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## ***Whose Fault Is It Anyway?* How Sexual Abuse Has Plagued the United States Olympic Movement and Its Athletes**

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# ***WHOSE FAULT IS IT ANYWAY? HOW SEXUAL ABUSE HAS PLAGUED THE UNITED STATES OLYMPIC MOVEMENT AND ITS ATHLETES***

KATHERINE HAMPEL\*

## **I. INTRODUCTION**

Allegations of sexual assault and abuse have plagued the national governing bodies of Olympic sports in the United States over the last several decades. Most recently, USA Gymnastics has been the primary subject of these allegations by its current and former member gymnasts. Prior to being sentenced to up to 175 years in federal prison, former USA Gymnastics team physician Larry Nassar was accused of sexual abuse by over 150 former and current gymnasts within the organization. Larry Nassar's actions, and the response given by the larger organizations responsible for his conduct, are not unique to Olympic gymnastics, as similar scandals have infected other national governing bodies of sports and athletes in the United States for over three decades.

Part II of this Comment will discuss Larry Nassar's career leading up to his sentencing, and the beginning of his abuse of these gymnasts. Part III will continue to discuss the allegations against Nassar and trials and sentencings that were entered against him as a result of the allegations. Part IV will examine the organizational structure of the United States Olympic Committee (USOC), as well as USA Gymnastics, and discuss how the latter has responded to the situation involving Nassar. Finally, Part V will review how similar scandals have affected other national governing bodies in the United States Olympic world, and how the USOC has responded to similar situations prior to Nassar.

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The Comment will conclude by offering a critical look at the response these athletes have received from the organizations, and recognize the desperate need for realignment in the mission and the values that these organizations have with respect to the victim athletes.

## II. LARRY NASSAR'S EMPLOYMENT IN SPORTS AND THE BEGINNING OF THE ALLEGATIONS

### *A. Larry Nassar's Career in the Sports Industry*

Larry Nassar's (Nassar) first employment in the sports industry began in 1978, when he worked as a student athletic trainer at North Farmington High School, located in a suburb of Detroit, while he attended high school there.<sup>1</sup> Upon graduating high school, Nassar attended the University of Michigan, where he worked as an athletic trainer with the football and track and field programs.<sup>2</sup> In 1986, Nassar joined the USA Gymnastics National Team staff where he was employed as an athletic trainer.<sup>3</sup> In 1993, Nassar received an osteopathic medical degree from Michigan State University (MSU),<sup>4</sup> and following the completion of his residency in 1997, he became a team physician at MSU, a role he continued in until 2016.<sup>5</sup>

Nassar served as the U.S. national team physician for over twenty-five years, with this course of work including a period of four Olympic games.<sup>6</sup> In this role, Nassar treated gymnasts at national and international competitions, as well as at pre-competition training camps at Bela and Marta Karolyi's Ranch (the Karolyi Ranch) in Texas.<sup>7</sup> In this role, Nassar was a member of the committee that created the policies for medical personnel within the organization, even participating in the drafting of the rules against sexual misconduct.<sup>8</sup> In addition to his role working with USA Gymnastics, Nassar

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1. Lansing State Journal & IndyStar, *Who Is Larry Nassar? Timeline of His Career, Prison Sentences*, CINCINNATI, <https://www.cincinnati.com/pages/interactives/larry-nassar-timeline/> (last visited May 9, 2019).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Rebecca Davis O'Brien, *USA Gymnastics, McKayla Maroney Had Confidentiality Agreement to Resolve Abuse Claims*, WALL STREET J., Dec. 20, 2017, <https://www.wsj.com/articles/usa-gymnastics-reached-settlement-over-abuse-claims-with-gold-medalist-mckayla-maroney-1513791179?mod=searchresults&page=1&pos=1>.

7. *Id.*

8. Dvora Meyers, *Larry Nassar Helped Draft USA Gymnastics' Sexual Misconduct Policies*, DEADSPIN (Dec. 12, 2018), <https://deadspin.com/larry-nassar-helped-draft-usa-gymnastics-sexual-misconduct-1831052315>.

continued to be employed by MSU through his termination 2016. At MSU, Nassar worked as an associate professor and as the team physician for the gymnastics and the women's crew teams.<sup>9</sup>

*B. History of Nassar's Abuse*

Although the primary news coverage of the abuse that Nassar committed dictated the abuse that occurred in his role as a team physician for USA Gymnastics, Nassar's reputation for abusing his patients began long before many of his most prominent victims were even patients of his. Various court records indicate that Nassar began abusing a six-year old daughter of a family friend, in addition to a student at MSU, beginning in 1998.<sup>10</sup> In 2000, a second student-athlete at MSU reported concerns about Nassar to the University, but, according to a lawsuit filed in 2017, the university failed to take any action in response to her complaint.<sup>11</sup> One of Nassar's early accusers explained the lack of response she received from the university, stating she "felt like they thought I was a liar. She brushed me off, and made it seem like I was crazy. She made me feel like I was crazy."<sup>12</sup> This accuser, a former Spartans softball player, reported the abuse she suffered to three different athletic trainers, as well as to their supervisor, all to no avail or recourse from the University.<sup>13</sup>

In contrast to the recent-downfall Nassar experienced in the last few years, he began his career with a promising reputation as a doctor for the treatment that he gave to athletes. Nassar was a well-respected doctor based on the theoretically successful treatment that he gave to the best gymnasts in the world.<sup>14</sup> Nassar continuously claimed that his "pelvic floor" treatment, the treatment that has since been the basis for the majority of the allegations against him, in which he put his fingers into young girls' vaginas, was a "cure-all" that could fix nearly all injuries the athletes suffered.<sup>15</sup>

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9. Emanuella Grinberg, *Simone Biles Says Larry Nassar Abused Her*, CNN (Jan. 16, 2018), <https://www.cnn.com/2018/01/15/us/simone-biles-larry-nassar/index.html>.

10. Lansing State Journal & IndyStar, *supra* note 1.

11. *Id.*

12. Tim Daniels, *Report: Michigan State Employees Were Informed of Larry Nassar's Abuse in 1990s*, BLEACHER REP. (Jan. 16, 2018), <http://bleacherreport.com/articles/2754394-report-michigan-state-employees-were-informed-of-larry-nassars-abuse-in-1990s>.

13. *Id.*

14. Eric Levenson, *Larry Nassar Sentenced to 40 to 125 Years for Sexual Abuse*, CNN (Feb. 5, 2018), <https://www.cnn.com/2018/02/05/us/larry-nassar-sentence-eaton/index.html>.

