected’ means to increase the flow of information about health and safety from the athletes to the professionals in health services, the Athletic Department, and in the Dean’s Offices and counseling centers.

STRUCTURAL SUGGESTIONS/IDEAS

First Structural Suggestion

**Create and fill a new, full-time position:
“Athletics Health Care Administrator”**

Broad Outlines of This Idea

This recommendation is rooted in a proposal advanced by the NCAA Sports Science Institute -- but the specific shape it takes here is a product of our independent views.

The title we recommend for this position is the title preferred now by the NCAA, in part to promote uniformity across member institutions, in part to avoid triggering opposition by persons who might feel threatened by the possible relocation of power or responsibility to the person in this position, and in part to create a network of professionals with parallel responsibilities who could share experiences and ideas about how to improve protections for the health and safety of athletes.

In our view, however, the NCAA’s vision of this new kind of position is not sufficiently broad. In that vision, perhaps colored a little by the interests of athletic departments, this position would be purely administrative, that is, the person filling this post would not be actively involved in helping develop, from the ground up, the policies or practices he or she would be charged with administering.

We think that confining the boundaries of this position in this way would needlessly cost the campus an opportunity to enrich the thinking that should inform policy and practice in this sensitive arena. By expanding the role (but not the power) of the person in this position beyond pure administration, the campus would expand the flow of information and ideas to the ultimate policy makers, and the information and ideas so flowing would be rooted in first hand, ground-level, independent, professionally informed observation and experience.

The person who occupies this position would be charged with one overriding responsibility: to help design and organize, then to implement and monitor, a set of comprehensive, efficient systems for delivering safety protections and

health care services (both preventative and reactive) to intercollegiate athletes *in all 30 Cal programs*.

We will outline below our suggestions for the specific elements of the job description for this position, but at this juncture it is important to emphasize that the person in this post would not be given independent policy making power. Instead, he or she would be responsible for overseeing the administration of systems whose design would be controlled by physicians and other health care professionals, with input from all other knowledgeable sources, including, of course, coaches and certified athletic trainers.

By creating and funding this position, the campus would be recognizing that the risks to health and safety that accompany being a student athlete are qualitatively different and greater than they are to students who do not participate in inter-collegiate athletic competition.

At least as important, by creating this position, and funding it outside the Athletic Department's budget, the University would be putting its money where its mouth is: committing the University's financial resources to the goal of giving as much reality as possible to its public pronouncements that the health and safety of its students is more important than win-loss records.

This position should be fully and formally independent of the Athletic Department. It should *not* be funded from the Athletic Department's budget, but by adding to the budget of University Health Services. The position would be located inside the UHS organizational structure and the person occupying it would report to the Director of UHS (as another demonstration of the seriousness of the University's commitment to health and safety issues).

The person who occupies this position would be selected, supervised, evaluated, and subject to discipline only by UHS. While the campus administration and UHS should be sure to establish open, active channels for communication with and input from the Athletic Department about the matters within this person's sphere of responsibility, all of the real power over how this person is chosen, managed, and assessed should reside within UHS.

We also recommend that this position be filled by a health care professional. There are two equally important terms in the preceding sentence: "health care" and "professional."

The professional experience and education of the person selected to fill this position should be principally in health care. A person whose education and experience had been solely as a certified athletic trainer would not qualify. Instead, the campus and UHS should look to fill this position with a person who has extensive experience as a nurse practitioner, a physician's assistant, an advanced practice registered nurse (APRN), physical therapist, or as a licensed

clinical mental health care professional. Preferably, this person would have extensive experience working with college student athletes. The medical experience of the occupant of this position should be in a field central to the health and safety of athletes, e.g., mental health, internal medicine, or orthopaedics.

The health care professional who occupies this position should be intellectually active and visibly open-minded, vigorously but calmly independent, tactful, a person who listens first, asks questions second, and then identifies underlying interests and searches for ways to accommodate them. He or she must have the interpersonal skills and values that will encourage others to share information and to cooperate with one another. By his or her manner and job performance, the AHCA must be the kind of person who invites trust and earns respect and confidence. No arrogance. No self-satisfaction. No condescension.

The Need for This Position

Our recommendation that the campus create and fund this position is inspired by our impression that current staff and administrators simply do not have the time resources to attend in appropriate detail to monitoring and administering an optimal program for protecting athletes' safety and promoting their health.

As an example, the Sr. Associate Athletic Director for Performance, Health and Welfare and Head Athletic Trainer has duties that extend in to the follow spheres:

- Supervising three major unit directors within the Athletic Department: (1) strength and conditioning (he is ultimately responsible for all strength and conditioning coaches and programs for all 30 intercollegiate sports), (2) sports medicine (which includes all certified athletic trainers for all teams), and (3) sports nutrition.
- Coordinating delivery of certain services to all student athletes (30 teams, 900 athletes): health (physical and mental), wellness related research projects, insurance, discipline problems. By way of one example, these broadly defined coordination responsibilities would include addressing the need to maximize the likelihood that athletes who need mental health services receive them.
- Liaison with multiple campus units that provide services or support to student athletes, including, among others, UHS, Housing, and UCPD. Meeting this set of responsibilities requires communication regularly with service providers in a host of campus units and attending countless meetings.
- Overseeing performance planning for all intercollegiate sports programs

- Overseeing the use of data analytics to support pursuit of improved *performance*.
- Helping develop, implement, and monitor compliance with all sports-related *health and safety* policies, protocols, and guidelines (those created on campus and those superimposed by the Pac 12 and/or the NCAA).
- Monitor four assigned teams' budgets.
- Risk management (insurance, etc.)
- Emergency planning, including designing, implementing, rehearsing, and updating the Catastrophic Incident Guidelines.
- As a certified athletic trainer, providing medical care as needed.
- As Head Athletic Trainer (for all sports), consulting and collaborating with head team physician about health and safety issues and policies (for individual athletes on 30 teams and for athletes as groups in all sports).
- Consulting with the Faculty Athletic Representative as needed on student athlete health and welfare issues.

It is impossible to conscientiously and meaningfully meet all of these responsibilities.

We also would ask the campus and the Athletic Department to consider the possibility that in some instances there might be some tension between responsibility for “performance,” on the one hand, and responsibility for “health and safety,” on the other. While these two responsibilities can be complementary, there might be some risk that pursuit of “performance” would dilute sensitivity and attention, as first priorities, to “health and safety.”

Recommended Specific Responsibilities of the Athletics Health Care Administrator

There is a real risk that stakeholders (and the authors of this report) will expect too much of the person who fills this position, i.e., of including so many duties in this job description that the essentials end up being under-served. It follows that careful thought must be given to prioritizing this person's responsibilities, especially until experience provides campus leaders with more instruction about the capacities and limitations of this kind of post.

Bearing this admonition in mind, we suggest that the person in this post attend most carefully at the outset to monitoring the implementation of policies and protocols already formally in place. As in many large institutions, there is likely to be an unintentional gap between what is written and what is done.

At Cal, what is written looks pretty good. What the AHCA should determine, early in his or her tenure, is what is actually done -- regularly, not just

during audits or visible reviews or inspections. This would be an instructive way to begin looking for ways to make things better. In short, we would urge the AHCA to devote considerable energy to seeing how close the people in the field come to complying with the policy and practice prescriptions (about health and safety) that they are supposed to be following. In particular, we would urge the AHCA to try to understand how coaches and certified athletic trainers strike the balance between, or integrate pursuit of, performance and health.

