

Student Athletes and NIL Liabilities



By Jeffrey A. Woods, JD

It's January, and you may be preparing to watch the CFB National Championship game. You may also be wondering, "what does a college football game have to do with a risk liability column?" If you are involved in providing medical care and/or therapy to student athletes, the answer is "plenty".

In 2021, the NCAA implemented rules allowing student-athletes to be compensated for the use of their "name, image, and likeness" (NIL). Student-athletes can now receive payment for endorsements and sponsored social media posts, while collectives (organizations made up of alumni, boosters, and wealthy individuals) offer financial incentives to top high school recruits to attend affiliated colleges or universities. Student-athletes with the most promising futures can now earn millions of dollars each year, consequently increasing the stakes in the event of a malpractice claim.

Working with a professional, collegiate or high school sports team can be very prestigious. That physician/patient relationship can lead to financial rewards, an enhanced reputation in the community, and perks such as attending championship games and television exposure. However, as with any area of medicine, potential malpractice claims should always be a concern.

Several recent high profile cases involving athletes have reinforced the risks involved in treating these high-income patients. Former Philadelphia Eagles player, Chris Maragos, won a \$45 million judgment against an orthopedic surgeon alleging the physician pressured Maragos into rehabilitation too soon following surgery for a torn meniscus. Maragos was never able to return to active status thereby costing him millions in lost earnings.

However, malpractice suits are not limited to professional athletes. Penn State player, Isaiah Humphries, alleged malpractice related to a shoulder injury, asserting “non-medical influences” in that the team physician allegedly took directions from the head coach, prioritizing the team’s needs over the individual patient’s needs. A “lack of presence” was also alleged as the physician was not on campus full-time, resulting in a lack of care for the athlete. Although this case was ultimately dismissed, it demonstrates the types of claims that student-athletes can assert in a malpractice action.

Generally, malpractice suits for college athletes have not included damages for lost wages from future income because prior to the NIL, college athletes were not compensated and for most, any future income was speculative at best. The NIL changes the playing field, at least for players with high rankings and great future potential. A college athlete who files a malpractice lawsuit against a physician, provider, trainer, therapist, or other healthcare provider can include a claim for lost NIL earnings and lost future earnings as an element of damage as those amounts are less speculative now. For star athletes, these figures could be in the millions. It is important to note that because lost wages and lost future income are economic damages, the plaintiff who is successful at trial would be able to collect the full amount awarded even in states with tort reform legislation, such as Tennessee, since these laws place a cap on non-economic damages - not on economic damages.

What can healthcare providers do in the wake of the NIL to better protect themselves?

- **First**, always practice within the standard of care using your medical judgment for the best care and treatment for the patient. Do not be influenced by outside forces or parties such as coaches and school officials.
- **Second**, thoroughly and timely document all encounters with the patient, including telephone calls.
- **Third**, be familiar with the academic institution’s rules, regulations, and policies relating to medical care of student-athletes.
- **Fourth**, consider your professional liability insurance coverage needs.

Should you have any questions, you may contact our Risk Education Department at 800-342-2239 or at ContactSVMIC@svmic.com.



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