

Abuse and Reporting in Athletics: Clear Conscience v. Minimum Compliance

Pope Francis in a June 2014 statement said, "If there is no sports club, something is missing. Yet, a sports club needs to be well executed, in a way that is consistent with the Christian community. If it isn't consistent, better not to even have one! Sports in a community can be an optimal missionary tool, where the Church comes close to each person and helps him or her to excel and to encounter Jesus Christ."

Diocesan-sponsored Catholic sports programs are an integral and valued part of our Church's educational and recreational offering for young people. Sports hold tremendous potential to develop accomplished athletes as well as build the character of young people empowering them to become productive citizens of our world as well as disciples of our Church. Our sports programs should provide a safe and accessible structure for interscholastic competition along with an environment that protects as well as promotes the academic, moral, physical, and spiritual qualities that are the hallmark of sports played among Catholic-sponsored teams. Competition, which should foster excellence in interscholastic athletics can, unfortunately, breed mistrust, incivility and abuse.

Because competition can become corrosive of the very qualities that interscholastic sports are meant to foster, Catholic athletic programs need a robust organizational structure and a strong culture based on mutual trust, cooperation and a deep sense of justice. Catholic sponsored sport leagues depend upon the commitment of each of their member schools, teams, and coaches to conduct their own sports programs based on values of justice and benevolence. Yet individual schools can do only so much on their own. By working together as members of one body, the Body of Christ, Catholic diocesan administrators must put into place structural practices creating safe and developmental Catholic sponsored sports programs that benefit those whom they serve (athletes, coaches, sport parents, the full athletic community). Professional development education for sport administrators and coaches from a moral, character perspective is integral to this process.

Recent sports program scandals have led to the adoption of strict monitoring, reporting, and disciplinary standards at every level. Legislative and regulatory bodies have busily passed codes and bylaws imposing strict compliance standards accompanied by severe individual and institutional consequences. This



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environment has also led to innovative theories of liability from trial lawyers based on already existing laws read to be applied and carry obligations heretofore unappreciated, misunderstood, or which simply did not exist.

As an example, Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A. § 5106g), defines child abuse and neglect as, at minimum: any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation or an act or failure to act which presents an imminent risk of serious harm. Headline stories of abuse can serve to clarify how CAPTA is to be understood and applied.

The fallout from the Penn State abuse scandal included charges brought against Senior Vice President Gary Schultz, President Graham Spanier, and Athletic Director Tim Curley for endangering the welfare of children, obstruction of justice, and criminal conspiracy. Former FBI Director Louis Free and his law firm were commissioned by the Penn State Board of Trustees to investigate the scandal. They concluded that the university leaders, in an attempt to avoid the consequences of bad publicity, repeatedly concealed facts that, if reported, would have helped protect child victims. The criminal trial for the school's leaders is currently pending and the NCAA imposed penalties include a ban from bowl games for four years, loss of 40 scholarships, \$60 million fine, and vacated 111 wins over a 13-year period.

A jury awarded the family of a University of Central Florida football player who died in March 2008, after an off-season workout, \$10 million in a wrongful death lawsuit. Further, the NCAA cited UCF for lack of institutional control for wide-ranging violations in football and basketball. Head football coach, George

O'Leary, was not named in the suit; however, his program was hit with a one-year bowl ban that was later appealed. Former AD, Keith Tribble, resigned during the NCAA investigation in November 2011.

At a 2011 football practice in Maryland, Derek Sheely, during a drill where the players run at each other, complained of a headache and was visibly bleeding. The head coach told Sheely to stop complaining and a few minutes later Sheely collapsed and died due to severe brain trauma. Sheely's family filed a wrongful death complaint against Frostburg University, as well as the NCAA and the team trainer. The case is scheduled for trial in September 2015.

High school football player, Max Gilpin, died of heat stroke after a rough practice on a hot day. Gilpin's parents filed charges against head coach, Jason Stinson, for reckless homicide and wanton-endangerment in connection with the death of their 15-year-old son. This is believed to be the first case in which a coach has faced criminal charges for working his players too hard. As a result, Stinson was fired as head football coach after the incident. Stinson was acquitted of both charges and Jefferson County Public Schools settled with Gilpin's parents for \$1.75 million.