Thus, in the first stages of her or his work, the AHCA would:

- (1) assess the adequacy and timely availability of appropriate medical services (diagnostic and therapeutic) and resources (equipment, supplies, appropriately trained personnel);
- (2) assess the quality, regularity, and accessibility of documentation related to health or safety matters;
- (3) assess the timeliness and sufficiency of communicating (in both directions) health-related information between professional providers of medical services (within UHS and off-campus) and the Athletic Department;
- (4) assess compliance by professionals and staff in the Athletic Department with health or safety related continuing education requirements;
- (5) assess systems currently in place for acquiring information *from athletes* about their health status and any concerns athletes have about safety or health (mental or physical); and
- (6) assess the availability, uses, and quality of equipment and facilities for compliance with the NCAA's health and safety regulations, guidelines from the National Athletic Trainers Association, and manufacturers' instructions.

These initial assessments would help shape the way the AHCA launches the efforts to meet his or her more general responsibility to help improve the design and implementation of systems to assure delivery to athletes of professionally first rate, appropriately targeted, and timely health care services.

In pursuit of this goal, the AHCA would establish and maintain direct, ongoing, and wide channels of communication with the units of the NCAA that have been so productively active in developing policies, procedures, and guidelines for promoting the health of student-athletes. Through such channels, the AHCA would assure that Cal's medical and athletic departments learned promptly about all new insights, issues, programs, policies, and resources that the NCAA generates or identifies and endorses.

During the initial stages of his or her time in the job, the AHCA would try to identify and experiment with ways to expand and regularize the flow of information about health and safety matters from and between all relevant persons

and entities. Maximizing protections for athletes is impossible without maximizing timely delivery of information to the health care professionals who are ultimately responsible for providing the services and shaping the policies in this arena.

Perhaps the biggest challenge that the AHCA would face is to find ways to encourage the athletes themselves to be more self-aware and more forthcoming about health and safety matters, to accept more fully their fair share of responsibility for their own health and safety, and, critically, to communicate to the AHCA (or an anonymous conduit -- ala a subsequent suggestion in this report) promptly, openly, and thoroughly about health or safety issues, concerns, or problems.

As part of the larger, comprehensive system, the AHCA would take on the challenge of increasing the likelihood that *athletes and/or their family members* would *report concerns, complaints, and apparent violations* of health and safety rules or policies, including instances or patterns of what an athlete perceived as abusive behavior (psychological or physical).¹⁰ Any such system would have to include appropriate protections for confidentiality, as well as protections against retaliation (subtle or otherwise).

In addition to trying to improve the quality and timeliness of the flow of information about health and safety from the athletes, the AHCA also would look for ways to enhance communication and *reporting* about such matters to a centralized source (the AHCA) from coaches, certified athletic trainers, other staff of the Athletic Department, as well as from other campus sources, including counselors, deans, and teachers. The AHCA would look for ways to regularize these kinds of communications -- without creating bureaucratic burdens or consuming substantial time of staff.

The AHCA would focus in particular on lines of communication with coaches and certified athletic trainers, not just about incidents or obvious injuries, but also about concerns and questions. Encouraging coaches and other staff to recognize health matters they don't fully understand, or symptoms whose significance is unclear, is especially important. So the AHCA would need to make it easy for athletic staff to ask questions confidentially (without fear of some adverse inference or consequence), and then to make sure they got useful responses promptly (perhaps from physicians).

¹⁰In a subsequent section we will describe one tool that Cal could consider using to pursue this goal: requiring the players to complete, anonymously and at prescribed intervals, an electronically distributed questionnaire that posed a small number of targeted questions about health and safety.

One important component of such a new system would be to make sure that everyone in a position to make pertinent observations knew that their communications to the AHCA about such matters would be viewed by campus authorities as significant “positives” in job performance evaluations and in decisions about retention and advancement. In other words, the AHCA would recommend ways to *create incentives for people in a wide range of positions and situations to express concerns and ask questions in this arena, and to visibly reward the people who responded positively to such incentives.*

Psychological and psychiatric services are an especially important area in which it is widely recognized that many Division One institutions have room to improve. With the increasing national awareness of need in this arena, one of the AHCA’s principal tasks should be to work with campus experts to develop a comprehensive, master “Mental Health Service Plan” that would include, among other things, a “Mental Health Emergency Action Plan.” The AHCA could draw on experts from the NCAA, UHS, the psychology department, professors who specialize in communications, ethnic and gender studies, cultural anthropology, the athletic department, and the office of general counsel (to appropriately protect and navigate privacy rights).

In developing mental health plans, it is imperative to deepen the awareness and knowledge (among all staff and athletes) of symptoms or signs of emotional/mental/psychological stress, and then to *reward* everyone (especially the athletes) who contributes an observation, raises a concern, or asks a question about a mental health matter.

A related component of the AHCA’s responsibilities would be to devise and regularize a system to assure that every mental health problem (embryonic or otherwise) results in a referral to an appropriately specialized treating professional and *that athletes so referred, on informed consent, actually participate in diagnostic or treatment sessions.*

Similarly, the AHCA would be responsible to monitor (with appropriate levels of respect for privacy and patient independence) how individual athletes respond to or progress in treatment, or, when athletes make informed decisions not to participate in treatment, how they fare (emotionally and physically) after their potential need surfaced.

This kind of follow-up and monitoring is both time consuming and extremely important -- and cannot be achieved without a significant commitment of human resources through a well-designed administrative system.

What we have just written about mental health applies as well to physical health. What is needed is a comprehensive system (1) that focuses initially on ways to assure that issues, injuries, and concerns are promptly identified, (2) that

assures that an appropriately specialized professional addresses the matter and prescribes a treatment regimen or plan (to include follow-ups as necessary), and (3) that monitors compliance with every treatment plan: compliance by the athletes, coaches, certified athletic trainers, and medical professionals.

It simply is not enough to tell an athlete to “come back and see me in four weeks.” Someone on the athlete care team needs to be aware of recommended treatment (when appropriate, and at a very general level) and then to support and encourage the athlete to follow through with recommended medical interventions. Someone on the athlete care team also needs to make sure that all relevant staff in the athletic department clearly understand, then actually honor, the instructions and limitations set by the medical professionals.

Second Structural Suggestion:
Create a Specialized Appeal Panel
From Which Employees in the Athletic Department or UHS
Could Secure An Independent Review
of Adverse Employment Actions

This second suggestion also has roots in papers generated by the NCAA. The ultimate purpose of establishing such an Appeal Panel, which presumably would be called upon to act only rarely, would be to increase the confidence of employees (including part-time graduate assistants or other non FTEs) in the Athletic Department and UHS that they could report concerns about risks to the health and safety of athletes, and they could resist (in professionally appropriate ways) directives that seemed to create such risks, without suffering unfair retaliatory actions by supervisors or other superiors. Stated differently, the purpose of creating such an Appeal Panel would be increase the visibility and size of the “safe space” in which conscientious employees could take steps to enhance the health and safety of student athletes.

The Appeal Panel would provide a forum, completely independent of the Athletic Department and UHS, that could protect employees from adverse employment actions that were based at least in part on conduct intended by the employee to protect the health or safety of athletes, e.g., on efforts by the employee to comply with the letter and spirit of policies related to health or safety, on filing complaints or reporting perceived violations of health or safety policies, or on resistance by the employee to directives or practices that the employee believed would jeopardize player health or safety.