15. *Id.*

Maggie Nichols was the first gymnast to report the abuse that she suffered from Nassar to the USA Gymnastics organization.<sup>16</sup> Nichols reported this in 2015, when she told a fellow teammate what Nassar had been doing to her.<sup>17</sup> One of Nichols' coaches overheard the conversation between the two gymnasts, and this led to Nichols reporting the abuse to USA Gymnastics.<sup>18</sup> Upon receiving the report from Nichols, USA Gymnastics undertook a five-week internal investigation into the allegations, policies, and procedures surrounding her accusations, and eventually reported the matter to the Federal Bureau of Investigation (FBI) in late July 2015.<sup>19</sup> In a recent statement made about the report of her case against Nassar, Nichols stated:

I later found out that Michigan State University had ignored complaints against Larry Nassar from other girls going back 20 years and had investigated him for sexual assault in 2014, . . . They never told USA Gymnastics. If they had, I might never have met Larry Nassar and I would never have been abused by him.<sup>20</sup>

This investigation resulted in USA Gymnastics prohibiting Nassar from treating patients in the USA Gymnastics organization.<sup>21</sup> Despite closure of this door to USA Gymnastics athletes, he continued to "treat" athletes at MSU.<sup>22</sup> As the investigations conducted internally and with the FBI did not reveal to the public the substance of the allegations made by Nichols, coverage of Nassar's assault did not reach the media until 2016. Rachael Denhollander was, instead, the first gymnast to make Nassar's abuse public in a story published in the *Indy Star* in September 2016.<sup>23</sup> Denhollander alleged that in 2015, when she was fifteen years old, Nassar began sexually abusing her during her treatments with him for lower back pain.<sup>24</sup>

Since Denhollander's first public allegation against Nassar, the gymnastics world has been overcome with allegations of abuse by Nassar from hundreds of current and former gymnasts, stemming from facilities and tournaments across

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16. *Maggie Nichols Says She Told USA Gymnastics About Larry Nassar's Abuse First*, SPORTING NEWS (Jan. 9, 2018), <https://www.yahoo.com/news/maggie-nichols-says-she-told-181516715.html>.

17. *Id.*

18. *Id.*

19. O'Brien, *supra* note 6.

20. *Id.*

21. Levenson, *supra* note 14.

22. *Id.*

23. Eric Levenson, *Larry Nassar Sentenced to Up to 175 Years in Prison for Decades of Sexual Abuse*, CNN (Jan. 24, 2018), <https://www.cnn.com/2018/01/24/us/larry-nassar-sentencing/index.html>.

24. Lansing State Journal & IndyStar, *supra* note 1.

the country. Prior to his sentencing hearing, more than 150 women in total alleged being victims of abuse by Nassar that over the past two decades.<sup>25</sup> Almost all of the victims stated that they suffered not only physically from the abuse, but also mentally, with the majority of them enduring anxiety, depression and even instances of self-harm as a result of the abuse.<sup>26</sup> Some of the victims even testified during Nassar's hearings that they can no longer trust their doctors.<sup>27</sup> At his sentencing, in Nassar's plea, he admitted to sexually abusing his patients during what they believed to be treatment, dating as far back as 1998, and to victims as young as thirteen years old.<sup>28</sup>

### III. ALLEGATIONS AND SUIT AGAINST NASSAR

#### *A. Publicized Allegations by Gymnasts*

Among the hundreds of current or former gymnasts that have accused Nassar of sexual assault, some of these allegations have gained more publicity and traction in the media than others. For example, former U.S. Olympic medalist and member of the 2012 "Fierce Five", McKayla Maroney was one of the first women to come forward with an allegation against Nassar.<sup>29</sup> In October 2017, Maroney went public with her allegations against Nassar via a post on her Twitter account.<sup>30</sup> Maroney tweeted that her abuse by Nassar began when she was thirteen years old, continued into her time in London at the 2012 Olympic games, and lasted all the way through her final competitions in 2013.<sup>31</sup>

Maroney's involvement in Nassar's time in court was not limited to her allegations in October of 2017. Prior to publicizing these allegations, Maroney had signed a confidentiality agreement with USA Gymnastics resolving her previous claims of sexual abuse by Nassar.<sup>32</sup> This agreement included both a non-disclosure and a non-disparagement provision, each with a fine attached of more than \$100,000 if Maroney violated the terms.<sup>33</sup> Despite this agreement, Maroney filed suit against USA Gymnastics, the USOC, and MSU in December

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25. Levenson, *supra* note 23.

26. *Id.*

27. *Id.*

28. Grinberg, *supra* note 9.

29. Alice Park & Billy Perrigo, *McKayla Maroney Joins #MeToo Movement, Says She Was Molested*, TIME, Oct. 18, 2017, <http://time.com/4987066/mckayla-maroney-metoo-molested/>.

30. *Id.*

31. O'Brien, *supra* note 6.

32. *Id.*

33. *Id.*

2017.<sup>34</sup> This time, Maroney alleged that in 2015, the USOC knew that USA Gymnastics was forcing Nassar out of the organization because of allegations against him of sexual molestation, but the organization concealed that information from the public.<sup>35</sup> Following an outpouring of support given to Maroney by other public figures, including model Chrissy Teigen and actress Kristen Bell, who both offered to pay any fine USA Gymnastics would impose on Maroney for speaking in court on the abuse she suffered by Nassar,<sup>36</sup> USA Gymnastics assured that Maroney would not be fined for her participation in the lawsuits against Nassar.<sup>37</sup>

Another current USA gymnast, and member of both the 2012 and 2016 US Olympic gymnastics team, Aly Raisman, also garnished national attention when she spoke out in accusation against Nassar. Raisman joined in the allegations against Nassar in November 2017.<sup>38</sup> When she was asked about her allegations against Nassar, Raisman publicly called out not only Nassar, but also the USA Gymnastics organization and the culture that it has created through the way that it handled this situation for the past few years. Raisman was quoted, “[w]hy not look at . . . the culture? What did USA Gymnastics do, and Larry Nassar do, to manipulate the girls so much that they are afraid to speak up?”<sup>39</sup> Accusations specifically surrounding the culture of the organizations in which Nassar was employed have been a common topic for the victims, as one current MSU gymnast reported that as late as September 2016, a card was passed around at a gymnastics team meeting, not long after Nassar was fired, asking the members to sign it as a show of support for Nassar.<sup>40</sup> Responding in October 2018 to the still present organizational issues within USA Gymnastics, Raisman told NBC’s *Today* show that she “never imagined [USA Gymnastics] would be this bad” and that the organization still cannot be trusted due to its failure to fully address and combat this issue.<sup>41</sup>

Since Raisman’s initial allegations against Nassar, she has continued to pursue her rights in regard to the situation and abuse that she suffered. In March

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34. *Id.*

35. *Id.*

36. Scott Gleeson, *Chrissy Teigen Offers to Pay Fine for McKayla Maroney to Speak Out*, USA TODAY, Jan. 18, 2018, <https://www.usatoday.com/story/sports/olympics/2018/01/16/chrissy-teigen-offers-pay-100000-fine-mckayla-maroney-larry-nassar/1036339001/>.

37. *Id.*

38. Eric Levenson, *Aly Raisman: I Was Sexually Abused by Former USA Gymnastics Doctor*, CNN (Nov. 11, 2017), <http://www.cnn.com/2017/11/10/us/aly-raisman-abuse-usa-gymnastics/index.html>.

39. *Id.*

40. Daniels, *supra* note 12.

41. Liz Roscher, *Aly Raisman Rips USA Gymnastics for Lack of Transparency*, YAHOO! SPORTS (Oct. 30, 2018), <https://sports.yahoo.com/aly-raisman-usa-gymnastics-never-imagined-bad-152442775.html>.

