College Football's Serial Murderer: Sickle Cell Trait

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COMMENTS

COLLEGE FOOTBALL’S SERIAL MURDERER: SICKLE CELL TRAIT

INTRODUCTION

Starting with the January 1986 National Collegiate Athletic Association (NCAA) Convention, NCAA institutions officially committed to implement the Drug-Testing Program.1 The motivation behind the introduction of the Drug-Testing Program was not only to ensure an equitable playing field for all student-athletes but also to protect the health and safety of student-athletes.2 In 2010, the NCAA was again called to intervene to protect the health and safety of its student-athletes when it mandated sickle cell trait (SCT) screening for all incoming student-athletes.3 The NCAA’s new policy is based on the fact that for, approximately the past thirty-five years, college football has experienced its own version of a serial murderer: SCT.4 A serial murder is defined as “[a] murder in which a criminal kills one of many victims over

2. Id.
4. This Comment will focus on college football players, but SCT-associated deaths can occur in athletes that participate any sport at all levels of competition. NAT'L ATHLETIC TRAINERS' ASS'N, CONSENSUS STATEMENT: SICKLE CELL TRAIT AND THE ATHLETE 1-2 (June 2007), http://www.whitman.edu/athletics/sport_pages/NATA%20Concensus%20Statement%20Sickle%20Cell%20Trait%20And%20The%20Athlete.pdf [hereinafter CONSENSUS STATEMENT]. For example, the CONSENSUS STATEMENT states that SCT-associated deaths have occurred in high school athletes, one of which was a fourteen-year-old basketball player. Id. SCT even impacts professional athletes; Pittsburgh Steelers’ player Ryan Clark, who has SCT, sat out of a game in Denver in 2009 out of fear of overexerting himself in the high altitude. Bill Williamson, Source: Steelers Won’t Play Clark, ESPN.COM, Nov. 8, 2009, http://sports.espn.go.com/nfl/news/story?id=4635544. The impact of high altitudes on those with SCT is discussed in Part II of this Comment. Further, SCT-associated deaths are not limited to athletes. The CONSENSUS STATEMENT also discusses deaths of United States’ military recruits that occurred during basic training. CONSENSUS STATEMENT, supra note 4, at 2. As also discussed in Part II, college football players are particularly at risk due to the type of training and practice that is required in such a physical sport. Id.
time, often as part of a pattern in which the criminal targets victims who have some similar characteristics.\(^5\) SCT developed such a pattern in college football players.

The National Athletic Trainers’ Association (NATA) released its *Consensus Statement* reporting that, over the past four decades, SCT has been linked to up to thirteen deaths of college football players.\(^6\) The most recent college football tragedy occurred on March 18, 2008, at the University of Central Florida (UCF).\(^7\) After participating in an off-season workout, Ereck Plancher, a UCF football player, died as a result of complications associated with SCT.\(^8\) Without NCAA intervention, young college football athletes would have likely continued to fall prey to SCT’s fatal effects.

This Comment discusses the critical issue of SCT among college football players and praises the proactive steps taken by the NCAA in April 2010. Part I will focus on the death of Plancher and the pending lawsuit that resulted. Part II will address what SCT is, whom it affects, and how and why SCT has vigorously affected college football players. Part III will provide examples of college football deaths attributable to SCT, such as the death of Dale Lloyd, a Rice University football player, and how a settlement from the subsequent lawsuit led to the most significant NCAA advancements concerning SCT until April 2010.\(^9\) Part IV will address the NCAA’s previous voluntary institutional guidelines for managing student-athletes with SCT. Part V will tackle opponents’ primary argument against a NCAA-mandated SCT screening policy and why the NCAA need not fear a successful legal challenge to such a policy. Finally, Part VI will discuss why the NCAA rightfully converted to mandatory institutional SCT screening for all incoming student-athletes\(^10\) and why the NCAA should further mandate athletic department education on SCT.

**I. ERECK PLANCHER**

After an off-season workout, which Head Football Coach George O’Leary and his staff supervised, Plancher, a freshman wide receiver, collapsed and

\(^5\) *BLACK’S LAW DICTIONARY* 1114 (9th ed. 2009).

\(^6\) *CONSENSUS STATEMENT*, supra note 4, at 1-2.

\(^7\) Ilia Limón, *Court to Hear UCF Motion in Wrongful Death Suit Today*, ORLANDO SENTINEL, Aug. 21, 2009, at Cl.

\(^8\) Id.


\(^10\) Hosick, supra note 3.
died at the age of nineteen.\textsuperscript{11} His autopsy showed that he had SCT, which predisposed him to vascular distress during periods of physical stress and contributed to his death.\textsuperscript{12} Less than a year after their son's death, Enock and Giselle Plancher filed a wrongful death suit against the UCF Board of Trustees and the UCF Athletics Association, alleging that the University was negligent in its treatment of Plancher.\textsuperscript{13} On October 9, 2009, UCF's motion for summary judgment, which was based on two waivers that Plancher had signed, was denied.\textsuperscript{14} With the case in its discovery stage, Coach O'Leary was deposed about the circumstances surrounding Plancher's death.\textsuperscript{15}

Seventeen months after his death, confusion concerning student-athletes with SCT still loomed at UCF.\textsuperscript{16} At least two coaches—notably the two coaches that most directly supervised Plancher—admitted "they had no prior knowledge of Plancher's condition or [of] the risks [that] he faced during high-stress workouts."\textsuperscript{17} Furthermore, UCF's head athletic trainer stated that she told Plancher that he had tested positive for SCT, but she could not provide any documentation of such discussion.\textsuperscript{18} Including Plancher, at least seven deaths in college football have been attributed to SCT in this decade alone.\textsuperscript{19} It is puzzling why the NCAA failed to do more prior to April 2010 to help protect its student-athletes, specifically its college football players. To comprehend why college football players have historically served as targets for SCT, an examination of sickle cells is required.