This Appeal Panel would *not* have jurisdiction over adverse employment actions involving the athletic director, the head football coach, or the director of

university health services. The Chancellor would retain un-reviewable campus authority over actions affecting the employment of the persons occupying these positions.

But coaches, health care professionals, and other specified categories of employees (full or part-time) below these highest levels would be entitled to appeal adverse employment actions to this panel, including not only hiring, firing, and demotion, but also negative performance evaluations or other negative written entries in employees' personnel files.

This Appeal Panel might have five members (serving on rotating terms) -- all of whom would be completely independent of the Athletic Department and UHS. By way of example, at any given time the panel might include, a tenured history professor, the dean of undergraduate studies, a tenured law professor, a high-level physician from another UC campus, and an experienced administrator from another campus.

The members of this Panel would be appointed through a process that further reinforced perceptions of the Panel's independence and integrity, e.g., one member by the Chancellor at Berkeley, one by the head of the Faculty Senate, one by the dean of the law school, one by the Dean of the School of Medicine at UCLA or Davis, and one by the Chancellor at UC San Diego, Davis, or Irvine.

A complainant who elected to appeal to the Panel would be required to sign a document committing him or her to accept the terms and conditions on which the appeal would proceed.¹¹ The Appeal Panel would consider all relevant documents, would accept additional written submissions before the hearing, and could invite written submissions again after the hearing.

At the hearing, only the complainant and the person who took the adverse employment action would be permitted to appear (no lawyers or other agents/assistants).¹²

The Panel would be required to permit the complainant and the person who took the adverse employment action to make oral presentations, separately but in the presence of the other party. These presentations would take whatever form the speaker chose, e.g., narratives. The other party would not be permitted to ask

¹¹By agreeing to these terms and conditions, the appellant would waive (expressly and freely) any remaining parallel appellate rights he or she might have as a member of a union or arising out of an individual employment contract.

¹²The authors do not know whether this provision, or any other aspect of this one possible model for an Appeal Panel, would conflict with rights or procedures already in place (and not amendable to change) from other sources, e.g., state law, University or campus policies or protocols, employment contracts, collective bargaining agreements, etc.

questions or to interrupt in any manner. An additional limited period would be available for members of the Panel to pose questions.

The disposition by the Panel would be the final action on the matter by the University -- but would not purport to curtail the claimant's rights to pursue remedies under the law in the public courts.

Third Structural Suggestion:
For Health and Safety Matters,
Require the Athletic Director to Report Directly to
the Medical Director of University Health Services

At many Division One Institutions, the only person to whom the Athletic Director reports directly, on any matter, is the Chancellor or President. This fact can dilute the Athletic Director's attention to health and safety matters and can reduce the flow of health and safety information to the University's Medical Director. It also can lead to confusion about where ultimate power and responsibility lies for health and safety matters. These possibilities can needlessly prevent health and safety issues from receiving the kind of focused attention they require and deserve.

We can think of no reason, with respect to health matters, that an Athletic Director should not be subject to the power of a Medical Director. In sharp contrast, we can think of multiple ways that explicitly locating power in the Medical Director over the Athletic Director -- only in this specific arena -- would improve health and safety and would enhance the confidence that parents of athletes, and athletes, would have in the University's commitment to the health and safety of their student athletes.

Making the Athletic Director report to the Medical Director about health and safety would elevate health and safety on the Athletic Director's list of priorities. The Athletic Director's list of priorities is necessarily long. And the priorities on it are affected by a host of competing and quite substantial variables. The sheer length of the list, and the weight of competing considerations, easily could push health and safety, unselfconsciously, to a lower position than is consistent with the values that are supposed to drive an institution like the University of California. A reporting requirement to the Medical Director would push health and safety higher up the list.

Such a requirement also would trickle down, constructively, within the Athletic Department. If the boss is required to report, regularly, on health and safety matters, the boss will push those beneath him or her on the organizational

chart to be more active, better informed, and more responsible in health and safety matters.

In addition, imposing and regularizing this reporting requirement on the Athletic Director would expand the flow of information to the Medical Director and increase the level of attention she or he pays to these matters. Increasing the Medical Director's knowledge, in turn, will enhance her interest and improve her effectiveness in supervising the Head Team Physician.

Fourth Structural Suggestion:
**The Associate Athletic Director for
Performance, Health & Welfare
Should Be Supervised Directly By and
Should Report Directly to
the Head Team Physician**

Some Division One institutions do not make it sufficiently clear where they locate ultimate power and responsibility for the health and safety of athletes. We recommend that Cal make the location of that power and responsibility unchallengeable clear by requiring the Head Team Physician for Football to directly supervise the Associate Athletic Director for Health and Welfare, and by requiring the Associate Athletic Director for Health and Welfare to Report, formally, directly, and regularly to the Head Team Physician. There should be no "dotted" or "dual" lines on organizational charts with respect to this power and responsibility.

By requiring the Head Team Physician to supervise the Associate Athletic Director for Performance, Health and Welfare, and this Associate Athletic Director to report directly to the Head Team Physician, the campus would eliminate any nascent concern there might be about the reconcilability of the pursuit of performance, on the one hand, and, on the other, the priority of protecting the health and safety of athletes. The responsibility to make these two important objectives compatible, while maintaining the ascendancy of health and safety, would be definitively located in one person -- the physician most knowledgeable about the athletes, about their health, and about the training regimens with which they are expected to comply.

The University should require the Associate Athletic Director for Health and Welfare to submit written reports to the Head Team Physician no less often than once a quarter. The Head Team Physician should be required to specify the subjects that, at a minimum, the Associate Athletic Director would be required to address in each of these reports -- and then, for every report, to provide written

feedback to the author. That feedback might include requests for clarification or elaboration, or to address additional subjects, or to suggest initiation of a process for reviewing and perhaps revising or abandoning existing policies, protocols, or practices.

As we explain in a subsequent section of this paper (“Non-Structural Suggestions”), we also recommend that Cal regularize and expand the required reporting by the Head Team Physician to her or his immediate supervisor, the Medical Director of UHS. In some Division One Institutions, the campus or university’s Medical Director knows and learns too little about health and safety matters in the most prominent and the most obviously risky activities in which undergraduates participate. And participation in football at a Division One institution (unlike participation in the vast majority of other sports) is virtually a full-time job, virtually year-round. So there is a much greater need in this arena than in most others for physicians to assume direct responsibility -- and for medical directors to be more knowledgeable and more actively involved. It is this objective that informs our next structural suggestion.

Before turning to that next suggestion, however, we emphasize that there is no tension or inconsistency between the notion that ultimate power and responsibility for health and safety should be clearly located in one person and position, on the one hand, and, on the other, establishing and actively using cooperative, collaborative, ‘team’ approaches to identify health and safety issues, to develop policies, and to implement practices to enhance protections.

Keeping abreast of developments and dangers in health and safety, and generating effective responses to health and safety challenges, are complicated undertakings that require thoughtful and informed contributions from a wide range of sources and vantage points, contributions that must be well coordinated and interactively processed.

It follows that, to maximize its value, the system a campus establishes must secure inputs from all front-line sources, and then draw on the full range of relevant experience and expertise to collaboratively craft ideas about how to move things forward and how to respond most effectively to identified needs or problems. Collaboratively developed policies and protocols that are endorsed by all stakeholders are likely to be the most intelligent and the most effectively followed.