2018, Raisman filed suit against the United States Olympic Committee, alleging that the United States Olympic Committee was “aware . . . at the highest levels of its organization, that Defendant Nassar had molested Olympic and National Team level gymnasts.”<sup>42</sup> Raisman has accused the Committee of a “conspiracy to silence victims and cover-up the largest child sex abuse scandal in history.”<sup>43</sup> Since filing suit, Raisman said that her highest priority in all of this has been to “push for change, so future generations of athletes will be safer.”<sup>44</sup>

Other notable accusers of Nassar who gained national news attention include 2016 gold medalist Simone Biles, and 2012 and 2016 U.S. Olympian Gabby Douglas. Douglas joined in the allegations in November of 2017, also discussing the culture that Raisman previously referred to in her accusation, saying that she didn’t reveal the abuse earlier because “for years we were conditioned to stay silent.”<sup>45</sup> Biles joined in the allegations in January 2018.<sup>46</sup> Biles did not include specific allegations but described experiencing Nassar’s use of “special treatment” in the same manner that many of the other victims described in detailing the abuse they suffered.<sup>47</sup>

#### *B. USA Gymnastics’s Response to the Allegations Against Nassar*

As the allegations against Nassar continued to be filed by countless gymnasts, USA Gymnastics filed a motion to dismiss the civil and criminal lawsuits brought against it, at the time by ninety-three former athletes, the organization contending that despite Nassar’s personal liability to the gymnasts, USA Gymnastics was not liable itself to the victims of Nassar’s assault.<sup>48</sup> USA Gymnastics, instead, argued that most of the claims brought by these plaintiffs were time-barred, arguing that the statute of limitations had run on their claims.<sup>49</sup> USA Gymnastics further moved to dismiss the claims on the basis that most of the locations in which the complaints were alleged to have occurred

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42. Darren Reynolds, *Aly Raisman Files Lawsuit Against USOC, USA Gymnastics Over Handling of Larry Nassar*, ABC NEWS (Mar. 2, 2018), <http://abcnews.go.com/US/aly-raisman-files-lawsuit-usoc-usa-gymnastics-handling/story?id=53453469>.

43. *Id.*

44. *Id.*

45. Eun Kyung Kim, *Olympic Gymnast Gabby Douglas Latest to Claim Sexual Abuse by USA Team Doctor*, TODAY (Nov. 22, 2017), <https://www.today.com/news/olympic-gymnast-gabby-douglas-latest-claim-sexual-abuse-usa-team-t119190>.

46. Grinberg, *supra* note 9.

47. *Id.*

48. Jessica Schladebeck, *USA Gymnastics Argues It’s Not ‘Liable’ to Victims of Larry Nassar’s Sexual Abuse*, N.Y. DAILY NEWS, Dec. 12, 2017, <http://www.nydailynews.com/news/national/usa-gymnastics-not-liable-victims-larry-nassar-article-1.3694063>.

49. *Id.*



were at MSU or at Nassar's home – places “where Nassar was acting outside of any relationship with USA G[ymnastics].”<sup>50</sup>

### *C. Nassar's Trials and Sentencings*

In July 2017, Nassar pleaded guilty to charges brought by the U.S. Attorney for the Western District of Michigan,<sup>51</sup> for receiving and possessing child pornography, as well as to hiding and destroying evidence in the case investigating this possession of child pornography.<sup>52</sup> As a result of this plea, on December 7, 2017, Nassar was sentenced to sixty years in prison on possession of child pornography charges.<sup>53</sup>

In November 2017, Nassar pleaded guilty to seven counts of criminal sexual conduct.<sup>54</sup> As part of his plea deal, Nassar was initially facing up to twenty-five years in prison.<sup>55</sup> Nassar said that he pled guilty to “move the community forward and stop the hurting” of his actions against his former gymnasts and patients. Finally, in January 2018, following seven days of hearing victim impact statements from over one hundred current and former gymnasts who had been patients of his,<sup>56</sup> and three weeks of court hearings, Nassar was sentenced in Ingham County Circuit Court to up to 175 years in prison for the seven counts of first-degree criminal sexual misconduct against his victims.<sup>57</sup> Upon his sentencing, Nassar apologized for the abuse he committed to these women, stating:

I understand and acknowledge that it pales in comparison to the pain, trauma and emotions that you all are feeling. It's impossible to convey the depth and breadth of how sorry I am to each and everyone involved. The visions of your testimonies will forever be present in my thoughts.<sup>58</sup>

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50. *Id.*

51. *Larry Nassar Full Background*, MICH. ST. U., <https://msu.edu/ourcommitment/sexual-assault/nassar-full-background.html> (last visited May 9, 2019).

52. Levenson, *supra* note 38.

53. Schladebeck, *supra* note 48.

54. Lauren Meltzer, *USA Gymnastics Cuts Ties with Karolyi Ranch Amid Larry Nassar Scandal*, CBS NEWS (Jan. 18, 2018), <https://www.cbsnews.com/amp/news/usa-gymnastics-cuts-ties-with-karolyi-ranch-amid-larry-nassar-scandal/>.

55. *USA Gymnastics Doctor Larry Nassar Pleads Guilty to Sex Charges*, BBC NEWS (Nov. 22, 2017), <http://www.bbc.com/news/world-us-canada-42083977>.

56. Levenson, *supra* note 23.

57. Reynolds, *supra* note 42.

58. Levenson, *supra* note 14.

Despite his alleged remorse, Judge Janice Cunningham, who presided over his case, ensured Nassar that his previous actions demonstrated that he did not truly understand his actions and the impact they had on his hundreds of victims, as well as their families and friends.<sup>59</sup>

#### IV. USA GYMNASTICS AND THE UNITED STATES OLYMPIC COMMITTEE

##### *A. Organization of Olympic Gymnastics in the United States*

The United States Olympic Committee (USOC) serves roles as both the National Olympic Committee and the National Paralympic Committee in the United States.<sup>60</sup> This role makes the USOC responsible for the training, funding, and entering of U.S. teams in the Olympic and Paralympic games, among others.<sup>61</sup> The mission statement of the organization reflects this role, as it states that the organization is responsible “to support U.S. Olympic and Paralympic athletes in achieving sustained competitive excellence while demonstrating the values of the Olympic Movement, thereby inspiring all Americans.”<sup>62</sup> The USOC was recognized in the Ted Stevens Olympic and Amateur Sports Act,<sup>63</sup> with the Act giving the USOC the exclusive right to the use of Olympic-related marks, images, and terminology in the United States.<sup>64</sup>

The USOC is structured as a pyramid, with fifty Olympic and Pan American National Governing Bodies (NGBs) reporting to it.<sup>65</sup> These NGBs are the organizations that administer each sport at the national level in the United States.<sup>66</sup> USA Gymnastics is the NGB for the sport of gymnastics in the United States; the organization has more than 174,000 members across the country.<sup>67</sup>

The USOC has been accused by many of Nassar’s victims of creating a culture and environment that prioritizes the achievement of medals over the

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59. *Id.*

60. *United States Olympic Committee*, TEAM USA, <https://www.teamusa.org/About-the-USOC> (last visited May 9, 2019).

61. *Id.*

62. *Id.*

63. 36 U.S.C. § 220501 (2019).

64. *USOC – General Information*, TEAM USA, <https://www.teamusa.org/About-the-USOC/History> (last visited May 9, 2019).

65. *Structure*, TEAM USA, <https://www.teamusa.org/About-the-USOC/Structure> (last visited May 9, 2019).

