

A Commitment to the Whole Athlete: Embracing the Role of Cannabinoids in Collegiate Athletics

*Kelli Rodriguez Currie**

The Auburn University football team rescinded an offer it previously extended to C.J. Harris as a “walk-on”¹ player in May 2018 because his history of epilepsy prevented him from receiving the medical clearance necessary from team doctors.² C.J. had dreamed of attending Auburn since he was young, but by the end of his senior season in high school, few universities had recruited him.³ After C.J.’s father, Curtis Harris, sent film of C.J.’s high school games to Auburn, the university offered him a spot on their roster as a “walk-on.”⁴ Curtis Harris contends that Auburn was aware of C.J.’s epilepsy when they offered him the opportunity to walk-on to their roster and that the university only rescinded the offer after learning that C.J. took cannabis oil when the team reviewed his medical records.⁵

Harris’s epileptic seizures began in the seventh grade.⁶ His doctors initially prescribed an anticonvulsive medication to treat the condition, but the seizures continued.⁷ Harris began taking cannabis oil instead of the anticonvulsive medication in January 2017, and he has not had a seizure since.⁸ Though C.J.’s doctors encouraged him to continue playing football

* Seattle University. B.S., California University of Pennsylvania; Master of Sport Administration & Leadership, Seattle University; J.D., Seattle University School of Law.

1. A “walk-on” player to an athletic team of a National Collegiate Athletic Association member institution does not receive an athletic scholarship. *See generally* Frank Fitzpatrick, *College Football Walk-Ons: An Uphill Battle That Can Be Won*, NCAA (Dec. 15, 2015), <https://www.ncaa.com/news/football/article/2015-12-12/college-football-walk-ons-uphill-battle-can-be-won> [<https://perma.cc/CB4E-VSYR>].

2. Nick Martin, *Auburn Says Football Recruit Was Dropped Because of Epilepsy, Not CBD Oil*, DEADSPIN (May 31, 2018), <https://deadspin.com/auburn-says-football-recruit-was-dropped-because-of-epi-1826453861> [<https://perma.cc/Q3KD-M749>].

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

through high school and college, many college football “recruiters [told] Curtis they would risk too much by offering C.J. a roster spot” because the National Collegiate Athletic Association (NCAA) included cannabis on its list of banned substances.⁹ Without any opportunities to play college football, C.J. took the time to focus on his studies outside the NCAA and in January 2020, C.J. was given the opportunity to enroll as a junior transfer to Arkansas State University.¹⁰ Although C.J. enrolled as a junior transfer on a full athletic scholarship,¹¹ he was forced to give up his dream of playing at Auburn because the NCAA rejects a more inclusive approach to cannabis for its student-athletes.¹² The NCAA should consider a more inclusive approach to cannabis and substance abuse treatment for its student-athletes to allow for necessary medical exceptions and to create a more supportive environment for student-athletes.

C.J.’s story highlights the disparity between the NCAA’s commitment to student-athlete well-being and the growing acceptance of the use of cannabinoids among athletes for pain management and as a natural remedy for many medical conditions.¹³ Further, the failure of the NCAA to provide comprehensive and standardized education to student-athletes about substances of abuse, including marijuana, is incongruent with its commitment to supporting student-athletes.¹⁴

Part I of this Article discusses how cannabinoids are used in sports medicine. Part II discusses the different approaches to marijuana and cannabidiol use across sports leagues. Part III highlights the inconsistencies between the NCAA’s approach to testing for substance abuse and its investment in student-athletes’ well-being. Part IV discusses how the NCAA must focus on student-athlete health. Finally, Part V concludes that the NCAA should consider a more supportive and

9. *Id.*; see also *2018-2019 NCAA Banned Drugs*, NCAA (May 30, 2018), https://www.ncaa.org/sites/default/files/2018-19NCAA_Banned_Drugs_20180608.pdf [<https://perma.cc/BP3G-U5LK>] (listing “marijuana, tetrahydrocannabinol (THC), and synthetic cannabinoids” as banned drugs).

10. Marvin James, *Former Warner Robins Demon Gets a Chance to Play NCAA College Football*, 13WMAZ (Dec. 24, 2019), <https://www.13wmaz.com/article/sports/cj-harris/93-5d0d3899-92ff-44d2-8339-b6e474319e3d> [<https://perma.cc/8MGJ-BB52>].