II. WHAT IS SCT AND HOW DOES IT AFFECT COLLEGE FOOTBALL PLAYERS?

A sickle cell is "an abnormal red blood cell of crescent shape."\textsuperscript{20} Those

\begin{itemize}
  \item \textsuperscript{11} Limón, supra note 7.
  \item \textsuperscript{12} See generally id.
  \item \textsuperscript{13} Id.
  \item \textsuperscript{15} Iliana Limón, \textit{O'Leary Scheduled to Testify Judge Defers Ruling on UCFAA's Status as a State Agency}, ORLANDO SENTINEL, Jan. 5, 2010, at C1.
  \item \textsuperscript{16} See Mike Bianchi, \textit{Seems UCF Hasn't Learned From Ereck Plancher's Death}, ORLANDO SENTINEL, Aug. 28, 2009, at C1.
  \item \textsuperscript{17} Iliana Limón, \textit{2 Coaches Say They Didn't Know About Player's Sickle Cell Trait}, ORLANDO SENTINEL, Aug. 26, 2009, at A1.
  \item \textsuperscript{18} Iliana Limón, \textit{No Record Plancher Knew of Sickle Cell}, ORLANDO SENTINEL, Aug. 28, 2009, at C1.
  \item \textsuperscript{20} Merriam-Webster's Online Dictionary, \textit{Sickle Cell}, MERRIAM-WEBSTER.COM,
red blood cells contain a substance called hemoglobin.\textsuperscript{21} SCT is "an inherited usually asymptomatic blood condition in which some red blood cells tend to sickle but usually not enough to produce anemia and that occurs primarily in individuals of African, Mediterranean, or southwest Asian ancestry who are heterozygous for the gene controlling hemoglobin S."\textsuperscript{22} While less than one percent of non-African Americans have SCT, about eight percent of African Americans have SCT;\textsuperscript{23} essentially, approximately one in twelve African Americans carry SCT,\textsuperscript{24} a remarkably high statistic.

Many states began offering screening for sickle cell diseases in newborns in 1998.\textsuperscript{25} Currently, forty-nine states and the District of Columbia mandate screening for sickle cell diseases in newborns.\textsuperscript{26} New Hampshire provides screening for selected populations and for those who specifically request it; however, it is the only state that does not mandate screening for newborns.\textsuperscript{27} But even if all states screen newborns for sickle cell diseases,\textsuperscript{28} whether it be mandated or not, issues still arise. For instance, "in many cases, families are [not] told the results, or they forget or ignore them,"\textsuperscript{29} and perhaps more alarming, some screening may not detect SCT; instead, the purpose of the screening is to detect sickle cell anemia.\textsuperscript{30}

\begin{footnotesize}
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\item 27. Id.
\item 30. Neergaard, supra note 25.
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SCT should not be confused with sickle cell anemia, a sickle cell disease.

Sickle cell anemia is a blood disease that affects red blood cells. In people with the disease, hemoglobin becomes defective and causes the red blood cells to change shape. The faulty hemoglobin is called hemoglobin S, and it replaces normal hemoglobin. Over time, the red blood cells become rigid and shaped like crescent moons.

As a result, the cells cannot squeeze through tiny blood vessels and can cause pain, infections, and eventually life-threatening organ damage.

Conversely, SCT is generally a benign condition. Many people have SCT and never experience any difficulties. Unlike those who have the disease, carriers of SCT only carry one copy of the faulty hemoglobin gene, not the two needed for the full disease. Persons who have SCT, "have enough normal hemoglobin in their red blood cells to prevent the cells from sickling."

Another issue with screening newborns is that the initial screening procedures "were established to find disease, not generally healthy gene carriers, and specialists say there is wide variation in how aggressively the state programs notified parents about [SCT]." Thus, although a college football player may have been screened at birth, his status as a SCT carrier may be unknown to him.

The red blood cells of athletes that have SCT change from the normal round shape to a C-shape or sickle-shape cell when overexerted; this is known as exertional sickling. More precisely, exertional sickling is "the process of blood cells changing shape from physical activity and lack of

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31. Schrotenboer, supra note 19; see also SICKLE CELL ANEMIA, supra note 21.
32. SICKLE CELL ANEMIA, supra note 21.
33. Id.
34. Neergaard, supra note 25.
35. Schrotenboer, supra note 19.
36. Id.
37. Neergaard, supra note 25.
38. SICKLE CELL ANEMIA, supra note 21.
40. See id.
41. Schrotenboer, supra note 19.
42. See Mullen, supra note 24.
oxygen;"
thus, sickling is even more likely to occur at high altitudes, where oxygen is low. For example, in 2009, Ryan Clark of the Pittsburgh Steelers was withheld from playing in a regular season game in Denver, Colorado, which is situated 5,280 feet above sea level. In 2007, the last time he had played in Denver, Clark suffered nearly fatal SCT-associated complications.