66. *Id.*

67. Holly Yan, *USA Gymnastics Agrees to Dozens of Changes Amid Sex Abuse Scandal*, CNN (June 27, 2017), <https://www.cnn.com/2017/06/27/health/usa-gymnastics-policy-changes/index.html>.

protection of its member athletes.<sup>68</sup> The former CEO of the USOC, Scott Blackmun, has emphasized the importance of achieving medals within the organization, saying, “[f]or us, it’s all about medals. How do we help American athletes get medals put around their necks? We have a line of sight between every decision we make and the impact on how many Americans will win medals.”<sup>69</sup> This long-running focus on achieving success in international competition delayed the USOC in adopting safety measures to protect against sexual abuse within the organization, as compared with its counterpart organizations in other countries. The USOC did not mandate its basic child protection policies until 2014, while Canadian sports ministry officials created the country’s sexual harassment and abuse education program in 1998, Denmark’s Olympic committee began recommending background checks in 2001, and Britain’s sports ministry implemented requirements of child protection measures in 2002.<sup>70</sup>

### *B. Ted Stevens Olympic and Amateur Sports Act*

The Ted Stevens Olympic and Amateur Sports Act<sup>71</sup> was codified into law in 1978, with the primary purpose of “coordinat[ing] amateur athletic activity, . . . recogniz[ing] certain right [of] amateur athletes, and . . . provid[ing] for dispute resolution involving national governing bodies.”<sup>72</sup> As such, the Act sets the basic framework and requirements for Olympic sports organizations in the United States.<sup>73</sup> The Act requires that the national governing bodies of the Olympic sports provide full due process relief to officials and coaches before they can ban them from the organization, requiring fair notice and a hearing with the opportunity to defend himself or herself before the person can be banned from the organization.<sup>74</sup> Complying with these requirements has led the

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68. Saja Hindi, *Larry Nassar Sexual Abuse Prompts Lawsuit Against U.S. Olympics Committee in Colorado*, DENVER POST, Mar. 15, 2019, <https://www.denverpost.com/2019/03/15/us-olympic-committee-larry-nassar-lawsuit-colorado/>.

69. Will Hobson & Steven Rich, *An Athlete Accused Her Coach of Sex Abuse. Olympic Officials Stayed on the Sideline*, WASH. POST, Feb. 14, 2017, [https://www.washingtonpost.com/sports/olympics/an-athlete-accused-her-coach-of-sex-abuse-olympic-officials-stayed-on-sideline/2017/02/14/35a6fc76-d2eb-11e6-a783-cd3fa950f2fd\\_story.html?utm\\_term=.51bae5786c12](https://www.washingtonpost.com/sports/olympics/an-athlete-accused-her-coach-of-sex-abuse-olympic-officials-stayed-on-sideline/2017/02/14/35a6fc76-d2eb-11e6-a783-cd3fa950f2fd_story.html?utm_term=.51bae5786c12).

70. *Id.*

71. 36 U.S.C. § 220501 (2019).

72. WALTER T. CHAMPION, JR., *FUNDAMENTALS OF SPORTS LAW* § 21:3 (2d ed. 2004) (Amateur Sports Act of 1978).

73. Will Hobson, *Senator Dianne Feinstein Calls for Changes to Olympic Sports Law to Protect Children from Abuse*, WASH. POST, Feb. 22, 2017, [https://www.washingtonpost.com/news/sports/wp/2017/02/22/senator-dianne-feinstein-calls-for-changes-to-olympic-sports-law-to-protect-children-from-abuse/?utm\\_term=.d15727983f51](https://www.washingtonpost.com/news/sports/wp/2017/02/22/senator-dianne-feinstein-calls-for-changes-to-olympic-sports-law-to-protect-children-from-abuse/?utm_term=.d15727983f51).

74. Hobson & Rich, *supra* note 69.

USOC to hesitate in acting to ban coaches and other officials in the organization who have been accused of allegations similar to those by the gymnasts against Nassar, out of fear for legal liability in their actions.

*C. What Has Happened to the Organization's Business?*

Since the revelations of the abuse that Nassar committed during his employment with USA Gymnastics, the organization has faced several repercussions in its business and operations. Some of USA Gymnastics' biggest sponsors have dropped the organization as a client. These sponsors include Hershey, P&G, Under Armour, among others.<sup>75</sup> Similarly, the International Gymnastics Camp, a highly regarded annual camp in Pennsylvania, pulled its sponsorship of the organization.<sup>76</sup> Professor T. Bettina Cornwell, the academic director of the Warsaw Sports Marketing Center at the University of Oregon, described why these organizations have dropped their sponsorships of USA Gymnastics, "[p]artnerships in sports are all about sharing valued associations. Brands want to associate with things like ruggedness, grace, passion, joy, success and even trying hard in the face of failure. They are fearful to associate with an organization tied to the horrific Larry Nassar."<sup>77</sup> This evaluation has been demonstrated consistently by the organizations that have dropped their sponsorships of USA Gymnastics, as AT&T released a statement rationalizing dropping of their sponsorship, saying "until [USA Gymnastics] is re-built and we know that the athletes are in a safe environment" it would suspend its affiliation with the organization.<sup>78</sup> Under Armour released a similar statement, saying "[w]e stand with these athletes and hope our decision to end this partnership resounds with USAG leadership and helps to facilitate necessary change."<sup>79</sup>

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75. See O'Brien *supra* note 6; see also Will Hobson, *AT&T Drops USA Gymnastics as Sponsor Over Larry Nassar Scandal*, WASH. POST, Jan. 23, 2018, [https://www.washingtonpost.com/news/sports/wp/2018/01/23/att-drops-usa-gymnastics-as-sponsor-over-larry-nassar-scandal/?utm\\_term=.6064207be7e1](https://www.washingtonpost.com/news/sports/wp/2018/01/23/att-drops-usa-gymnastics-as-sponsor-over-larry-nassar-scandal/?utm_term=.6064207be7e1); Scott Reid, *Procter & Gamble, Kellogg's Drop USA Gymnastics Sponsorship After Sex Abuse Scandal*, ORANGE COUNTY REG., May 25, 2018, <https://www.ocregister.com/2017/12/14/procter-gamble-kelloggs-drop-usa-gymnastics-sponsorship-after-sex-abuse-scandal/>.

76. *USA Gymnastics President Steve Penny Resigns Amid Sex Abuse Scandal*, CBS NEWS (Mar. 16, 2017), <https://www.cbsnews.com/news/usa-gymnastics-president-steve-penny-resigns-amid-sex-abuse-scandal/>.

77. Associated Press, *Sponsors Flee Scandal-Plagued USA Gymnastics; Future Cloudy*, CHI. TRIB., Jan. 25, 2018, <http://www.chicagotribune.com/sports/international/ct-larry-nassar-sponsors-flee-usa-gymnastics-20180125-story.html>.