11. *Id.*

12. Jacob Bogue, *Football Recruit Pleads with College Coaches to See Past His Medical Cannabis Medication*, WASH. POST (Aug. 8, 2018), <https://www.washingtonpost.com/news/early-lead/wp/2018/08/08/football-recruit-pleads-with-college-coaches-to-see-past-his-medical-cannabis-medication/> [<https://perma.cc/NMW4-J7Q3>].

13. See Mark A. Ware et al., *Cannabis and the Health and Performance of the Elite Athlete*, 28 CLIN. J. SPORT MED. 480 (2018). See generally NCAA, 2019–20 NCAA DIVISION I MANUAL (Aug. 2019) [hereinafter NCAA DIVISION I MANUAL].

14. See NCAA, NCAA DRUG TESTING PROGRAM 2019–2020, at 4 (2019) [hereinafter NCAA DRUG TESTING PROGRAM 2019–2020], https://ncaaorg.s3.amazonaws.com/ssi/substance/2019-20SSDI_DrugTestingProgramBooklet.pdf [<https://perma.cc/D9M4-VRX8>].

inclusive approach to cannabis and substance abuse treatment for its student-athletes.

I. MEDICAL USE OF CANNABINOIDS BY ATHLETES

Cannabinoids can be a highly effective way for athletes to combat various kinds of pain associated with intense training. Derivatives of cannabis, such as marijuana, have been used for centuries as a form of pain relief.¹⁵ “Cannabis” includes any derivative of the *Cannabis sativa L* plant¹⁶ and includes preparations, such as marijuana.¹⁷ “Cannabinoids” are any of the several naturally-occurring chemical components found in cannabis.¹⁸ Many of these components contain both a psychoactive component, Δ^9 -tetrahydrocannabinol (THC), and a non-psychoactive component, cannabidiol (CBD).¹⁹

Concerns over the dangers of addiction to and abuse of THC have led to several decades of heavy regulations on cannabinoids, including CBD, despite the numerous documented medical benefits of CBD.²⁰ Studies are inconclusive as to whether cannabinoids are consistently effective for pain relief; however, many studies show cannabinoids as effective in reducing muscle pain and pain associated with the nervous system.²¹ Specifically, “CBD has been shown to exert potent anti-inflammatory and antioxidant effects.”²² Additionally, some early studies show that CBD may decrease anxiety and, in some cases, may improve sleep quality, both of which may benefit athletes with rigorous training schedules.²³

Moreover, elite athletes are eager to explore the benefits of CBD, since it can help them pursue excellence through years of intense training and competition.²⁴ Floyd Landis, a former professional cyclist and 2006 winner of the Tour de France, notes that “many athletes prefer ‘natural’ alternatives for pain relief,” and although he “acknowledges the lack of

15. Ware et al., *supra* note 13, at 480; *see also* Natalya M. Kogan & Raphael Mechoulam, *Cannabinoids in Health and Disease*, 9 DIALOGUES CLIN. NEUROSCI. 413, 414 (2007).

16. Ware et al., *supra* note 13, at 480.

17. Kogan & Mechoulam, *supra* note 15, at 1.

18. *Cannabinoid*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cannabinoid> [<https://perma.cc/JMY3-UULF>].

19. Ware et al., *supra* note 13, at 480.

20. Kogan & Mechoulam, *supra* note 15, at 414.

21. *See id.* at 416.

22. *Id.* at 418.

23. Genevieve Lafaye et al., *Cannabis, Cannabinoids, and Health*, 19 DIALOGUES CLIN. NEUROSCI. 309, 314 (2017).

24. *See* Amanda Loudin, *As More Pro Athletes Use Cannabis for Aches and Pain, the More They Run Afoul of Rules*, WASH. POST (Dec. 7, 2019), https://www.washingtonpost.com/health/as-more-pro-athletes-use-cannabis-for-aches-and-pain-the-more-they-run-afoul-of-rules/2019/12/06/7dbd82fc-00c7-11ea-8bab-0fc209e065a8_story.html [<https://perma.cc/YX3Q-MT28>].