As a result of exertional sickling, blockage can occur in the blood vessels, causing a collapse from blood-starved muscles. Sickled cells, unlike normal round cells, do not pass through blood vessels easily; therefore, they jam up the vessels and prevent "oxygenated blood from reaching that part of the body." When the muscles shut down, exertional rhabdomyolysis, "[the] rapid degeneration of muscle and tissue," occurs. Exertional rhabdomyolysis is a life-threatening process that can stop an athlete's heart.

Clark's complications in 2007 prevented oxygen from flowing into his spleen and caused his spleen and gall bladder to be removed.

Deaths known to have resulted from SCT have primarily occurred during football workouts because these workouts are usually much more physically strenuous and have less down time than practices and games. "Sickling can . . . occur during repetitive running of hills or stadium steps, during intense sustained strength training, if the tempo increases late in intense one-hour drills, or . . . when players run 'gassers,'" activities that primarily take place during off-season football conditioning workouts. In fact, sickling can occur in as quickly as two to three minutes of sprinting. Extreme exertion, high

43. Id.
44. Neergaard, supra note 25.
45. Williamson, supra note 4.
46. Id.
47. Schrotenboer, supra note 19.
49. Limón, supra note 17.
50. NCAA HANDBOOK, supra note 21, at 86.
51. Id.; see also CONSENSUS STATEMENT, supra note 4, at 1; see also Limón, supra note 17 (referring to exertional rhabdomyolysis as the cause of Plancher's death).
52. Williamson, supra note 4.
53. Schrotenboer, supra note 19.
55. CONSENSUS STATEMENT, supra note 4, at 2.
56. Id.
altitudes, and hot climates facilitate sickling in red blood cells. It follows that a football player with SCT could experience fatal effects if the proper precautions are not taken to help protect the student-athlete during times of extreme physical exertion.

III. SCT-ASSOCIATED DEATHS IN COLLEGE FOOTBALL

Including Plancher, at least fourteen SCT-associated deaths in college football have occurred over the past thirty-five years. The first death occurred in 1974. A native of South Florida, Polie Poitier left the Sunshine State to play college football at the University of Colorado in 1973. Poitier collapsed on the first day of practice. A year later, in August of 1974, after sprinting approximately seven hundred meters on the first day of practice, Poitier collapsed again. He passed away the following day; the cause of death was acute exertional rhabdomyolysis associated with SCT. Poitier became the NCAA’s first known death due to complications from SCT. Back then, coaches and players were unaware of SCT and the complications related to the condition in athletes. Bill Mallory, Colorado’s head football coach at the time, stated, “[y]ou’ve got to understand, we were ignorant.”

Since Poitier’s death, the tragedies have continued to add up, and many have occurred within the past decade. However, the major difference between 1974 and today is that ignorance is no longer a valid excuse. On February 26, 2001, Florida State University (FSU) linebacker Devaughn Darling collapsed during an off-season workout. He died later that same day at the age of eighteen. Darling and his twin brother, an FSU wide receiver,
became aware that they had SCT after a physical examination during their freshman year. Although there was no specific medical cause cited for Darling’s death, the medical examiner concluded that SCT could have contributed to his death. Darling’s parents sued FSU alleging that “their son died despite complaining of dizziness and chest pains during a workout” and that he “was deprived of water and other fluids during conditioning drills.” They also alleged that “[FSU] failed to provide sufficient rest periods during the workouts, did not have adequate medical personnel or equipment available, and failed to recognize that [Darling] was in distress.” Darling’s parents and FSU eventually reached a $2 million settlement agreement, which included the school’s commitment to maintain a scholarship award in Darling’s name.

Another SCT-associated college football death occurred at the University of Missouri (Mizzou). Aaron O’Neal, who was an accomplished athlete in high school, was living his dream of playing college football at Mizzou in 2005. Heading into the 2005 college football season, O’Neal was a redshirt freshman linebacker. On July 12, 2005, O’Neal collapsed during a voluntary workout; he died less than two hours later. O’Neal’s parents filed a wrongful death action against Mizzou alleging that “O’Neal died from a vascular crisis caused by [SCT] and extreme physical exertion, which caused several systems and organs in his body to shut down . . . .” The suit asserted that various members of the football staff, as well as Mizzou’s athletic director, failed to recognize signs of medical distress that could have saved O’Neal’s life. Additionally, the complaint claimed that the defendants’ “actions and inactions . . . demonstrate[d] that they had no familiarity with, or

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71. Id.
72. Id.
73. Id.
74. Id.
75. Id.
77. Aaron O’Neal Profile, MUTIGERS.COM, http://www.mutigers.com/sports/m-footbl/mft/oneneal_aaron00.html (last visited Nov. 5, 2009). O’Neal was a “four-sport standout student-athlete,” in high school. Id. In addition to football, O’Neal “excelled in basketball, track and baseball . . . .” Id.
78. Id.
79. Mizzou Settles, supra note 76.
80. Suit vs MU Over O’Neal is Revised, ST. LOUIS POST-DISPATCH, July 19, 2006, at D6 [hereinafter Suit vs MU].
81. Mizzou Settles, supra note 76.
ignored or forgot their required training concerning [SCT]."’82 Depositions from the lawsuit revealed a frightening fact: Mizzou personnel knew little about how to deal with an athlete with SCT.83 The two sides settled the suit in March 2009 for $2 million.84 Mizzou, like FSU in Darling’s case, also agreed to establish a scholarship endowment in honor of O’Neal.85