78. *Id.*

79. *Id.*

*D. How Have the Organization's Operations Been Affected?*

Since the revelation of all of the allegations against Nassar, there have been major changes to the organizational structure of USA Gymnastics and MSU. The president of USA Gymnastics, Steve Penny, resigned on March 15, 2017, amidst accusations by many of the victims that he failed to promptly notify authorities about the allegations of abuse.<sup>80</sup> He, along with USA Gymnastics, have been accused of negligence, and have been named as defendants in multiple civil lawsuits.<sup>81</sup> Subsequently, following Nassar's January 2018 sentencing, the entire board of USA Gymnastics resigned amidst pressure from outside and inside the USOC calling for action and re-structuring within the organization.<sup>82</sup> Affiliates of Nassar's outside of USA Gymnastics have also been affected in their careers as a result of Nassar's actions and the allegations. Since the allegations against Nassar intensified, both the President and the Athletics Director at Michigan State have stepped down from their roles.<sup>83</sup>

USA Gymnastics has also taken action to prevent repeat of these instances of abuse outside of its Board of Directors. In January 2018, USA Gymnastics cut ties with the Karolyi Ranch training facility in Texas.<sup>84</sup> The Karolyi Ranch was designated as an Olympic Training site in 2011 and has been a primary training destination of U.S. Olympic gymnasts and other elite gymnasts in the country ever since.<sup>85</sup> USA Gymnastics likely cut ties with this organization as many of the victims allege that abuse occurred at the Karolyi Ranch while they trained at the facility.<sup>86</sup>

Kerry Perry was announced as the new CEO of USA Gymnastics in late 2017 following Penny's resignation.<sup>87</sup> Perry lasted a mere nine months in the

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80. *USA Gymnastics Doctor Larry Nassar Pleads Guilty to Sex Charges*, *supra* note 55.

81. John Branch, *Steve Penny Resigns as U.S.A. Gymnastics President*, N.Y. TIMES, Mar. 16, 2017, <https://www.nytimes.com/2017/03/16/sports/steve-penny-resigns-as-usa-gymnastics-president.html>. Penny was also charged with tampering with evidence in the investigation, to which he pled not guilty. See Associated Press, *Former USA Gymnastics President Steve Penny Pleads Not Guilty*, USA TODAY, Oct. 30, 2018, <https://www.usatoday.com/story/sports/olympics/2018/10/30/former-usa-gymnastics-president-steve-penny-pleads-not-guilty/1817521002/>.

82. Reynolds, *supra* note 42.

83. *Id.*

84. Meltzer, *supra* note 54.

85. *Id.*

86. *Id.*

87. D'Arcy Maine, *U.S. Gymnasts Deserve Better Than What USA Gymnastics President and CEO Kerry Perry Has So Far Delivered*, ESPNW (Aug. 19, 2018), <http://www.espn.com/espnw/sports/article/24409204/us-gymnasts-deserve-better-usa-gymnastics-president-ceo-kerry-perry-far-delivered>.

position before she was forced to resign by the USOC.<sup>88</sup> Perry's termination was largely due to her failure to implement the new change that the organization needed within its operations.<sup>89</sup> An attorney representing over 180 of the gymnast-victims emphasized that Perry "continued the same flawed policies that led to the Nassar scandal, placing the reputation of coaches and staff above the safety of athletes and denying all legal responsibilities for the two-decade-long cover-up of Nassar's crimes."<sup>90</sup> Perry's termination was also due in part to her appointment of Mary Lee Tracy as the developmental coordinator for the organization, Tracy previously being a public supporter of Nassar following initial allegations against him from fifty gymnasts.<sup>91</sup>

A California Congresswoman and former gymnast was subsequently appointed as the interim CEO of USA Gymnastics in October 2018.<sup>92</sup> Less than one week following her appointment, however, she stepped down from the position, largely due to criticism she faced following her public opposition via twitter to Nike's sponsorship of and advertisement with NFL quarterback Colin Kaepernick.<sup>93</sup> Bono's tweet garnered the attention of Simone Biles, who responded to this situation and Bono's appointment as CEO stating "don't worry, it's not like we needed a smarter usa gymnastics president or any sponsors or anything."<sup>94</sup>

#### *E. What Action Has the Organization Taken to Combat Reoccurrence of the Issue?*

In June 2017, upon receiving numerous complaints and allegations against the organization, USA Gymnastics ordered an independent review by a former federal prosecutor on the policies and practices on allegations of sexual misconduct within the organization.<sup>95</sup> Following this investigation, the organization was given seventy recommendations, all of which were unanimously accepted and put into place.<sup>96</sup> Among the prevalent

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88. Juliet Macur & Ken Belson, *Kerry Perry, U.S.A. Gymnastics Chief, Is Forced Out*, N.Y. TIMES, Sept. 4, 2018, <https://www.nytimes.com/2018/09/04/sports/usa-gymnastics-kerry-perry.html>.

89. *Id.*

90. Elliott C. McLaughlin, *Simone Biles Claps Back at New USA Gymnastics Leader Over Nike Tweet*, CNN (Oct. 16, 2018), <https://www.cnn.com/2018/10/15/us/usa-gymnastics-simone-biles-mary-bono-tweet/index.html>.

91. Roscher, *supra* note 41.

92. Gina Martinez, *USA Gymnastics Interim CEO Mary Bono Resigns After Less Than a Week*, TIME, Oct. 16, 2018, <http://time.com/5426455/mary-bono-resigns-usa-gymnastics/>.

93. *Id.*

94. McLaughlin, *supra* note 90.

95. Meltzer, *supra* note 54.

96. *Id.*

recommendations that the organization enacted, was the creation of the Athlete Assistance Fund to provide survivors of sexual abuse with financial assistance.<sup>97</sup> Another prominent addition to USA Gymnastics' policies on the issue include the requirement that any adult who has been removed from a gymnastics club will be tracked in a database to ensure athletes in other clubs won't be similarly harmed by that adult.<sup>98</sup>

In recognition of the adjustments of its policies and procedures in handling sexual misconduct within the organization, USA Gymnastics publicly listed many of the steps that the organization has taken within the last ten years.<sup>99</sup> Among the changes to the individual policies governing the organization discussed above, USA Gymnastics has focused its attention on developing new resources and new subsidiary organizations to help athletes and members within the organization to better address and prevent these issues.<sup>100</sup> For example, the organization has created educational initiatives, including the Clubs Care<sup>101</sup> and We Care<sup>102</sup> programs, that individually target both parents and clubs within the larger organization to raise awareness of the incidents of child sexual abuse.<sup>103</sup> In addition to creating programs to further the education that constituents of the organization have on the dangers of sexual assault, USA Gymnastics has strengthened its relationship with law enforcement officials in the assistance of handling these claims and the relationship that the organization has with law enforcement agencies as the circumstances of these allegations dictate is needed.<sup>104</sup>

In October 2018, the national tumbling coach of USA Gymnastics, Sergio Galvez, resigned from his position pending an investigation by USA Gymnastics and the U.S. Center for Safe Sport due to "allegations of misconduct" against him.<sup>105</sup> His resignation resulted from "interim measures" that were placed on him by these organizations, as was determined to be

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97. Reynolds, *supra* note 42.

98. Yan, *supra* note 67.

99. *How USA Gymnastics Combats Sexual Misconduct*, USA GYMNASTICS, <https://usagym.org/pages/aboutus/pages/misconduct.html> (last visited May 9, 2019).

100. *See generally id.*

101. *USA Gymnastics Launches 'Clubs Care Campaign' to Educate Clubs About Safe Environments for Athletes*, USA GYMNASTICS (Sept. 18, 2012), <https://usagym.org/pages/post.html?PostID=10770&prog=h>.

102. *USA Gymnastics Launches 'We Care' Initiative to Educate Parents About Safe Environments for Athletes*, USA GYMNASTICS (Nov. 8, 2012), <https://usagym.org/pages/post.html?PostID=11026&prog=h>.

103. *How USA Gymnastics Combats Sexual Misconduct*, *supra* note 99.