It also is critical, however, that the system not diffuse ultimate responsibility. As we emphasized in the “Themes” section of this report, it is our view that diffusion dilutes responsibility. Diluted responsibility risks compromising achievement of objectives. One person in one position needs to feel, acutely: “It is my job to be sure this gets done. If it doesn’t get done, the

harms that could have been prevented are my fault.” Fear of this feeling, and of blame, prompt action.

It is by combining (1) this kind of focused, inescapable sense of responsibility with (2) a collaborative process that works “from the ground up” that a system can move closest to achieving the objective that is shared by everyone: maximizing protections for the health and safety of student athletes.

Fifth Structural Suggestion:
Require the Associate Head Athletic Trainer
and
the Head Athletic Trainer for Football to
Report Regularly and Directly to the Head Team Physician

In our view, maximizing protections for the health and safety of student athletes requires maximizing the flow of information about their physical and mental status from the people to whom that status is most visible, the certified athletic trainers, to the person best situated by education and experience to take appropriate prophylactic or responsive action, the Head Team Physician.

To maximize this flow of information, both the Associate Head Athletic Trainer (who is not a physician or otherwise licensed medical professional) and the Head Athletic Trainer for Football should be required to report directly and regularly to the Head Team Physician. It is important that this reporting be direct - not indirect and through other layers on an organizational chart. It also is important that the Head Team Physician be charged with responsibility for directly supervising and for evaluating the job performance of the Associate Head Athletic Trainer and the Head Athletic Trainer for Football.

Through their Head Athletic Trainer, all other athletic certified athletic trainers in the football program also would report to and ultimately be controlled by the Head Team Physician.

Imposing these reporting and supervisorial responsibilities need not mean that the Associate Head Athletic Trainer and/or the Head Athletic Trainer for Football could not also be required to report regularly to other professionals within the Athletic Department (e.g., a head athletic trainer for the entire department) -- but the final power to direct and the final responsibility to assess the work by the Associate Head Athletic Trainer and the Head Athletic Trainer for Football should be located clearly in a physician, not elsewhere, e.g., not in another certified athletic trainer and not in a senior athletic department administrator.

The Team Physician should be required, of course, to secure input regularly for additional sources about the performance of the head athletic trainer for

football or the performance of the Associate Head Athletic Trainer, e.g., from the campus' Head Athletic Trainer and, as appropriate, from the Senior Associate Athletic Director who is designated as the "Supervisor" for football. Some of this input should be provided in writing (at regularly scheduled intervals) -- and all of it should be given substantial consideration by the Team Physician as she supervises and assesses the job performances of the Associate Head Athletic Trainer and, separately, of the Head Athletic Trainer for Football.

Certified athletic trainers consider themselves, and should be considered, integral parts of the campuses' team of health care professionals. But to be integral to the health care system, certified athletic trainers need to be educated and continually re-educated about relevant advances in medical science. This should include not only continuing education through the National Athletic Trainers Association, but also with and by the team physicians with whom the certified athletic trainers regularly work. To make sure this kind of education occurs, and that certified athletic trainers feel the maximum incentive to absorb this education and to integrate it into the day-to-day performance of their jobs, certified athletic trainers need to feel that it is a physician who supervises and controls their work, and that it is a physician who ultimately will pass judgment on their job performance.

Sixth Structural Suggestion:
Openly Acknowledge That
the Head Strength and Conditioning Coach for Football
Reports, *But Not Exclusively*, to the Head Football Coach,
While Also Requiring the S&C Coach to
Report Directly to the Head Athletic Trainer for Football

It seems quite unrealistic to suggest on an organization chart (as seems currently to be the case at Cal) that the football team's Head Strength and Conditioning Coach does not 'report' to the Head Football Coach, especially when the Head Football Coach has in the past played such a decisive role in determining who is hired (and fired) as the team's Head Strength and Conditioning Coach. 13

¹³The job description of the head strength and conditioning coach includes a telling indicator of the relationship between him and the head football coach. This job description includes the following statement: "Senior management and Head Coaches review objectives to determine whether or not the unit is providing the appropriate service and training for optimal performance of sports teams."

Instead of confusingly elevating form over substance, the University and the Athletic Department should acknowledge that one of the Head Football Coaches' direct reports is the Head Strength and Conditioning Coach.

However, the campus also should clearly require the Head Strength and Conditioning Coach to report, either *directly* on his or her own, or *directly in tandem* with the campus-wide Director of Strength and Conditioning, to the Head Athletic Trainer for Football. Given the importance and potential complexity of the subjects of such communications, it is essential that they be regularized and direct, not filtered through other positions on the organizational chart.

It is imperative that certified athletic trainers, and through them, the Head Team Physician, have the power and responsibility to set appropriate boundaries on the plans, protocols, and actions of strength and conditioning coaches in every way that potentially implicates the health or safety of the athletes. In the *health and safety* arena, strength and conditioning coaches can have only *one 'final-say' boss* and that boss, ultimately, must be *a physician*. If there is any tension between performance and health, health always trumps performance. All coaches, and all certified athletic trainers, must be explicitly required to resolve all doubts, all arguably close questions in this arena, in favor of health and safety.

In a football program, Head Team Physicians can use certified athletic trainers to help meet 14 some of their responsibilities for the health and safety of the players. In this arena, coaches (regardless of where their position sits on the organizational chart) must be required to work closely with certified athletic trainers and to follow meticulously every directive they receive from certified athletic trainers. If there is any tension or inconsistency between what a strength and conditioning coach is asked to do by a football coach and what he or she is asked or told to do by an certified athletic trainers, the strength and conditioning coach must honor, to the letter, the requests or directives from the certified athletic trainer.

This would *not* mean that the Head Athletic Trainer for Football would be given final responsibility and authority for passing judgment on the job performance of the strength and conditioning coach. These responsibilities should be shared with the campus-wide Director of Strength and Conditioning and the head football coach. Thus, performance evaluations and job status determinations would be made on the basis of equally weighted assessments from three sources:

¹⁴One especially important and sensitive role certified athletic trainers can play is monitoring and reporting on day-to-day strength and conditioning activities for compliance with requirements, limitations, and guidelines promulgated by the team physician.

the Head Athletic Trainer for Football, the campus-wide Director of Strength and Conditioning, and the Head Football Coach.

Seventh Structural Suggestion:

Assure that the Associate Team Physician Always Is an FTE

As will be clear in the next section of this report, we recommend adding a long list of responsibilities to the job description of the Head Team Physician. No one person would be able to meet even most of these responsibilities. But the responsibilities are important, so we recommend that the campus assure that the Associate Head Team Physician position is an FTE, always filled, and dedicated completely to helping the Head Team Physician meet her responsibilities.

The Medical Director of UHS and the head team physician would decide which duties would be delegated to the Associate Head Team Physician for front line performance. It would not be wise (or cost effective) to try to assign these duties on an *ad hoc* or changing basis to physicians in private practice with whom separate contracts would need to be negotiated and over whom supervision would be difficult, at best.

We suggest that the direct reports to the Associate Team Physician include the Associate Head Athletic Trainer for and the (newly created) licensed clinical psychologist for intercollegiate athletes. Because the responsibilities of the Athletic Health Care Administrator would reach into so many areas, we suggest that she or he report directly to the Head Team Physician, not directly to the Associate Head Team Physician.