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CAPTA does not only protect against wrongful death, but also protects against child physical and sexual abuse or neglect. As a highly publicized example of non-lethal physical abuse and neglect, Rutgers head basketball coach, Mike Rice, was suspended, fined and ordered to anger management counseling after a former basketball program employee gave school officials a video showing the head coach hitting and kicking players and using gay slurs as he yelled at them during practice. After ESPN reported on the video, Rice was fired, an assistant coach resigned, athletic director Tim Perneti resigned, and university counsel John Wolf resigned. AD Perneti and Counsel Wolf's conversations were viewed as a cover up to protect Rutgers from legal action rather than protecting student athletes. A month prior, Perneti had been named a finalist for athletic director of the year.

Kennesaw State University women's basketball coach Nitra Perry was accused of verbal and physical harassment toward her players, according to a video published by KSU Owl Radio, the university's student-run streaming radio station. In response, the AD launched a comprehensive review of the athletic department and Perry's actions. As a result, the university appointed a program manager to monitor the coaches, created a procedure to handle student complaints, and enrolled Perry in a mentorship program.

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Abuse and Reporting in Athletics: Clear Conscience v. Minimum Compliance (cont.)

During a football scrimmage on September 1, 2007, Flushing High School senior, Blake Hunt, shattered the C5 vertebra in his neck when a running back's knee snapped his head backward. The collision left Hunt paralyzed from the waist down, and after receiving treatment at various New York hospitals; Hunt filed a complaint alleging that his injury stemmed from improper and inadequate supervision, training and officiating, and a lack of qualified medical personnel at the scrimmage. In particular, Hunt, who weighed 140 pounds, argued that he was too small to be competing against larger players and was already suffering from a leg injury when he was struck in the head by a player he was attempting to tackle. In addition, Hunt argued that he had not been trained properly and wasn't ready to participate in scrimmages or games when he was injured. This catastrophic football injury led to an \$8 million settlement.

Another level of concern is negligence for not reporting abuse. Ed Gilliland, Indiana LaPorte High School Athletic Director, was charged with failure to report child abuse or neglect relating to male volleyball coach's inappropriate behavior with female player. The court ruled that Gilliland did not need to have specific knowledge of a sexual relationship between coach and player to trigger duty to report child abuse or neglect; and testimony that the AD had general knowledge of abuse was enough to show probable cause sufficient for the charges against him. The head coach, Robert Ashcraft, is now serving a 21-year prison sentence for engaging in a more than one-year sexual relationship with a girl beginning when she was 15.

Abusive coaching practices similar to the headlines above have often been romanticized by television and movies. Major motion pictures such as *Remember the Titans*, *Miracle*, *Coach Carter*, *Rudy*, and even the *Bad News Bears* contain scenes where abusive coaching tactics are used to "inspire" players. Unfortunately, these "inspirational" methods typically involve child abuse or neglect for which the coach, athletic director, and school could be held legally accountable. While the memorable endings have endured throughout the years, many of these movies have continued to



legitimize the old-fashioned mentality requiring young athletes to keep pushing through pain and abuse to become a "superior" athlete. Catholic administrators have not only a legal, but also a moral obligation to change this dangerous mentality in our sports programs.

What are you doing in the area of risk management with athletics in your diocesan sports programs?

In the *Marquette Sports Law Review* "Managing Risk in Interscholastic Athletic Programs: 14 Legal Duties of Care," the 14th duty of care is listed as the "duty to select, train and supervise coaches". The article states this is the most important preventative risk management duty for any school and it is the one that is most neglected.

Play Like a Champion Today of the University of Notre Dame's Alliance for Catholic Education is responding to the increasing challenges in today's sports culture that threaten to harm young athletes. It does this primarily by providing educational workshops for sport leaders (administrators, coaches, parents and athletes) to help foster a sports culture that reflects our catholic identity. Included in *Play Like a Champion's* educational offering on coaching for character is a sport specific safe environment training module to train coaches to understand destructive, inappropriate and abusive coaching practices as well as instruction on how to report those who are employing these dangerous techniques.

Play Like a Champion's coach clinic begins by teaching coaches that they are ministers of our church. Coaches and ministers share many services in common. Like ministers, coaches provide mentoring and support as well as serve as role-models for the people with whom they work. Both should instill the values of respect, cooperation, fairness, selflessness, courage, justice, compassion and even faith. Most coaches are not ordained clergy; however, through baptism, all lay people are called to ministry in the church as a part of the common priesthood of the faithful (*Lumen Gentium*, 10). According to the Second Vatican Council, "the laity are called in a special way to make the church present and operative in those places and circumstances where only through them" the church's mission can be felt (*Lumen Gentium* 33). *Play Like a Champion's* research shows that prior to the coach clinic, only 69% of coaches agreed that as coaches they were "ministers of our church" while following the clinic, 94% of coaches embraced this idea, a full 25% increase from this educational clinic. Our clinics also instruct coaches and sport parents on the importance of embracing and teaching virtue through sport. In particular, we relate the cardinal virtue of temperance, the virtue that restrains addiction to good things, to the way we must think about winning. Winning is a good thing, but putting too great an emphasis on winning can lead to the "win at all costs" culture that can and has diminished the developmental potential of sports in recent years.