104. *Id.*

105. Scott M. Reid, *USA Gymnastics Tumbling Coach Sergio Galvez Resigns Amid Misconduct Allegations*, ORANGE COUNTY REG., Oct. 28, 2018, <https://www.ocregister.com/2018/10/28/usa-gymnastics-tumbling-coach-sergio-galvez-resigns-amid-misconduct-allegations/>.

necessary to maintain a safe environment for the gymnasts he previously worked with while the investigation against him was being conducted.<sup>106</sup>

#### V. THE U.S. OLYMPICS HISTORY OF ABUSE

##### *A. Allegations Against Other National Governing Bodies*

Unfortunately for the USOC, USA Gymnastics is not the only national governing body within the larger organization to face allegations of sexual misconduct by officers and employees within the organization. More than 290 coaches and officials associated with US Olympic organizations have been publicly accused of sexual misconduct since 1982.<sup>107</sup> This includes more than 175 officials who have been formally convicted of sex crimes, in addition to numerous others who have denied the criminal claims against them and those who never faced any criminal charges.<sup>108</sup> USA Gymnastics is but one of six United States Olympic governing bodies that have been accused of mishandling these kinds of complaints of abuse,<sup>109</sup> with others that received some publicity including USA Taekwondo and USA Swimming, USA Figure Skating, USA Speed Skating, and USA Volleyball.<sup>110</sup>

USA Taekwondo faced allegations of sexual abuse by a coach in the organization stemming from acts that began in 2010.<sup>111</sup> Over the next three years, this coach, Marc Gitelman, forced three aspiring Olympic athletes to have sex with him dozens of times while he was their coach.<sup>112</sup> When one of these athletes, Yasmin Brown, approached the USA Taekwondo organization, the officials within the organization allegedly believed her claims of assault by Gitelman, but the court records demonstrate that they refused to ban Gitelman from USA Taekwondo out of fear of a potential lawsuit filed by him in response.<sup>113</sup> Concerns by officials within the Olympic organizations in the United States echoing USA Taekwondo's fears have not been uncommon. Interviews and investigations conducted with Olympic sport officials and these

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106. *Id.*

107. Will Hobson & Steven Rich, *Every Six Weeks for More than 36 Years: When Will Sex Abuse in Olympic Sports End?*, WASH. POST, Nov. 17, 2017, [https://www.washingtonpost.com/sports/every-six-weeks-for-more-than-36-years-when-will-sex-abuse-in-olympic-sports-end/2017/11/17/286ae804-c88d-11e7-8321-481fd63f174d\\_story.html?utm\\_term=.dc110a9ce6d2](https://www.washingtonpost.com/sports/every-six-weeks-for-more-than-36-years-when-will-sex-abuse-in-olympic-sports-end/2017/11/17/286ae804-c88d-11e7-8321-481fd63f174d_story.html?utm_term=.dc110a9ce6d2).

108. *Id.*

109. Hobson, *supra* note 73.

110. Lauren Green, *USA Gymnastics: Why USOC Began Decertification Process*, SPORTS ILLUSTRATED, Nov. 6, 2018, <https://www.si.com/olympics/2018/11/06/usa-gymnastics-larry-nassar-usoc-decertification>.

111. Hobson & Rich, *supra* note 69.

112. *Id.*

113. *Id.*



victims have led to discovering a “culture [in USA Olympic organizations] in which limiting the legal risk and preserving gold medal chances have been given a priority over safeguarding children.”<sup>114</sup>

After an unsuccessful attempt to find help within the USA Taekwondo organization, Brown approached the USOC to try and enlist its authority to ban Gitelman.<sup>115</sup> For the next year, Gitelman continued to coach Brown and other children competing in the organization, and it was not until September 2015 that Gitelman was convicted of criminal sexual abuse for the assault he committed on Brown and was subsequently finally banned from coaching by USA Taekwondo.<sup>116</sup>

This reluctance to increase education and reporting has also been seen in the USA Swimming organization. Multiple coaches within the USA Swimming organization have been accused of molestation and sexual assault spanning back more than thirty years of the organization’s operations.<sup>117</sup> Unlike the allegations against USA Taekwondo and USA Gymnastics that focused on one course of abuse, the allegations against USA Swimming pointed to a multitude of sources as to how the organization avoided detection of the abuse: “USA Swimming and other organizations had inadequate oversight, many local coaches, parents and swimming officials failed to report inappropriate conduct they witnessed, and some parents, driven to see their children succeed, ignored or did not recognize what should have been red flags.”<sup>118</sup> An investigation into the organization also found several situations in which parents of swimmers and other swimmers in the club chose to rally around a coach being accused of sexual abuse by a fellow swimmer, rather than coming to the support of their teammate.<sup>119</sup>

In the wake of the scandal of Nassar’s crimes, USA Swimming has once again recently come under fire with allegations of sexual abuse continuing in the organization. In March, 2017, the Southern California News Group issued a publication that described the sexual abuse problems that have plagued the organization for years.<sup>120</sup> The report detailed instances in the 1980s in which

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114. Hobson & Rich, *supra* note 107.

115. Hobson & Rich, *supra* note 69.

116. *Id.*

117. T.J. Quinn & Greg Amante, “*Outside the Lines*” Investigation Finds Some USA Swimming Coaches Molested Young Swimmers Managed to Escape Criminal Charges, ESPN (Apr. 27, 2010), <http://www.espn.com/espn/otl/news/story?id=5071820>.

118. *Id.*

119. Hobson & Rich, *supra* note 107.

120. Jessica Luther, Opinion, *USA Swimming Has a Sexual Abuse Problem, Too*, HUFFINGTON POST, Mar. 6, 2018, [https://www.huffingtonpost.com/entry/opinion-luther-swimming-abuse\\_us\\_5a9e8929e4b089ec353e8faa](https://www.huffingtonpost.com/entry/opinion-luther-swimming-abuse_us_5a9e8929e4b089ec353e8faa).

head coaches and a vice president of the USA Swimming organization were informed that a coach within the organization had been sexually abusing a female swimmer in the organization.<sup>121</sup> Despite numerous warnings given, USA Swimming did not pursue a case against the coach, nor did it fire him or change his role in any capacity with the organization upon learning of these accusations.<sup>122</sup> The treatment of this coach reflects the culture of those in power in the USA Swimming organization, as more than 250 swimming coaches and officials have been “arrested, charged by prosecutors, or disciplined by USA [Swimming] for sexual abuse or misconduct against individuals under 18,” in the last twenty years of the club’s operations.<sup>123</sup>

Another source of concern in the failure to enforce sexual abuse policies in these NGBs comes from a small cluster of attorneys located in Colorado Springs and Indianapolis.<sup>124</sup> The primary law firm that represents these national governing bodies is Bryan Cave,<sup>125</sup> which has represented twenty-seven of the Olympic NGBs and serves as outside counsel to the USOC.<sup>126</sup> Many victims and victims’ advocates have urged that the problems imposed in trying to escape from the culture of winning embodied in the NGBs result from the lawyers at this firm and other lawyers defending the NGBs, and their continued emphasis on avoiding litigation, rather than ensuring that the health and safety of the athletes remains of paramount importance.<sup>127</sup>

The NCAA has adopted a new policy in response to the Nassar abuse that requires all college athletes, coaches, and athletics administrators at member NCAA schools to complete annual sexual violence prevention education.<sup>128</sup> This policy requires that leaders on campus “must attest annually that coaches, athletics administrators, and student-athletes were educated in sexual violence prevention.”<sup>129</sup>

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121. Scott M. Reid, *100s of USA Swimmers Were Sexually Abused For Decades and the People in Charge Knew and Ignored It, Investigation Finds*, ORANGE COUNTY REG., July 30, 2018, <https://www.ocregister.com/2018/02/16/investigation-usa-swimming-ignored-sexual-abuse-for-decades/>.