data about medical uses of CBD, . . . “[t]opical products are popular with people who want to treat localized pain.”²⁵ Although one study indicated that younger athletes have a higher use of recreational cannabis, the same study noted that “[a]bout 61 percent of the athletes indicated they use cannabis for pain, with 68 percent saying that cannabis improved their pain, . . . [t]here were no differences in pain relief by age, but younger athletes reported better sleep and less anxiety with cannabis use than older athletes.”²⁶

Additionally, since Colorado and Washington legalized the recreational use of marijuana and cannabis by adults in 2012,²⁷ twelve more states have deregulated adult use of cannabinoids.²⁸ However, despite the increasing support for the legalization of marijuana in America,²⁹ professional and amateur sports leagues continue to restrict the use of cannabinoids by athletes. Because cannabinoids can offer a natural alternative to pain relief for athletes, the NCAA must take steps toward lifting such strict regulation on cannabinoids.

II. LEAGUE CANNABIS USE AND SUBSTANCE ABUSE POLICIES

Triathlete Lauren Goss accepted a six-month suspension for an anti-doping violation under the United States Anti-Doping Agency (USADA) in September 2019 after she tested positive for THC in June 2019.³⁰ Goss finished second among women in the July 9, 2019 Escape from Alcatraz event,³¹ which included a 1.5-mile swim, an 18-mile bike ride, and an 8-mile run.³² After Goss suffered a stress fracture in her foot, she used a

25. *Id.*

26. *Id.*; see also Joanna S. Zeiger et al., *Cannabis Use in Active Athletes: Behaviors Related to Subjective Effects*, 14 PLOS ONE 1 (2019), <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0218998&type=printable> [<https://perma.cc/7HH7-HTGP>].

27. Tom Angell, *Marijuana on the 2020 Ballot: These States Could Vote*, FORBES (Dec. 26, 2019), <https://www.forbes.com/sites/tomangell/2019/12/26/marijuana-on-the-2020-ballot-these-state-s-could-vote/> [<https://perma.cc/SW3S-K3QQ>].

28. *State Medical Marijuana Laws*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 10, 2020), <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> [<https://perma.cc/QY8P-VW4C>].

29. Andrew Daniller, *Two-Thirds of Americans Support Marijuana Legalization*, PEW RES. CTR. (Nov. 14, 2019), <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/> [<https://perma.cc/9AD9-4Y8L>].

30. *U.S. Triathlon Athlete Lauren Goss Accepts Doping Sanction for Anti-Doping Rule Violation*, USADA (Sept. 5, 2019), <https://www.usada.org/sanction/lauren-goss-accepts-doping-sanction/> [<https://perma.cc/3GVM-KHAV>].

31. *Escape from Alcatraz Triathlon Results*, ESCAPE FROM ALCATRAZ TRIATHLON (June 6, 2019), <https://www.escapealcatraztri.com/results/2019#/race/Z0WZGQ/> [<https://perma.cc/5MGG-XNQF>].

32. *Escape from Alcatraz Triathlon Overview*, ESCAPE FROM ALCATRAZ TRIATHLON, <https://www.escapealcatraztri.com/race-information/overview> [<https://perma.cc/5EMB-29V8>].

topical cream containing CBD to help with the pain.³³ Because there is only a minimal amount of THC contained in all CBD products, Goss did not realize it would be enough to trigger a positive test³⁴ above the USADA urinary threshold of 150 nanograms per milliliter (ng/ml).³⁵ As Goss's story illustrates, the prohibition on marijuana and cannabinoids by sport regulatory agencies may limit the ability of athletes to access helpful pain management treatments during training and competition.³⁶

As a signatory to the World Anti-Doping Code administered by the World Anti-Doping Agency (WADA), the USADA prohibits marijuana and other cannabinoids in competition.³⁷ In 2019, the WADA and the USADA exempted CBD from this prohibition.³⁸ However, the WADA still argues that cannabis can lead to poor decision making, improperly enhance performance, be harmful to an athlete's health, and tarnish the image of an athlete as a role model for young people.³⁹ The WADA's argument fails to consider studies about how cannabis can help athletes and offer a more natural alternative. Further, although the WADA exempted CBD from this prohibition, THC largely remains prohibited, and the USADA cautioned athletes that "it is very difficult, if not impossible, to obtain a pure CBD extract or oil from the cannabis plant."⁴⁰

Further, the NCAA recently revisited its restrictions on cannabinoids and raised the THC threshold used for drug testing from 15 to 35 ng/ml.⁴¹ The NCAA cited the increased exposure student-athletes may have to more potent secondhand smoke and the correlation between increased concentrations of THC in cannabinoids and more states legalizing

33. Loudin, *supra* note 24.

34. *Id.*

35. *Marijuana FAQ*, USADA, <https://www.usada.org/athletes/substances/marijuana-faq/> [<https://perma.cc/FT2R-P6XX>].