Prior to the NCCA’s decision to mandate SCT screening of student-athletes in April 2010,86 the most significant advancements concerning SCT in college football came as a result of the death of Dale Lloyd.87 Lloyd was a defensive back for the Rice University (Rice) football team in 2006.88 Like O’Neal, Lloyd was a multi-sport athlete in high school with great potential as a collegiate athlete; unfortunately, Lloyd played in only one game for Rice’s football team.89 He died on September 24, 2006, one day after collapsing during a conditioning workout.90 The nineteen-year-old’s death was caused by acute exertional rhabdomyolysis associated with SCT.91 Lloyd’s family sued Rice and the NCAA.92

The resulting settlement led to the NCCA’s pre-April 2010 SCT policy.93 Pursuant to the settlement agreement, the NCAA agreed to a number of commitments to assist its member institutions to better understand SCT as it relates to student-athletes.94 Among the commitments, the NCAA agreed to

[(1)] Amend its Sports Medicine Handbook Guideline 3c to state that while [SCT] screening is normally performed on all U.S. babies at birth, some student-athletes may not know if

82. Suit vs MU, supra note 80.
83. Dodd, supra note 29.
85. Id.
86. Hosick, supra note 3.
87. See NCAA RECOMMENDS TESTING, supra note 9.
89. Id. Dale played high school football and baseball. Id.
91. Id.; see CONSENSUS STATEMENT, supra note 4, at 2.
92. Family Settles Suit, supra note 90.
93. Id.
94. NCAA RECOMMENDS TESTING, supra note 9.
they have the trait. Following recommendations from NATA and [the College of American Pathologists], the NCAA recommends athletics departments confirm [SCT] status in all student-athletes, if it is not already known, during their required medical examinations [and (2) prepare an educational video about [SCT] to appear on the NCAA website and make it available to member schools.95

Lloyd’s case is significant because, after his death, the NCAA agreed to recommend that its member institutions screen student-athletes for SCT if it was not already known.96

IV. THE NCAA’S POST-LLOYD VOLUNTARY GUIDELINES FOR TREATING ATHLETES WITH SCT

The NCAA’s resolution with the Lloyd family was a major victory for the protection of student-athletes who carry SCT. As stated earlier, the NCAA began to recommend that, if the trait is not known, athletic departments should confirm SCT status in all student-athletes during the medical examination period.97 The NCAA recommended following NATA’s precautions.98 Amongst those precautions, NATA suggested that student-athletes with SCT should “[e]ngage in slow and gradual preseason conditioning regimen to be prepared for sports-specific performance testing and the rigors of competitive intercollegiate athletics” and should “[n]ot be urged to perform all-out exertion of any kind beyond two or three minutes without a breather.”99

Additionally, NATA advised that workouts of student-athletes carrying SCT should be considerate of their environment, which can affect student-athletes during periods of physical exertion.100 When high heat stress is possible, institutions should adjust workout and rest cycles to account for such conditions.101 If a workout is occurring at a higher altitude than the student-athlete is accustomed to, the workout should also be modified and an oxygen supply should be readily available.102 NATA further recommended that

95. Id.
96. Id.; see also NCAA HANDBOOK, supra note 21, at 87.
97. NCAA HANDBOOK, supra note 21, at 87.
98. Id. at 87–88.
99. Id.
100. See CONSENSUS STATEMENT, supra note 4, at 3.
101. Id.
102. Id.
student-athletes with SCT should maintain hydrated, control asthma, and not workout if ill.103

The primary issue with the NCAA’s stance concerning SCT was that the NCAA did not mandate screening of student-athletes;104 abiding by NATA’s precautions was not required either.105 According to NATA, nearly all of the deaths that had occurred in college football had occurred at NCAA member institutions that did not screen for SCT or whose procedures for managing student-athletes with SCT were inadequate.106 Even after Lloyd’s death, one key question remained: How many more young persons needed to die before the NCAA recognized the severity of this issue and began to require all member institutions to screen their student-athletes and to educate their athletic departments?

It is also puzzling why the NCAA lacked a mandated policy prior to April 2010 because the NCAA had expressly acknowledged that, “[i]n a 2006 survey of NCAA Division I Football Bowl Subdivision schools, [sixty-four] percent of respondents screened for [SCT]; however, precautions were inconsistent.”107 This inconsistency is not surprising. In 2006, the NCAA had not provided its member institutions with guidelines or recommendations regarding the precautionary measures that they should take for student-athletes carrying SCT,108 despite the thirty-two years that had passed since Poitier’s death and the numerous deaths that had occurred in college football due to complications with SCT since then.109 Thus, institutions could take the necessary steps to help protect their student-athletes, or they could not.110 Deciding whether student-athletes would be screened for SCT was an entirely discretionary institutional decision.111

Even after the surplus of SCT-associated deaths in college football, not much changed until April 2010. Prior to this time, the NCAA simply provided institutions with guidelines for treating student-athletes with SCT; however,
the guidelines' effectiveness was diluted by the NCAA's statement that "[s]creening for [SCT] . . . is an institutional decision."