122. *Id.*

123. *Id.*

124. Hobson & Rich, *supra* note 107.

125. Steven B. Smith, *Colorado Springs*, BRYAN CAVE LEIGHTON PAISNER, <https://www.bryan-cave.com/en/offices/colorado-springs.html> (last visited May 9, 2019).

126. Hobson & Rich, *supra* note 107.

127. *See generally id.*

128. Merrit Kennedy, *NCAA Will Require Athletes and Coaches to Complete Sexual Violence Education*, NPR: TWO WAY (Aug. 10, 2017), <https://www.npr.org/sections/thetwo-way/2017/08/10/542652954/ncaa-will-require-athletes-and-coaches-to-complete-sexual-violence-education>.

129. *Id.*

*B. What Has USOC Done to Try and Combat This in the Past?*

In response to the sexual abuse allegations that have plagued the USOC over the last few decades, criminal background checks and abuse education programs became mandatory in 2014.<sup>130</sup> Despite the influx of concerns of sexual abuse in these programs as allegations have become more and more public, some of the national governing bodies continue to be reluctant to impose further protections, primarily citing administrative difficulties in doing so. In 2012, a United States Tennis Association official objected to USOC's attempt to mandate abuse prevention policies.<sup>131</sup> At the same time, USA Softball officials expressed concerns about the expense of conducting these criminal background checks, which cost only \$20 each.<sup>132</sup> These officials were quoted in opposing USOC-wide policies, describing them as "misguided at best" and asking if there "really [is] a need for a top-down one-size-fits-all USOC approach to these issues?"<sup>133</sup>

Upon the realization of the severity of the abuse issue, the U.S. Center for Safe Sport was created in March 2017 to take over investigations of suspected sexual abuse in Olympic National Governing Bodies.<sup>134</sup> Among other mandatory provisions in the USA Gymnastics Safe Sport policy,<sup>135</sup> members of USA Gymnastics are now required to report suspicion of abuse to law enforcement, to notify USA Gymnastics of any misconduct, and to take designated continuing education courses every two years.<sup>136</sup> Specific policies that individual member clubs must adopt include: the requirement that all photographs or videos of athletes can only be taken in public view, if they observe "generally accepted standards of decency," and are appropriate and in the best interests of the gymnast; adults are not allowed to be alone with minor athletes while traveling; gift-giving to individual gymnasts is prohibited; compromising physical positions (for stretching) cannot be done by a gymnast while he or she is interacting with an adult; and there can be no interactions

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130. Hobson & Rich, *supra* note 107.

131. *Id.*

132. Hobson & Rich, *supra* note 107.

133. *Id.*

134. *Safe Sport*, USA GYMNASTICS, <https://usagym.org/pages/education/safesport/> (last visited May 9, 2019).

135. USA GYMNASTICS, USA GYMNASTICS SAFE SPORT POLICY (F/K/A/ PARTICIPANT WELFARE POLICY), [https://usagym.org/PDFs/About%20USA%20Gymnastics/safesportpolicy\\_062617.pdf](https://usagym.org/PDFs/About%20USA%20Gymnastics/safesportpolicy_062617.pdf) (last visited May 9, 2019).

136. *Safe Sport*, *supra* note 134.

between adults and gymnasts in a locker room, restroom, or other room where “there is a reasonable expectation of privacy.”<sup>137</sup>

In February 2017, Senator Dianne Feinstein announced that she was crafting legislation that would change how the organizations that create the US Olympic teams will deal with allegations of sexual abuse that arise from actions of their coaches,<sup>138</sup> one of these recommended changes included alterations to the Ted Stevens Amateur and Olympic Act. The change in legislation would require:

[A]nyone affiliated with an Olympic governing body to report immediately to law enforcement all allegations of sexual abuse; create procedures to prevent coaches leaving one club under the suspicion of abuse from getting jobs at other clubs, and clarify language in the Ted Stevens Act that has been interpreted by lawyers to afford coaches suspected of sexual abuse more rights than they would have if they worked in other industries.<sup>139</sup>

On November 14, 2017, this legislation was passed in the Senate, and a new mandatory reporting requirement was imposed on amateur athletics governing bodies, requiring a report of sex-abuse allegations to local or federal law enforcement, or to a child-welfare agency immediately upon receipt of the allegation by an athlete.<sup>140</sup>

In recognition of the hundreds of athletes that have alleged abuse by officials within the respective NGBs for Olympic sport in the United States, the USOC has continued its investment in remedying the internal operations of the organization to prevent the continuance of such patterns of abuse. In February 2018, the USOC announced several new policies that it believes continues its commitment to “ensure current and future athletes can train and perform in an environment where they feel safe and supported.”<sup>141</sup> These efforts are aimed directly at the source of several complaints that have been reported by athletes, by imposing a review of the governance structures of both the USOC and the national governing bodies, with input from safe sport advocacy groups, current athletes, policymakers, and advisory councils, among others.<sup>142</sup> These actions

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137. See generally USA GYMNASTICS, *supra* note 135.

138. Hobson, *supra* note 73.

139. *Id.*

140. Press Release, *Senate Passes Bill Requiring U.S. Amateur Athletic Organizations to Report Sexual Abuse*, U.S. SENATOR FOR CAL.: DIANNE FEINSTEIN (Nov. 14, 2017), <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=2BEC8C16-43E4-412A-8660-3E7EC73104F9>.

141. USOC, *U.S. Olympic Committee Announces Significant Changes to Further Protect Athletes*, TEAM USA (Feb. 28, 2018), <https://www.teamusa.org/News/2018/February/28/US-Olympic-Committee-Announces-Significant-Changes-To-Further-Protect-Athletes>.

142. *Id.*

also seek greater input from the athletes in the organization, as current and former competing athletes will be advised on the decision making process involved in the operations of the USOC.<sup>143</sup>

*C. Nassar Was Sentenced, What Has Happened Since?*

In March 2018, Jacob Moore became the first male gymnast to allege abuse by Nassar.<sup>144</sup> Moore's sister, also a gymnast, is one of the over 160 female gymnasts who accused Nassar of the abuse prior to his sentencing. Moore's complaint alleges sexual abuse by Nassar that dates back to 2016, when Nassar brought Moore to his home, and proceeded to molest him in what Nassar claimed would treat a shoulder injury that Moore was suffering.<sup>145</sup>

In April 2018, USA Gymnastics sued its insurance companies, alleging that the insurance carriers breached their contracts with the organization in their refusal to cover the organization for its defense costs in its lawsuits relating to Nassar.<sup>146</sup> The complaint alleges breach of contract against seven insurance companies, and the complaint specifically states that "[d]efendant insurers' wrongful denial of coverage and refusal to confirm they will indemnify USAG is a breach of their obligations to USAG under their respective policies."<sup>147</sup> In addition, in April 2018, the U.S. Senate, through a Commerce subcommittee, attempted to investigate how various sports organizations in the United States have handled sexual misconduct allegations, held a hearing with a number of US athletes.<sup>148</sup>

This House Energy and Commerce Committee investigated sexual abuse in the United States Olympic movement following Nassar's sentencing, and once again discovered a culture within the NGBs of a "systematic failure to protect athletes," explaining that the policies and procedures that have been put in place

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143. *See id.*

144. Jon Schuppe & Elizabeth Chuck, *Jacob Moore, First Male Gymnast to Accuse Larry Nassar of Sexual Abuse, Lashed Out*, NBC NEWS (Mar. 6, 2018), <https://www.nbcnews.com/news/us-news/gymnast-becomes-first-man-accuse-larry-nassar-sexual-abuse-n853791>.