Eighth Structural Suggestion:

**Hire a Licensed Clinical Psychologist
to Work Exclusively, as a Specialist, with Athletes
Who Face Psychological Challenges**

The NCAA is the source of this suggestion.

This psychologist would be regularly visible to and would become familiar with the athletes, e.g., by making periodic presentations about common stressors and emotional health challenges, by attending some practices and team meetings, and by providing counseling or therapy services to individual athletes.

In conjunction with other mental health care professionals and faculty with specialties in relevant fields, this psychologist could be primarily responsible for developing or regularly updating and refining a “Student-Athlete Mental Health Care Plan.” After generating a draft with health care professionals and considering

input from the Athletic Director, this mental health care professional would vet this plan with campus attorneys, risk management professionals, and the student services office.

As part of this plan, this psychologist would pull the lead oar in developing and overseeing the administration of a comprehensive plan for referring more acute or enduring mental health problems to the most appropriate specialists in the area, e.g., at UCSF, or in the East Bay medical community, *with special sensitivity to diversity*, especially racial/ethnic and gender diversity, to maximize the odds that the athletes would participate in the process of addressing their problems and would accept as credible the suggestions/diagnoses/prescriptions they were provided. He or she could make sure all staff (and athletes) know the campus' mental health emergency protocol and that all the relevant information from the UHS and the student services departments are both understood by staff and students and fully integrated into the education and protocols of all staff in the Athletic Department.

A specialist in this arena would develop a more particularized understanding of the unique stresses that athletes face and the unique challenges of getting athletes to recognize symptoms/signs of impairment or danger and to acknowledge problems, then to open up about their inner emotional world and the sources of its problematic or painful parts.

This specialist also could educate staff, in recurring cycles, about mental and emotional health generally, including about symptoms for which to be alert and circumstances that are known to increase the likelihood of mental health problems arising.

In addition, this specialist could help conduct pre-participation screening and counseling and could help athletes recognize and manage eating disorders

This mental health professional also might help address tensions between coaches, between coaches and certified athletic trainers or physicians, or between players.

NON-STRUCTURAL SUGGESTIONS

1. Expand and make more explicit, in employment contracts and job descriptions, the Athletic Director's and every coaches' responsibility for health of safety of players.

The Director of Intercollegiate Athletics (on many campuses called the Athletic Director) shoulders considerable responsibility for policies and procedures. Because of the paramount importance of policies and procedures that implicate or squarely address health or safety matters, we suggest that the Athletic Director's employment contract and job description expressly identify athletes' health and safety as the Athletic Director's single highest priority.

Because the Head Football Coach has so much influence over team culture, and over the prioritization of values and objectives that shape it, it is extremely important that he take an active role in the health and safety arena and, by visible example, demonstrate the central place that the health and safety of the athletes occupies in the football program.

The Head Football Coach's employment contract, his job description, and the forms that set forth the criteria under which his job performance will be evaluated should explicitly impose on him or her a substantial responsibility (a) to consult regularly about health and safety with the Head Team Physician and the Head Team Athletic Trainer and, through them, (b) to keep abreast of best practices to protect the physical and psychological well-being of his athletes. Employment contracts and job descriptions also should state clearly that the final, unchallengeable authority to make health or safety decisions, and to approve strength and conditioning drills, workouts or programs, rests with the team physician and not with the coaching staff or the certified athletic trainers.

In a job description system like Cal's, which specifies the percentage of the employee's time that is to be devoted to each of many separate responsibilities, the head football coach should be credited with, and expected to spend, at least 10% of his time being educated about and attending directly to health or safety matters. Among other things, the head coach should be required to meet at least bi-weekly, face to face, with head team physician.¹⁵ Each such meeting should be documented -- but without requiring burdensome elaborations of substantive matters discussed.

¹⁵The "face-to-face" requirement is important -- and would be easy to satisfy because at Cal the office of the Head Team Physician is in the same facility as the office of the Head Football Coach.

Because of the especially sensitive and significant relationship between the strength and conditioning program and the health and safety of the athletes, the Head Strength and Conditioning Coach also should be required (by employment contract and job description) to meet bi-weekly, face to face, with the Head Team Physician. When feasible, it would be productive and efficient for the Head Football Coach and the Head Strength and Conditioning Coach to hold their bi-weekly meetings with the Head Team Physician simultaneously.

Similarly, the employment contracts and job descriptions of all the other football coaches should explicitly impose a quantified duty to attend to health and safety matters -- both through (at least annual) continuing education requirements and through regular, documented consultations about health and safety issues with certified athletic trainers and/or physicians.

In addition, to drive home the importance of attending with appropriate levels of care to health and safety, all coaches' employment contracts should clearly state that negligent endangerment of the health or safety of student athletes would be a sufficient ground for termination "for cause."

2. Re-cast the employment contracts and job descriptions of the Head Team Physician and the Medical Director of UHS to place greater emphasis on prevention, and to require regularly scheduled, documented reporting about health and safety of athletes.

The employment contracts and job descriptions of the Medical Director of University Health Services and of the Head Team Physician should be adjusted to place greater emphasis on *prevention* -- especially with respect to obviously risk generating activities like Division One football. While these obligation-fixing documents, as currently cast, by no means ignore prevention, in our view they do not prioritize it as prominently as it should be.

To give reality to the priority of prevention, the Medical Director of UHS and the Head Team Physician should be required to submit annual reports to the Chancellor that document the challenges they have faced in the health and safety arena and the steps they have taken to meet those challenges.

In addition, the Head Team Physician should be required to submit quarterly written reports to the Medical Director of UHS that describe actions taken or policies adopted to reduce risks of injury and illness to the athletes. Being required to submit such reports will intensify the Physician's focus on these duties.

The Medical Director should be explicitly required to discuss these quarterly reports in face to face meetings with the Head Team Physician within two weeks of their quarterly submission. Receiving such reports, and being required to discuss them with the Head Team Physician, will enrich the information base the

Medical Director uses to meet her responsibility to oversee the provision of medical care to intercollegiate athletes.

3. Require the Head Team Physician (not an administrator or higher level certified athletic trainer) to define, delineate, and place boundaries on the roles and responsibilities of all certified athletic trainers.

4. Require the Head Team Physician to assess, annually and in writing, the performance of the Associate Head Athletic Trainer and the Head Athletic Trainer for Football.

5. Require documented, independent approval by the head team physician, at two fixed points each year, of each separable component of the football team's strength and conditioning program.

Twice each year, the Head Team Physician should be required to examine, evaluate, and, if appropriate, approve (in writing and in advance) every severable component of the football team's strength and conditioning program, first during the first two weeks of January and then, again, during the last two weeks of July.¹⁶

Approval of "workout design," even components that are considered "traditional" or "typical" by athletic staff, should not be delegated to coaches or even to certified athletic trainers. Instead, twice each year, the Head Team Physician and the Head Athletic Trainer for Football should meet with the Head Strength and Conditioning Coach to review, specifically and in an appropriate level of detail, each component of the proposed strength and conditioning plan. Together, the coach, the certified athletic trainer, and the physician should review each drill or type or form workout.

Along the way, the coach and/or the certified athletic trainer should identify any unusual, new, or innovative forms of workouts or drills that are included in the plan, should articulate the purposes of each such drill or workout, and should identify any unusual or unpredictable physical or psychological stresses the particular drill or workout might impose.