Coaches often feel pressure to engage in practices that endanger the welfare of young athletes. Do all your coaches appreciate that they

are serving children and not adults. Do all your coaches understand how to develop the character of their players? Do all your coaches recognize the mission of catholic athletics as developing the body, mind and soul of athletes? Do all your coaches protect athletes from harm? Do all your coaches understand their responsibility to report colleagues who are engaging in abusive coaching practices? Play Like a Champion Today works in collaboration with dioceses to educate coaches and sport administrators to protect athletes, not simply due to a legal obligation, but because we are morally obligated to be “Coach Ministers” who represent Christ and the Church in a leadership role with athletes and teams.

Play Like a Champion works together with a diocese to extend proactive, preventative educational professional development clinics for sport leaders. Prevention, rather than reaction is the key to a responsible Catholic-sponsored sports program. Educating coaches through Play Like a Champion Today clinics will empower sport leaders to create a safe sport environment for all athletes in our Catholic leagues as well as lower the risk and liability for the sponsoring diocese.

In secondary schools, athletics accounts for the majority of litigation against schools. In two-thirds (2/3) of these cases of litigation, the court finds in favor of the school largely due to the school’s government immunity. Private schools do not have the protection of “government immunity.” However, if the private school/diocese has put in place a program to directly educate about positive coaching and preventing abuse/negligence issues with coaches and sport teams, this can negate the diocese’ negligence as they educated coaches expressly against negative, harmful practices surrounding athletics.

Since 2006, Play Like A Champion Today has educated 40,000 coaches and 35,000 parents in 150 sport organizations in 37 states helping sports to be safer for more than a million athletes. Play Like a Champion would like to work with your catholic sports programs so that together we can build catholic sports that are safe, fun and wholly developmental for all involved. Pope Francis, in a November 2013 address to the European Olympic Committee said, “The bond between the Church and the world of sports is a beautiful reality, for the Ecclesial community sees in sports a powerful instrument for the integral growth of the human person.” Let us partner together through educating administrators, coaches and sport parents to create a catholic sports environment and structure that enables sport to be the missionary tool for physical, moral and spiritual growth that Pope Francis envisions.

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State-by-State Overview of Mandatory Reporters, Immunity, and Penalties

- Professionals mandated to report suspected child abuse or neglect are specifically listed in 48 States, the District of Columbia, American Samoa, Guam, The Northern Mariana Islands, Puerto Rico, and the Virgin Islands.
 - » New Jersey and Wyoming do not list specific groups.
 - » Such groups may include: Social workers, teachers and other school personnel, physicians and other health-care workers, mental health professionals, child care providers, medical examiners or coroners, and law enforcement officers
 - » Additional groups are specifically stated in 12 states that include coaches, camp/youth camp or residential camp personnel or owners, or recreational/sport program or facility personnel or administrators.
 - ♦ California, Connecticut, District of Columbia, Hawaii, Iowa, Illinois, Maine, Massachusetts, Nevada, Ohio, Vermont and Washington
 - ♦ Texas law requires anyone with knowledge of suspected child abuse or neglect to report it to the appropriate authorities.
 - ♦ Georgia requires a list of persons to report abuse, the list included those who provide “training, supervision, coaching”
 - ♦ Colorado lists “coach, assistant coach or athletic program personnel” as a mandatory reporter.
 - ♦ Virginia lists “athletic coach, director or other person 18 years of age or older” as mandatory reporters.
- 36 states provide some form of immunity from liability for persons who in good faith report suspected instances of child abuse or neglect under the reporting laws
- The term “good faith” refers to the assumption that the reporter, to the best of his or her knowledge, had reason to believe that the child in question was being subjected to abuse or neglect.
- 47 states specify penalties on mandatory reporters who knowingly or willfully fail to make a report when they suspect that a child is being abused or neglected.
- 39 states specify that any failure to report is classified as a misdemeanor.