In other words, the NCAA continued to maintain a hands-off approach to the most prevalent killer of NCAA football players this decade: exertional sickling due to complications with SCT. Perhaps the NCAA's hesitation was due to the fear of the alleged effects that a mandated SCT screening policy could have.

V. OPPONENTS' ARGUMENT THAT AN NCAA MANDED SCT SCREENING POLICY HAS A RACIALLY DISCRIMINATORY EFFECT

Probably the most prevalent argument against a mandated SCT screening policy is based on the concern of sickle cell discrimination. Essentially, the argument is that, because SCT is more prevalent in African Americans, as well as other minority groups, a mandated SCT screening policy could have a racially disproportionate effect by excluding student-athletes who have SCT. According to this argument, the NCAA should have continued to hesitate to implement such a policy.

Sociologist Troy Duster bases his concern on the long history of discrimination of people with SCT in the United States. In the 1970s, after four African American recruits died due to complications with sickling cells, the U.S. Army required mandatory screening. Those with SCT were barred from certain military sections, such as the Air Force. In addition to discrimination in the military, Duster suggests that people with SCT were also discriminated against through the denial of insurance policies and when seeking certain jobs.

Dr. Elliott Vichinsky of the Children's Hospital Oakland is also alarmed by the possible disproportionate discriminatory effect that the mandatory SCT screening policy could have in intercollegiate athletics. Vichinsky argues

112. NCAA HANDBOOK, supra note 21, at 87.
113. Dodd, supra note 29.
115. Id. (reporting that one in twelve African Americans carries SCT).
117. Avila-Shin, supra note 114.
119. Avila-Shin, supra note 114.
that coaches will be hesitant to put student-athletes on the field knowing that the student-athlete could suffer potentially fatal complications. 121 He believes coaches will say, "'[w]hy would I put a trait person out to play . . . when it's really hot? I may be liable.'"122 For example, FSU officials prevented Devard Darling, the twin brother of Devaughn Darling, from continuing to play wide receiver at the school after his brother's death.123 FSU doctors would not clear him to play because he, too, carried SCT.124

These arguments are misguided. First, it is doubtful that the mandated SCT screening policy will have a racially discriminatory effect. The history of discrimination of those with SCT in the United States occurred in the 1960s and 1970s, a time period that was right in the center of the civil rights movement.125 There has been much progress over the last forty to fifty years to help protect those with certain health conditions from being discriminated against, such as the passage of the Americans with Disabilities Act of 1990 (ADA).126 There are also state statutes that now specifically address discrimination based on SCT. For example, some states have enacted statutes preventing the denial of health or disability insurance to someone because they carry SCT.127 In other words, times have changed, and the argument that discrimination may occur because the NCAA now mandates SCT screening of its student-athletes is heavily outweighed by the higher probability that such screening can save lives.128

Additionally, a positive result from an SCT screening is unlikely to result in racial discrimination or to deter coaches from playing a student-athlete. Those with SCT generally live long and healthy lives, without ever experiencing any complications.129 In fact, as the NCAA has noted, "[SCT] is no barrier to outstanding athletic performance,"130 and a simple blood test,
along with the appropriate precautions, "can enable student-athletes with [SCT] to thrive in their sport." As long as the proper precautions are taken, there is no reason for an institution or a coach to discriminate against a student-athlete due to SCT. For instance, after being denied clearance to play by FSU, Devard Darling transferred to Washington State University where he played for two seasons before the Baltimore Ravens drafted him in the 2004 National Football League (NFL) Draft. Darling, a member of the Kansas City Chiefs at the time this Comment was written, has managed to successfully complete five seasons as a professional football player, despite carrying SCT. Moreover, according to NFL surveys, approximately seven percent of NFL players have SCT, further proof that, if the appropriate precautions are followed, an athlete should not be prevented from effectively participating in athletics, even at the highest level of competition.

Furthermore, contrary to Vichinsky's argument that coaches will hesitate to put student-athletes carrying SCT on the field, coaches should feel confident in playing student-athletes with SCT once they have been screened. The NCAA requires institutions to use reasonable care when managing their athletic programs. The mandated SCT screening policy should help to ease the fear of liability on the part of institutions and coaches. It is probable that an institution will be acting reasonably when it abides by the mandated SCT screening policy and takes the proper precautions for those student-athletes who test positive; thus, the concern of liability should be reduced.

Moreover, the NCAA need not worry about a legal attack alleging a violation of due process or equal protection rights guaranteed by the Constitution now that it has chosen to mandate SCT screening. The NCAA's authority to govern intercollegiate athletics without federal constitutional restraints was recognized in the monumental case *National Collegiate Athletic Ass'n v. Tarkanian*. In *Tarkanian*, the Court had to determine whether the NCAA was a state actor to which the Federal Constitution applies. Jerry Tarkanian, a tenured professor and the head

131. Id. at 87.
135. See *id*.
137. See U.S. CONST. AMEND. XIV, § 1.
139. Id. at 191.
basketball coach at the University of Nevada, Las Vegas (UNLV),\textsuperscript{140} alleged that the NCAA was a state actor and that it had violated his due process rights\textsuperscript{141} when it threatened further penalties against UNLV if UNLV did not sever ties with him.\textsuperscript{142} The Court found that the NCAA was not engaged in state action; therefore, the Fourteenth Amendment of the Constitution did not apply.\textsuperscript{143}

The Tarkanian case stands as the backbone to the NCAA’s governmental authority and “unless the Supreme Court overturns or distinguishes Tarkanian, it appears the NCAA will continue to have free reign and unfettered power to adopt and enforce its bylaws on its member institutions, each of whom voluntarily joined the organization.”\textsuperscript{144} Because the NCAA is a private entity, it is subject to the law of private associations.\textsuperscript{145} Judicial review of decisions and actions of private associations is highly deferential, and courts will generally “only overturn the decisions of a private association if it is proven that such decisions are made arbitrarily and capriciously or are procedurally unfair.”\textsuperscript{146} Since Tarkanian, a number of NCAA policies have been challenged in court.