After discussion with the coach and the certified athletic trainer, the physician should make clear to both, and should record, any restrictions she is imposing, any special precautions she requires, or any specific signs or symptoms

¹⁶These two-week time frames correspond to (1) the beginning of each year's new strength and conditioning cycle (post-season) in January, and (2) the beginning of workouts in preparation for the fall football season (end of July, very early August).

of distress the coaches and certified athletic trainers should look for in connection with any particular drill or type of workout, or any component of the plan.

The Head Team Physician must have absolute and unchallengeable authority to remove or impose restrictions on any component of any proposed (or active) strength and conditioning program. The Head Team Physician should not be permitted to delegate her responsibility to review and approve in advance all components of a strength and conditioning program even to the Head Athletic Trainer -- and never, under any circumstances, to a coach.

6. Require the Head Team Physician, by employment contract and job description, to randomly make multiple, direct, and substantial “observations” of the actual conduct of the strength and conditioning program.

The Head Team Physician also should be required to document a prescribed number of these substantial observations (as opposed to routine look-ins) during each strength and conditioning cycle (January - May and August - December). Her documentation should include any decision she made to remove or to limit or change significantly (in content or pace) any strength and conditioning drill, workout, or program.

7. Require the Head Team Physician to determine (after consulting all other health and training team members) the required level of supervision¹⁷ by certified athletic trainers for the major components of the strength and conditioning program (e.g., for prescribed exercise regimens or specific kinds of workouts).

8. Require the Director of UHS and the Head Team Physician to develop specific criteria for identifying the circumstances in which the campus health team would be required to seek a second medical opinion from an appropriately qualified outside medical specialist.

9. Every five years, have an unassailably qualified and independent entity or professional group conduct a full audit of all aspects of the systems that have

¹⁷Specifically, the ratio of certified athletic trainers to athletes and, if appropriate, how the certified athletic trainers should be deployed. According to the 2009 version of the Strength & Conditioning Professional Standards and Guidelines published by the National Strength and Conditioning Association, a very high percentage of lawsuits arising out of “athletic injuries deal with some aspect of supervision.” p. 5.

been set up for protecting and promoting the health (physical and mental) of all intercollegiate athletes.

10. Incorporate into initial and annual health screenings of athletes a specific set of requirements for assessing the mental health of each player -- looking in particular, but not exclusively, for signs of depression, anxiety, risk of suicide, or unusual stressors, e.g., the death or serious illness (physical or mental) of a parent or sibling, parents' divorce, a parent's loss of job or significant income, criminal prosecution or incarceration of a parent or sibling, etc.

Develop a specific set of instructions that teach coaches and certified athletic trainers what they should do when they see signs of psychological distress in athletes -- and impose rules that require all coaches and certified athletic trainers to follow these instructions and to document, each time, their having done so.

11. Annually have a mental health care professional (a psychiatrist, psychologist, or a licensed clinical social worker) teach, in a face-to-face setting, all coaches and all certified athletic trainers about what signs or symptoms to look for that might indicate that an athlete is experiencing or at risk of experiencing significant mental or emotional problems.

12. Require the Head Team Physician, or a qualified physician designated by the Head Team Physician, to make every decision about whether a football player will be permitted to return to competition after an acute or long term injury.

Authority to make this kind of decision should not be given (by unclear statements of policy or by delegation) to certified athletic trainers. Instead, it should remain the responsibility, in the football program, of the Head Team Physician.

13. Locate in the Head Team Physician responsibility for determining the content of required annual supplemental health care education for every certified athletic trainer and every coach in the football program.

Each year, some components of this education should be designed (1) to teach coaches about practices that can increase risks to athletes' health, and (2) to help coaches identify signs or symptoms of possible physical or psychological problems or of unhealthy levels of stress.

Because too little attention has been paid, across the nation, to educating coaches about mental health matters, during the first few years of implementing

this policy a substantial part of these annual educational hours should be devoted to education about emotional and psychological issues.

At Cal, consider asking experts from the psychology department, the School of Public Health, or UCSF to give lectures or conduct short seminars that would teach staff the most current science in the field of mental health and the most current thinking about how to detect emotional or psychological problems.

14. Require every coach in the football program to complete annually at least seven (7) hours of supplemental education about how to protect their athletes' health.

The Head Team Physician should be responsible for assuring compliance with this requirement and should be assisted administratively in meeting this obligation by the AHCA.

15. Require the Head Team Physician to deliver written reports annually to the Medical Director of UHS that describe the specific steps she has taken to deliver the most current relevant medical knowledge to certified athletic trainers and to coaches.

16. Require the Head Team Physician to complete annually no fewer than 10 hours of continuing professional education in topics and by means approved in advance by the Medical Director of UHS.

17. Require the Medical Director of UHS, the Head Team Physician, and the Athletic Director to design and implement a system that will deliver education *to alumni*, at least annually, about recent developments in sports medicine, as well as the most pressing health and safety issues or challenges facing the football program.

18. By employment contract and job description, require every assistant strength and conditioning coach and every assistant athletic trainer working in the football program to *promptly report*, in writing, to *both* the Head Strength and Conditioning Coach and the Head Athletic Trainer for Football every significant health or safety issue that surfaces or incident that occurs.

In turn, again by employment contract and job description, require the Head Strength and Conditioning Coach and the Head Athletic Trainer for Football to promptly relay every such report to the Head Team Physician.

Require the Head Team Physician to relay every such report promptly to the Medical Director of UHS and to the Athletic Director.

Require the Head Team Physician, each month, to submit a written report to the Director of UHS that describes in professionally appropriate detail what steps have been taken to address each reported health or safety incident or problem, as well as each reported significant injury or serious illness and to summarize the affected athletes' current status and prognosis.

Require the Director of UHS to include every such report in a quarterly written submission to the Chancellor and to the Athletic Director.

These quarterly reports also should identify any other health or safety issues or challenges that surfaced in any of the intercollegiate athletic programs and should describe how and to what effect the Department has addressed such matters.

19. The University, drawing on multiple sources, including legal counsel, should establish, and publicize regularly and actively, 18 requirements, *incentives*, 19 and procedures that will increase the likelihood that staff and students will report perceived violations of rules, protocols, or other directives related to health or safety.

The authors of this document do not know to what extent such requirements, incentives, and procedures already are in place at Cal. We acknowledge that the NCAA has in some measure addressed this matter, 20 and that this is sensitive business, as it requires careful navigation between potentially competing rights and other legally protected interests.

On the incentive side of things, as noted elsewhere, we suggest that the Athletic Department and UHS actively publicize their intent to recognize as significant “positives” in employees’ performance evaluations all good faith reporting of concerns about or potential problems related to health or safety, as well as all suggestions about how to improve safety protections or promote athletes’ health.

¹⁸Posting a notice on a wall or bulletin board is woefully insufficient. “Actively” publicizing the availability of a system like this should include, among other things, clear oral reminders from highly-placed people (like the head coach) at important gatherings, sending electronic messages directly to addresses at which players and staff are likely to look for communications that are important to them, and short, crisp video or film clips shown at team and staff meetings that everyone is required to attend.

¹⁹Incentives might include such things as formal recognition at alumni or team events, bonuses, or positive notes or points in personnel files and/or on annual performance reviews. It might be appropriate, for example, to include a category like “contributions to health and safety” on the form score sheets that are used during performance reviews.

²⁰See NCAA Bylaws 2.8, 3.2.4.17, and 3.2.4.1.7.