36. *See generally International Standards*, WORLD ANTI-DOPING AGENCY (2013), <https://www.wada-ama.org/en/what-we-do/international-standards> [<https://perma.cc/QK2M-6TTM>].

37. *See Who We Are*, WORLD ANTI-DOPING AGENCY (2013), <https://www.wada-ama.org/en/who-we-are> [<https://perma.cc/EU3Z-VN2K>]; *What We Do*, WORLD ANTI-DOPING AGENCY (2013), <https://www.wada-ama.org/en/what-we-do> [<https://perma.cc/G8K3-DYW7>].

38. *Athlete Advisory: 5 Things to Keep in Mind for 2019*, USADA (Nov. 2, 2018), <https://www.usada.org/spirit-of-sport/education/athlete-advisory-2019-prohibited-list/> [<https://perma.cc/3T LG-CGA8>].

39. *See generally* Marilyn A. Huestis, Irene Mazzoni & Olivier Rabin, *Cannabis in Sport: Anti-Doping Perspective*, 41 *SPORTS MED.* 949 (2011).

40. *Athletes: 6 Things to Know About Cannabidiol*, USADA (Oct. 23, 2018), <https://www.usada.org/spirit-of-sport/education/six-things-know-about-cannabidiol/> [<https://perma.cc/47QD-Y3T9>] (noting that whether CBD is derived from a true marijuana plant containing more than 0.3 percent THC or from hemp, which is also a cannabis plant but contains less than 0.3 percent THC, may impact how much THC the CBD product ultimately contains); *see Marijuana FAQ*, *supra* note 35.

41. Brian Burnsed, *NCAA Increases THC Testing Threshold*, NAT'L COLLEGIATE ATHLETIC ASS'N (Jun. 20, 2019), <http://www.ncaa.org/about/resources/media-center/news/ncaa-increases-the-testing-threshold> [<https://perma.cc/4PPM-7SJQ>].

marijuana to show the potential health risks associated with cannabinoid use amongst student-athletes.⁴² Although the NCAA Committee on Competitive Safeguards and Medical Aspects of Sport increased the threshold for the amount of THC that athletes may use, the committee still made it a point to show that they do not endorse cannabis use, “with several committee members citing the increasingly recognized mental health risks among young adults who use the drug, as well as the sometimes dangerous effects of high-concentration edible products.”⁴³ Although their actions may be conflicted in this narrative, the NCAA’s statements emphasize the prevailing attitude against cannabis use in collegiate sports.

Similarly, the National Football League (NFL),⁴⁴ National Basketball Association,⁴⁵ and the Women’s National Basketball Association⁴⁶ have established the THC threshold for testing substances of abuse at 35 ng/ml. Notably, however, Major League Baseball (MLB) does not test for natural cannabinoids, including THC, unless there is reasonable cause to believe that the player has engaged in the use, possession, or sale of these cannabinoids in the previous twelve months.⁴⁷ Similarly, although the National Hockey League (NHL) tests for THC as a part of its standard testing for substances of abuse, there is no specified threshold for THC levels.⁴⁸ Only if

a positive result shows a dangerously high level . . . that . . . causes concern for the health or safety of the Player or others, the Program

42. *Id.*

43. *Id.*

44. NAT’L FOOTBALL LEAGUE, NATIONAL FOOTBALL LEAGUE POLICY AND PROGRAM ON SUBSTANCES OF ABUSE 8 (2019) [hereinafter NAT’L FOOTBALL LEAGUE], <https://nflpaweb.blob.core.windows.net/media/Default/Active%20Players/wellness/2019%20Policy%20and%20Program%20n%20Substances%20of%20Abuse.pdf>. [https://perma.cc/4LQN-7ZQ5].