One NCAA policy that has been judicially challenged on numerous occasions is its Drug-Testing Program.\textsuperscript{147} For example, in Hill v. National Collegiate Athletic Ass’n,\textsuperscript{148} student-athletes attending Stanford University sued the NCAA alleging that its Drug-Testing Program violated their right to privacy guaranteed under Article one, Section one of the California Constitution.\textsuperscript{149} The trial court agreed with the plaintiffs and enjoined the NCAA from enforcing its Drug-Testing Program on the plaintiffs and other Stanford athletes;\textsuperscript{150} the Court of Appeal upheld that decision.\textsuperscript{151}

\textsuperscript{140.} Id. at 182.
\textsuperscript{141.} Id. at 180.
\textsuperscript{142.} Id. at 191–92.
\textsuperscript{143.} Id. at 182.
\textsuperscript{145.} Benjamin A. Menzel, Comment, Heading Down the Wrong Road?: Why Deregulating Amateurism May Cause Future Legal Problems for the NCAA, 12 MARQ. SPORTS L. REV. 857, 865 (2002).
\textsuperscript{146.} Id.
\textsuperscript{149.} Hill v. Nat’l Collegiate Athletic Ass’n, 865 P.2d 633, 637 (Cal. 1994).
\textsuperscript{150.} Id.
\textsuperscript{151.} Id.
On appeal, the Supreme Court of California, citing *Tarkanian*, recognized that the NCAA is a private organization but also emphasized that, under California law, the right to privacy creates a private right of action against governmental and private entities, such as the NCAA. Even so, the court refused to hold that the NCAA’s drug-testing policy violated the plaintiffs’ privacy rights for two reasons. First, the court explained that “athletic participation carries with it social norms that effectively diminish the athlete’s reasonable expectation of personal privacy in his or her bodily condition, both internal and external.” Second, the court found that student-athletes have a diminished expectation of privacy because they have advanced notice of and an opportunity to consent to the NCAA’s drug-testing program. The court stressed that “[p]articipation in any organized activity carried on by a private, nongovernment organization necessarily entails a willingness to forgo assertion of individual rights one might otherwise have in order to receive the benefits of communal association” and concluded that the NCAA’s drug-testing policy is a reasonable method of furthering its interest in securing fair competition and the health and safety of student-athletes.

*Hill* serves as a prime illustration of the authority that the NCAA has to regulate itself and its members and the deference that courts provide to the NCAA to do so. Accordingly, the constitutional shield created by *Tarkanian* affords the NCAA the protection needed to implement the mandatory SCT screening policy amongst its member institutions with the confidence that judicial interference will be strictly limited in accordance with the law of private associations.

VI. THE NCAA RIGHTFULLY MANDATED SCT SCREENING FOR ALL STUDENT-ATHLETES AND SHOULD FURTHER MANDATE SCT EDUCATION FOR ALL INSTITUTIONAL ATHLETIC DEPARTMENTS

The NCAA expressly provides that “an institution has a legal duty to use reasonable care in conducting its intercollegiate athletics program, and [NCAA] guidelines may constitute some evidence of the legal standard of care.” The NCAA followed its own suggestions to its member institutions

152. *Id.* at 641.
153. *Id.* at 644.
154. *Id.* at 658.
155. *Id.*
156. *Id.* at 658–59.
157. *Id.* at 659.
158. *Id.* at 666.
159. NCAA HANDBOOK, supra note 21, at 2.
and used reasonable care itself in April 2010, when it decided to mandate SCT
screening of all incoming student-athletes. The NCAA should further help
to ensure the health and safety of its student-athletes by mandating SCT
education for all institutional athletic departments.

A. The NCAA Rightfully Mandated SCT Screening For All Student-Athletes

NCAA Division I Bylaw 17.1.5.1 now states,

Sickle Cell Solubility Test. The examination or evaluation of
student-athletes who are beginning their initial season of
eligibility and students who are trying out for a team shall
include a sickle cell solubility test, unless documented results
or a prior test are provided to the institution or the prospective
student-athlete or student-athlete declines the test and signs a
written release.161

Such a policy was long overdue prior to April 2010. Previously, the
NCAA had acknowledged “[e]xertional rhabdomyolysis can be life-
threatening” and that “[s]creening can be accomplished with a simple blood
test that is relatively inexpensive.”162 In fact, screening for SCT only costs
about five to ten dollars per athlete and only thirty dollars to confirm a positive
test.163 The required screening for SCT as part of a pre-participation physical
is a simple and affordable solution.164