We also note that the kind of comprehensive system we envision need not involve in every instance the automatic triggering of a disciplinary or quasi-adjudicative process. For some matters, the most appropriate initial response might include asking a few relatively straightforward questions and/or convening a simple conversation with affected persons.

After conversation, the next step could be informal and confidential mediation (perhaps using free services from campus teachers or graduate students with appropriate training).

After mediation, more tightly rule-controlled processes could be triggered -- processes that might well already be in place on campus or that could be tailored to special circumstances within the Athletic Department. This is not the place, of course, to attempt to lay out the details of any such processes.

Here we simply emphasize the importance [1] of having a comprehensive system in place for responding to allegations against or complaints about staff in the health or safety arena and [2] *regularly and actively reminding athletes and staff* that (i) the system is in place, (ii) is not complicated, (iii) includes appropriate protection against retaliation and of the rights of all parties, and (iv) is readily accessible.

We suggest that consideration be given to how an Athletic Health Care Administrator might be used to advance the goal of securing compliance with mandates and increasing athletes' confidence that they have access to a safe process for communicating concerns. We describe in the next numbered suggestion one possible way an AHCA might be used for this purpose.

20. Require each member of the football team, once a quarter, to complete anonymously (on line) a short questionnaire that includes focused inquiries about physical and mental health and about safety, and that serves as a convenient and protected means for expressing any concerns about conduct by staff or players.

The completed questionnaires would be delivered electronically only to the AHCA, who could not share them with any employee of the Athletic Department or any certified athletic trainer. The information in the completed questionnaires could not be used for any purpose other than enabling the AHCA, without disclosing sources and only in general terms, to alert coaches, staff, and medical professionals that there might be a need to take some steps to address a possible problem.

These anonymous inputs could not be used to trigger any kind of disciplinary proceeding or any investigation of any person; nor could they be used for any purpose (e.g., evidentiary) connected with any disciplinary proceedings.

Instead, wholly independent steps would need to be taken to register a formal complaint or to initiate some kind of investigation or disciplinary proceeding.

The athletes should be made to understand that failure to return the questionnaires would trigger an appropriate sanction. ²¹

21. Add specific questions about health and safety to the survey instruments the athletes are asked to complete annually and/or when they leave the football program.

At some institutions, these survey instruments cover a lot of ground but fail to ask questions about how well the medical professionals, including certified athletic trainers, and coaches protected or promoted health and safety. The failure to include any request for feedback, assessments, suggestions or concerns in this important subject area can create the impression that health and safety of athletes are not high priority matters at the University. As important, the failure to expressly ask for feedback about these matters increases the risk that problems will go unaddressed or that opportunities to make improvements will be missed.

22. Prohibit, by University policy, any coach or other member of the athletic department from using any form of physical activity as punishment.

23. Prohibit psychological or verbal abuse of anyone for any purpose at any time by any coach or any other employee of the Athletic Department, or by any physician, psychologist, counselor, or certified athletic trainer.

24. Prohibit hazing or bullying of anyone by athletes or staff at any time (on team time or in any other setting).

This is the kind of prohibition that the head coach and his principal assistants must endorse very publicly and emphatically, in direct oral communication to the whole team, and to enforce vigorously and with zero tolerance.

25. Prohibit, by University policy, any member of the athletic department, directly or indirectly, from encouraging or authorizing any member or members of any team to impose or attempt to impose discipline on or to punish any other member or members of a team.

²¹By way of example only, an appropriate sanction might consist of requiring the athlete to commit a specified number of hours to helping with athletic activities at a local public school.

26. Require a certified athletic trainer to be present during, and able to see all parts of, every football workout or drill.

As we understand it, this suggestion already has been incorporated into Athletic Department policy for the football program.

27. Formally and explicitly confer on physicians and certified athletic trainers the unchallengeable authority to stop, limit, change, or to withdraw any athletes from any workout, drill, practice or competition that the certified athletic trainer is observing in his or her official capacity.

As we understand it, this suggestion also already has been incorporated into Athletic Department policy for the football program.

28. Update the “Coaches Role in Medical Care” policy that was adopted in June of 2016.

29. Articulate specific criteria that identify the circumstances in which coaches and certified athletic trainers are required by campus rule to report specific types of physical or psychological misconduct among players, e.g., an assault by one player on another or racial harassment.

30. Adopt procedures and practices that ensure that the Head Team Physician promptly is made aware of situations in which an athlete’s mental health has deteriorated seriously or has taken a turn that clearly increases the risk that the athlete will damage his or her health by continuing to participate fully, or without additional safeguards, in football drills, practices, or games.

We recognize that under applicable law and professional standards, without the consent of the patient or client, a mental health care professional, e.g., a therapist at UHS, could disclose confidential client information only to prevent “serious, foreseeable, and imminent harm to a client or other identifiable person.”

Cognizant of this important restraint, we recommend that the campus actively review current practices and procedures to determine whether additional measures could be implemented that would address, as reliably and comprehensively as possible, the most subtle sources of danger to students’ health: mental and emotional problems.

Our recommendation is based in large measure on the NCAA Inter-Association Consensus Document: Mental Health Best Practices - Understanding and Supporting Student Mental Wellness. This Consensus Document urges member institutions to adopt written institutional procedures for (1) management of emergency mental health situations, and (2) non-emergency mental health referrals. For both emergency and non-emergency mental health situations, these formally implemented procedures should specify both (1) the steps that will be taken to support a given student-athlete who is facing a mental health challenge and (2) the role-specific training about (a) mental health signs and symptoms and (b) referral processes that will be provided to stakeholders within athletics to help appropriately support this identification and referral process.

Toward these ends, we suggest that Cal invigorate and expand working groups that include mental health care professionals, sports medicine specialists (including team physicians), campus counselors who support student-athlete well-being, and other members of the campus community who share responsibilities or have expertise in this arena, e.g. members of the psychological sciences faculty.

Formal institutional policies should require these working groups to meet at fixed, relatively frequent intervals to identify emerging mental health issues or potential problems, to coordinate the flow of information about mental health issues facing individuals, groups, or programs, and to craft, from multiple professional sources, creative, integrated response strategies for addressing both individual and systemic challenges.

We also suggest that the campus community actively consider adopting policies that would encourage campus mental health care professionals to explore with their patients, confidentially and in therapeutically appropriate ways, the possible value of either the client or the therapist (with permission) sharing generalized information about the client's medical circumstances with a trusted conduit (like an AHCA) or with the Head Team Physician -- on conditions clearly fixed in advance that would strictly preserve the confidentiality of the information so shared while promoting exchange of information in support of athlete health and safety.

The act of visibly instituting such a policy, by itself, might encourage student clients and UHS therapists to consider more actively the possible value of getting some of this kind of information (again, at a generalized

level) to people who are positioned to make appropriately circumspect but ultimately constructive use of it.

31. Require annual audits of each player’s medical chart/records by the athlete’s respective team physician.

32. Teach all coaches and certified athletic trainers how to identify “stress indicators” and that one of their core professional responsibilities is to intervene when they see any such indicator, e.g., by removing the athlete from the exercise or event for sufficient time to identify the source of the problem and to determine how most appropriately to respond to it.

The certified athletic trainers at Cal have told us that some type of “stress indicator” is being developed.

33. Demand, in employment contracts and job descriptions, that all coaches, certified athletic trainers, and physicians commit fully to building into the football program a real “culture of learning.”