45. Collective Bargaining Agreement Between National Basketball Association & National Basketball Players Association 310 (2017) [hereinafter NBA & NBPA], <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf> [https://perma.cc/D6ME-BR23].

46. Collective Bargaining Agreement Between Women’s National Basketball Association & Women’s National Basketball Players Association 305 (2017) [hereinafter WNBA & WNBPA], <https://wnbpa.com/wp-content/uploads/2020/01/WNBA-WNBPA-CBA-2020-2027.pdf> [https://perma.cc/X3YH-G9ZZ].

47. OFFICE OF THE COMM’R OF BASEBALL & THE MAJOR LEAGUE BASEBALL PLAYERS ASS’N, MAJOR LEAGUE BASEBALL’S JOINT DRUG PREVENTION AND TREATMENT PROGRAM 18 (2020), <http://www.mlb.com/pa/pdf/jda.pdf> [https://perma.cc/K6C7-T9CF].

48. *See generally* Collective Bargaining Agreement Between National Hockey League & National Hockey League Player’s Association 189 (2012) [hereinafter NHL & NHLPA] (on file with Author).

doctors . . . have the authority to . . . contact the player to determine whether there is an alternative medical explanation.⁴⁹

Further, the NFL and NHL specifically state that the primary goal of their substance abuse policies is to support players who misuse prohibited substances.⁵⁰ The NFL and NHL each include a robust framework for intervention, within which players are tested, evaluated, treated, and monitored for substance abuse.⁵¹ The NHL in particular has been lauded for its focus on confidential treatment for players who may use marijuana.⁵²

The [NHL] won't punish [a player] at all for his test. If he chooses to enter the [Substance Abuse and Behavioral Health Program], [the doctors that run the program] have the power to levy fines, suspensions or other penalties if conditions are breached. However, the player is not required to enter the program if he doesn't want to.

"The thing that we're really looking for is if there's a guy that has an issue or a problem and he needs help—that's what we're trying to capture in that program," says longtime NHL defenseman Mathieu Schneider, now a senior executive at the NHLPA. "I do think it has worked very well. We have a tremendous amount of faith in the doctors that run the program. Confidentiality in that program is of the utmost importance."⁵³

The NHL's approach shows that some national sports programs are increasing support for players by providing strong interventions. Nonetheless, the NHL's approach also shows the lack of uniformity and variances in treating cannabis misuse. Although not all professional sports leagues participate in support and intervention practices, this trend has seen positive outcomes for individual athletes and their overall well-being.

III. INCONSISTENCIES IN NCAA SUPPORT OF STUDENT-ATHLETES

Although the NCAA recently increased the threshold for a positive test of THC from 15 to 35 ng/ml,⁵⁴ the penalties for a positive test remain excessive, without providing any treatment or other support structures to

49. *Id.*

50. NAT'L FOOTBALL LEAGUE, *supra* note 44, at 2; *see* NHL & NHLPA, *supra* note 48, at 188.

51. NAT'L FOOTBALL LEAGUE, *supra* note 44, at 2; NHL & NHLPA, *supra* note 48, at 188–94.

52. Emily Kaplan, *Is the NHL the Future of Marijuana in Pro Sports? Why it Could Be*, ESPN (Mar. 7, 2019), https://www.espn.com/nhl/story/_/id/26046596/is-nhl-future-marijuana-pro-sports-why-be [<https://perma.cc/25LJ-U9XR>] (If a player enters a Substance Abuse and Behavioral Health Program after testing for "abnormally high levels" of THC, "[n]either the NHL nor NHLPA needs to know that he's in the program").

53. *Id.*

54. Burns, *supra* note 41.

vulnerable student-athletes. “Student-athletes who test positive for a banned substance, or breach NCAA protocol, are subject to loss of eligibility. These student-athletes may be subject to additional testing for all NCAA banned substances by the NCAA at any time.”⁵⁵ Upon a first positive test for cannabinoids, a student-athlete:

[1] shall be ineligible for competition during 50 percent of a season in all sports, [and] . . . [2] shall remain ineligible from the time the institution is notified of the test result until the prescribed penalty is fulfilled and he or she tests negative pursuant to the policies and procedures of the NCAA Drug-Testing Program.⁵⁶