145. *Id.*

146. Marisa Kwiatkowski et al., *USA Gymnastics Sues Insurers While Under Legal Pressure*, USA TODAY, Apr. 10, 2018, <https://www.usatoday.com/story/sports/olympics/2018/04/10/usa-gymnastics-sues-insurance-carriers-compel-coverage-larry-nassar-lawsuits/505519002/>.

147. *Id.*

148. *Senate Panel to Hold Hearing on Sexual Abuse of Olympic Athletes*, REUTERS (Apr. 11, 2018), <https://www.reuters.com/article/us-gymnastics-usa-nassar/senate-panel-to-hold-hearing-on-sexual-abuse-of-olympic-athletes-idUSKBN1HI36T>.

since Nassar's abuse was uncovered have "fallen short."<sup>149</sup> The report specifically found that twenty-seven of the forty-eight NGBs were not properly conducting background checks, that forty-seven do not perform background checks on athletes, and the continuing presence of "the effect of the USOC's reputation" as a factor to be considered when imposing sanctions still apparent through April 2018.<sup>150</sup>

In November 2018, the USOC took the first steps in an effort to decertify USA Gymnastics as the national governing body for the sport in the United States.<sup>151</sup> Unsurprisingly, USA Gymnastics did not voluntarily give up its status as the NGB for gymnastics in the United States. As a result, the USOC will move forward with the formal process governed by the USOC bylaws.<sup>152</sup> As the revocation process continues, USA Gymnastics will remain the NGB for the sport, and if the investigation leads to a revocation of its status, the USOC would take over control of the operations of the sport until a new NGB will be identified.<sup>153</sup>

*D. The True Harm the United States Olympic Committee Inflicted on Its Athletes*

Although the recent efforts taken by the USOC to remedy the effects of the scandals that have plagued its organizations over the past decades is admirable, it cannot be believed that these have come at the proper time. While some of the former scandals were successful in remaining under the radar of the organization until a short time before action was taken by the organization, the same cannot be said for all allegations of misconduct within these two organization. The USOC was put on notice of allegations by various athletes in the USA Swimming Organization in 2004, when USA Swimming sent the organization a series of letters asking the USOC to take action to develop sufficient policies and practices to better protect the athletes in their

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149. Rachel Axon, *USOC: House Report Reveals Failures to Protect Athletes from Abuse*, USA TODAY, Feb. 21, 2019, <https://www.usatoday.com/story/sports/2018/12/20/usoc-house-subcommittee-report-failure-protect-athletes/2371573002/>.

150. *Id.*

151. Nancy Armour & Rachel Axon, *USOC Starts Process to Revoke USA Gymnastics' Governing Body Status*, USA TODAY, Nov. 21, 2018, <https://www.usatoday.com/story/sports/olympics/2018/11/21/us-olympic-committee-starts-process-revoke-usa-gymnastics-status/2079315002/>.

152. As of the publishing date of this Comment, further steps have not been taken in the decertification process.

153. Green, *supra* note 110.

organization.<sup>154</sup> The organization was similarly warned of potential issues of sexual abuse occurring in USA Gymnastics by way of a letter sent in 1999 by the then-president of USA Gymnastics, Bob Colarossi.<sup>155</sup> The USOC failed to respond in an effective way to this letter, and it wasn't until 2010 when a scandal within the USA Swimming organization became public in a 20/20 report that the USOC finally decided to take action on this topic of grave importance.<sup>156</sup>

Despite publicly committing to change the culture and environment when this scandal broke in 2010, it was not until the very end of 2013 that the USOC created minimum standards for how sexual abuse should be handled within the national governing bodies.<sup>157</sup> Even after this public commitment by the organization to remedy the abuse plaguing its member organizations, the USOC failed to fully commit to ensuring the safety of its athletes. As discussed, an athlete in the USA Taekwondo organization approached the USOC in 2014 with complaints of sexual abuse she had experienced by one of her coaches.<sup>158</sup> The organization failed to adequately respond to this complaint, and the abuser continued to coach the accusing athlete and other athletes for more than a year following this complaint against him.<sup>159</sup>

The operations and officials of the USOC created a culture in which success in competitions was prioritized over guarding the safety of the athletes who were actually competing for the success of the organization. A common theme in the hundreds of allegations of sexual abuse against officials and coaches within the various national governing bodies has been that the individual organizations brushed these complaints aside, maintaining the focus on winning medals for the organization. This focus on excelling in competition came to the detriment of the health and safety of hundreds of athletes within the United States Olympic organizations. The USOC was aware of complaints by athletes within the organization for decades before official action was taken to protect the safety of future athletes in the organization. In this sense, the USOC has failed its athletes. It is not until official action criminalizing these offenses and all officers, who orchestrated the abuse within the organization, and policies preventing the recurrence of this type of behavior are put in place from the top

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154. Nancy Armour & Rachel Axon, *USOC Did Not Heed Sexual Abuse Warnings in 2004, 2005*, USA TODAY, Mar. 31, 2017, <https://www.usatoday.com/story/sports/olympics/2017/03/31/usoc-sexual-abuse-usa-swimming-senate/99826600/>.

155. *AP Source: USOC Recommends USA Gymnastics President Resign*, USA TODAY, Mar. 9, 2017, <https://www.usatoday.com/story/sports/olympics/2017/03/09/usoc-delivers-conclusion-to-usa-gymnastics-president/98980938/>.

156. *Id.*; see Armour & Axon, *supra* note 154.

157. Armour & Axon, *supra* note 154.

158. Hobson & Rich, *supra* note 69.

159. *Id.*

down in the organization and its subsidiaries that the organization can properly and accurately say it has fostered a safe culture for its athletes.

## VI. CONCLUSION

As the newest CEO of the USOC explained the rationale for the attempt to decertify the organization, she used just three words to correctly summarize the failure of the organization to remedy the situation dramatized most by Larry Nassar's actions: "You deserve better."<sup>160</sup> While the attempt to decertify USA Gymnastics is an admirable and much needed first step to begin healing the wounds that this organization created in its athletes, one cannot help but wonder what took the organization so long to finally take a step that has the potential to truly end the pattern of abuse that the sport of gymnastics has faced for decades. It took the USOC more than two years from the first public allegation of assault against Nassar, and twenty years from the first known examples of his abuse, to begin this process that was an obvious option for many years prior. There is no denying that this action has come at far too long a time and at far too high a cost for the athletes that suffered as a result of its failure to act. The USOC created a culture that focused so much on the value for the country of winning gold medals that it forgot to care about the athletes that make the achievement of those medals possible. The United States Olympic world will never be thought of the same again following the unearthing of the severity of the abuse scandals that have plagued the organizations revered and admired by millions of Americans for decades past, and there is simply no excuse for the ever-present failure to correct this culture.

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160. Green, *supra* note 110.