Every incident, every negative event or development, and every unusually constructive or positive act or action gives rise to an opportunity to learn, to bring in professionals, to re-wind events and circumstances, to discuss openly with the whole team what happened, try to determine why, to reward the positive conduct and, with respect to the negative conduct or event or incident, to work together to make changes to prevent it from happening again.

34. In connection with annual performance reviews, teach coaches and certified athletic trainers about the danger of a “culture of permissive equals,” a culture in which each certified athletic trainers and each coach feels entitled to engage in his or her work in an essentially autonomous sphere and in which *collegiality, freedom of operation*, and freedom from criticism or comments by peers, *are elevated* (implicitly, by habit, and by sub-cultural convention) *above protecting health and safety*.

Teach coaches and certified athletic trainers that, with respect to health and safety, certified athletic trainers and coaches are not equals. Certified athletic trainers have superior power -- because they have sensitive, ascendant, and non-delegable responsibilities. Remind everyone that, with respect to health and safety matters, physicians have superior power over both coaches and certified athletic trainers.

35. Consider having the Faculty Athletic Representative elected (for five year, renewable terms) by the Faculty Senate or appointed by the President of the Faculty Senate.

36. Require the Athletic Director, the Head Football Coach, and the Head Team Physician, together, to meet quarterly with the Faculty Athletic Representative -- to report about health and safety issues, among other topics.

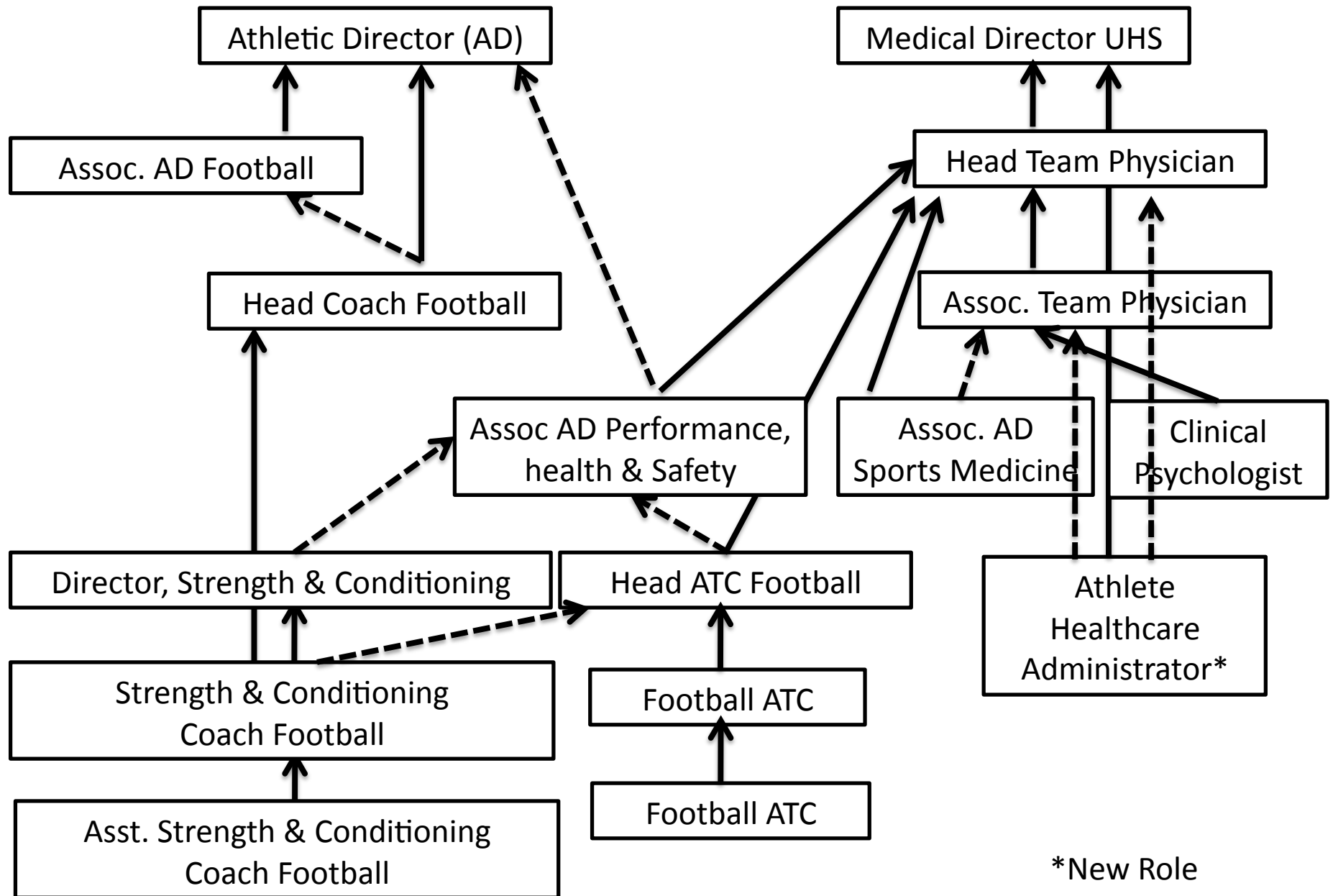
37. By University-wide policy, require the Chancellor to meet once each semester with the Faculty Athletic Representative to discuss health and safety issues, among other topics.

Attachment A
Persons Interviewed or Spoken With ²²
In Connection With This Project

Christopher Patti, former Chief Campus Counsel and
Associate General Council, U.C. Berkeley
Nils Gilman, former Associate Chancellor
Dean Robert Jacobsen, Faculty Athletic Representative
Anna Harte, M.D., Medical Director, University Health Services
Claudia Covello, Executive Director, University Health Services
Lindsay Huston, M.D., Head Team Physician
Mike Williams, Director of Intercollegiate Athletics
Chris Pezman, former Senior Associate Athletic Director
Ryan Cobb MS ATC, Head Athletic Trainer, Senior Associate Athletic Director
for Performance, Health and Welfare
Justin Wilcox, Head Coach, Football
Laura Dixon MS ATC, Associate Head
Athletic Trainer, Assistant Athletic Director for Sports Medicine
Mike Blasquez CSCS ATC, Director, Strength and Conditioning (all sports)
Torre Becton MS SCCC, Strength and Conditioning Coach, Football
Brenden Lambert MS ATC, Head Athletic Trainer for Football
Dawn Booth, NCAA

²²The authors interviewed or had conversations with some of these people multiple times.

Organizational Chart to Optimize Student Athlete Health & Safety



*New Role

Direct and Dotted Line Reports

Position	Direct Reports	Dotted Line Reports
Athletic Director	<ul style="list-style-type: none"> • AAD Football • Head Coach Football 	AAD Performance, Health & Safety
Medical Director UHS	<ul style="list-style-type: none"> • Head Team MD • AHCA 	
AAD Football	Head Coach Football	
Head Coach Football	Strength & Conditioning Coach Football	
AAD Performance, Health & Safety	Director Strength & Conditioning	Head ATC Football
Head ATC Football	<ul style="list-style-type: none"> • Strength & Conditioning Coach Football • ATCs Football 	
Director Strength & Conditioning	Strength & Conditioning Coaches Football	
Head Team MD	<ul style="list-style-type: none"> • AAD Sports Medicine • Assoc Team MD • AAD Performance, Health & Safety • Head ATC FB 	AHCA
Assoc Team MD	Clinical Psychologist	<ul style="list-style-type: none"> • AAD Sports Medicine • AHCA