Some, including an NCAA spokesman, alleged that the NCAA could not
mandate SCT screening but could merely recommend that institutions screen
student-athletes.165 One writer claimed that, “[b]ecause the NCAA is a
voluntary association, they cannot mandate the testing be done.”166 A quick
examination of the NCAA’s organizational structure suggests otherwise; the
NCAA can, and did, mandate SCT screening of student-athletes.167

160. Hosick, supra note 3.
161. NAT’L COLLEGIATE ATHLETIC ASS’N, 2010-11 DIVISION I MANUAL 241, July 2010,
162. NCAA HANDBOOK, supra note 21, at 87-88.
163. Dodd, supra note 29.
164. Broe, supra note 106.
165. Family Settles Suit, supra note 90.
166. Joseph Duarte, Dale Lloyd II to Have Lasting Impact on Rice, NCAA, THE HOUSTON
have_lasting.html.
167. See DIVISION I MANUAL, supra note 162.
The NCAA "is a voluntary organization through which the nation's colleges and universities govern their athletics programs. Its members are committed to the best interests, education[,] and athletics participation of student-athletes."\(^{168}\) The members are the "colleges, universities[,] and conferences that make up the NCAA."\(^{169}\) The "members appoint volunteer representatives that serve on committees which introduce and vote on rules called bylaws . . . [and] establish programs to govern, promote[,] and further the purposes and goals of intercollegiate athletics."\(^{170}\) Although many believe that the NCAA rules its member institutions, "it is actually a bottom-up organization in which the members rule the [NCAA]."\(^{171}\) As such, it is the members—the institutions themselves—who adopted the bylaw that now requires them to screen all student-athletes for SCT; this newly adopted bylaw certainly promotes and furthers the "best interests . . . of student-athletes."\(^{172}\)

The Division I Manual contains the bylaws that govern Division I intercollegiate athletics.\(^{173}\) Article 2.2.3 of the Constitution states that "[i]t is the responsibility of each member institution to protect the health of and provide a safe environment for each of its participating student-athletes."\(^{174}\) The NCAA’s Sports Medicine Handbook (Handbook) reiterates this provision in its preface, which primarily establishes that the Handbook is a compilation of guidelines, not mandates.\(^{175}\) However, the NCAA imposes requirements on its member institutions in other areas concerning the health and safety of student-athletes.\(^{176}\)

Most notably, the NCAA requires its member institutions to administer a consent form for each student-athlete in pursuance of its Drug-Testing Program.\(^{177}\) The NCAA provides two reasons for its Drug-Testing Program: (1) to prevent student-athletes from obtaining an "artificially induced advantage" and (2) for "the protection of the health and safety of the student-athletes."\(^{178}\)


\(^{170}\) Id.

\(^{171}\) Id.

\(^{172}\) See About the NCAA, supra note 169.

\(^{173}\) See generally DIVISION I MANUAL, supra note 162.

\(^{174}\) Id. at 3.

\(^{175}\) NCAA HANDBOOK, supra note 21, at 2.

\(^{176}\) See generally id.

\(^{177}\) DRUG-TESTING PROGRAM, supra note 1, at 4.
Clearly, the NCAA has a justifiable rationale for protecting its student-athletes from drug use; however, it was perplexing why the NCAA had been hesitant to proactively help protect student-athletes from SCT prior to implementing the mandated policy. Essentially, it appears either the NCAA valued the protection of fair play over the protection of the health and safety of its student-athletes or the NCAA only felt warranted to intervene to protect the health and safety of student-athletes when intervention was accompanied with another NCAA interest, such as eliminating unfair play. Regardless of the NCAA’s reasoning, in this decade, SCT has become the leading cause of death among NCAA football players. There is no legitimate reason that outweighs the protection of the health and safety of football players from their most prevalent killer this decade, particularly when a simple and effective remedy is available.

Before the NCAA adopted the mandated policy, many had started to advocate in favor of implementing such a policy. After settling with Dale Lloyd’s family, Rice University agreed to put forth an initiative that the NCAA mandate SCT screening of student-athletes. In an effort to save the lives of student-athletes, “NCAA schools . . . follow[ed] Rice and embrace[d] such a rule” in April 2010, when the NCAA passed legislation requiring all incoming student-athletes to be screened for SCT.

The circumstances surrounding Plancher’s death illustrate the confusion that arises when such a mandated policy does not exist. Plancher’s medical file had no documentation that Plancher had been informed that he tested positive for SCT or that he acknowledged testing positive for SCT. In fact, “the records indicated that Plancher had never been tested for SCT before he arrived at UCF.” Had the NCAA implemented a simple and low-cost SCT screening policy before Plancher arrived on UCF’s campus, he could still be alive today.

Scott Anderson, the head athletics trainer at the University of Oklahoma, has been screening all student-athletes for SCT for approximately the past eight or nine years, long before the NCAA mandated it. Within that time

178. Id.
179. Dodd, supra note 29.
180. Id.
181. Duarte, supra note 166.
182. Id.
183. Hosick, supra note 3.
184. Limón, supra note 18.
185. Id.
186. See Mullen, supra note 24.
period, Oklahoma detected SCT in nineteen football players; yet, only two of them already knew of this trait.\textsuperscript{187} Although SCT screening was not required, Anderson recognized that “there[ was] a body count that[ was] growing,”\textsuperscript{188} and refused to remain static. SCT screening is now a requirement of all member institutions;\textsuperscript{189} however, the NCAA must take one more step if screening is to have its intended effect.

B. The NCAA Should Further Mandate SCT Education For All Institutional Athletic Departments

In addition to mandated screening, the NCAA should require its member institutions to educate their athletic departments on SCT. The NCAA recognizes that “[p]lanned emergency response and prompt access to medical care are critical components to ensure adequate response to a collapse or athlete in distress.”\textsuperscript{190} In Plancher’s case, there was conflicting evidence as to whether the coaching staff even knew Plancher tested positive for SCT.\textsuperscript{191} Further, after nearly a year and a half had passed since Plancher’s death, UCF coaches still had not been given instructions on how to manage a student-athlete with SCT.\textsuperscript{192} “If education and precautions do [not] follow the information that comes with screening, then the screening has really been done all for nothing,” says Anderson.\textsuperscript{193}

The importance of education concerning SCT was recognized long before the NCAA mandated SCT screening.\textsuperscript{194} In the early ‘70s, the federal government stressed this idea when it enacted the National Sickle Cell Anemia Control Act.\textsuperscript{195} Congress found that “efforts to prevent sickle cell anemia must be directed toward increased research in the cause and treatment of the disease, and the education, screening and counseling of carriers of the sickle cell trait.”\textsuperscript{196} It would follow that, if the federal government appreciated the value of education concerning SCT in the early ‘70s, the NCAA would have implemented a policy requiring its member institutions to educate themselves on SCT at some point within the more than thirty-five years since then.

\begin{itemize}
  \item \textsuperscript{187} Neergaard, \textit{supra} note 25.
  \item \textsuperscript{188} Mullen, \textit{supra} note 24.
  \item \textsuperscript{189} Hosick, \textit{supra} note 3.
  \item \textsuperscript{190} NCAA HANDBOOK, \textit{supra} note 21, at 86.
  \item \textsuperscript{191} Limón, \textit{supra} note 17.
  \item \textsuperscript{192} Bianchi, \textit{supra} note 16.
  \item \textsuperscript{193} Neergaard, \textit{supra} note 25.
  \item \textsuperscript{194} \textit{See generally} National Sickle Cell Anemia Control Act, 42 U.S.C. § 300(b) (Supp. V 1975).
  \item \textsuperscript{195} \textit{Id.}
  \item \textsuperscript{196} \textit{Id.}
\end{itemize}
Regrettably, that had not occurred prior to April 2010, and action was long overdue.

Over the years, even coaches had become proactively concerned with the issues confronting student-athletes with SCT. Tom Amstutz, former University of Toledo football coach, coached William Bratton for four years and knew that Bratton was a carrier of SCT. Amstutz allowed Bratton to skip drills and, sometimes, entire practices. Amstutz stated, “[i]t goes against the natural grain of coaching, which is pushing players, and taking them past the point that they would take themselves, . . . [b]ut I would not feel comfortable coaching a young man that was not screened.” The lack of knowledge concerning treatment for student-athletes with SCT was apparent in the recent cases of O’Neal and Plancher. There is no better authority to ensure that this lack of knowledge is eliminated from college campuses than the organization that regulates intercollegiate athletics—the NCAA.

Screening student-athletes without educating institutions and requiring institutions to take the proper precautions is likely to prove meaningless. One father of a NCAA student-athlete agrees. Approximately only one year before the NCAA adopted its mandated SCT screening policy, college football nearly experienced another SCT-associated death. Eric Ikonne, a San Diego State University defensive lineman who has SCT, collapsed during a spring football workout. Ikonne could have died that day, and in fact, he almost did. Reflecting on the near-death experience of his son, Ikonne’s father said he “hope[s] the school learns from this because this could have been worse,” [and] hopes . . . other schools . . . will take better precautions with athletes who have [SCT].” In Ikonne’s case, the NCAA escaped another tragedy, but for screening to have its desired effect, institutions and their athletic departments must be informed. The NCAA should mandate that its member institutions’ athletic departments learn how to treat student-athletes with the condition and take the necessary precautions to do so.

197. Mullen, supra note 24.
198. Id.
199. Id.
200. See Dodd, supra note 29.
201. See generally Bianchi, supra note 16.
202. These precautions were discussed in Part IV.
203. See Schrotenboer, supra note 19.
204. Id.
205. Id.
206. Schrotenboer, supra note 19.
While it does not preclude those with the condition from participating in athletics, SCT is a life-threatening condition, and those carrying SCT should be monitored and treated appropriately. Far too many young men participating in intercollegiate football have died as a result of the ignorance concerning the complications associated with SCT. Lloyd’s case pushed the NCAA in the right direction, but more had to be done.

On January 13, 2010, the NCAA Division I Legislative Council decided to postpone the decision to mandate SCT screening of all student-athletes. It was alarming that the NCAA continued to leave its student-athletes—football players in particular—at risk. Finally, in April 2010, the NCAA took a giant step towards protecting student-athletes when it adopted legislation that requires member institutions to screen all incoming student-athletes for SCT. There was no legitimate reason for continuing to refuse to mandate SCT screening that outweighed the NCAA’s interest in protecting the health and safety of its football players against their most prevalent killer this decade—Sickle Cell Trait. The NCAA should further require its member institutions to educate their athletic departments concerning SCT. A mandated screening policy was certainly long overdue, but screening without education is unlikely to produce the intended results.

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