If a student-athlete tests positive for cannabinoids a second time, they shall be: (1) ineligible for competition in all sports for the equivalent of one season of regular-season competition, provided that the student-athlete is otherwise eligible for competition; (2) charged with the loss of one season of competition in all sports if they were not otherwise eligible for competition when they tested positive; and (3) ineligible for intercollegiate competition for 365 consecutive days after the collection of the student-athlete’s positive drug-test specimen and until he or she tests negative.⁵⁷ Finally, although the NCAA permits medical exceptions to the prohibition on use of any other banned substances, medical exceptions are not permitted for cannabinoids under any circumstances. Even in the event that a student-athlete has a documented medical history which demonstrates the need for regular use of such a drug, the NCAA does not provide an exception.⁵⁸

Moreover, the NCAA makes it clear that it is committed to the well-being of student-athletes and requires that “intercollegiate athletics programs shall be conducted in a manner designed to enhance the well-being of student-athletes,” without influences that may interfere with their scholastic or athletic interests, and within an “environment that fosters fairness, sportsmanship, safety, honesty and positive relationships between student-athletes and representatives of the institution.”⁵⁹ Additionally, the NCAA “is committed to the prevention of drug and alcohol abuse”⁶⁰ and requires athletic directors of its member institutions to “educate student-athletes about NCAA banned substances and the products that may contain them.”⁶¹ However, the NCAA Drug Testing

55. NCAA DRUG TESTING PROGRAM 2019–2020, *supra* note 14, at 8.

56. NCAA DIVISION I MANUAL, *supra* note 13, at 344–45.

57. *Id.* at 344.

58. *Id.* at 346.

59. *Id.* at 397.

60. NCAA DRUG TESTING PROGRAM 2019–2020, *supra* note 14, at 4.

61. *Id.*

Program only provides recommendations regarding what such education *should* include:

To assure adequate preparation to deliver drug education to student-athletes throughout the year, institutions *should* [d]evelop a written policy on alcohol, cannabis, tobacco and other recreational substances. This policy *should* include statements on recruitment activities, drug testing, disclosure of all medications and supplements, discipline, and counseling or treatment options.⁶²

Because the NCAA offers member institutions only minimal guidance to create and deliver drug education to student-athletes, the primary responsibility to support student-athletes with evaluation, intervention, and treatment tools falls to the member institution that the student-athlete competes for. Although treatment and recovery opportunities are growing among colleges and universities,⁶³ these colleges and universities are historically under-resourced⁶⁴ and are likely not well suited to address the unique stresses that student-athletes experience or the unique benefits that cannabinoid products may offer to athletes.

The NCAA also requires that any staff member or employee of a member institution's athletics department who has knowledge of a student-athlete's use of a substance within the banned-drug classes "shall follow institutional procedures dealing with drug abuse or shall be subject to disciplinary or corrective action."⁶⁵ Unfortunately, without any consistent guidance provided by the NCAA, coaches and athletics staff are likely to experience tension when faced with how they should address any knowledge of a student-athlete's use of cannabis. For example, a coach or staff member at an institution located in a state where adult-use of cannabis is legal may choose not to report the use of cannabis by a student-athlete to the university, even if it is a violation of the university's code of conduct. On the other hand, a coach or staff member at an institution located in a state where cannabis use is not legal may feel compelled to report the use of cannabis by a student-athlete as a violation of the institution's student code of conduct. This requirement to follow institutional procedures does not provide student-athletes with consistent expectations across institutions and may have a chilling effect on a

62. *Id.* (emphasis added).

63. Marjorie Valbrun, *Addiction Support Goes Mainstream*, INSIDE HIGHER ED (Nov. 7, 2019), <https://www.insidehighered.com/news/2019/11/07/colleges-offer-students-recovering-drug-and-alcohol-problems-support-and-place> [<https://perma.cc/X95H-CES4>].

64. See Brian E. Perron et al., *Supporting Students in Recovery on College Campuses: Opportunities for Student Affairs Professionals*, 48 J. STUDENT AFF. RES. & PRAC. 47, 47 (2011).

65. NCAA DIVISION I MANUAL, *supra* note 13, at 44.

student-athlete's willingness to reach out for support for themselves or for a teammate who may need help dealing with substance abuse.

On the one hand, the NCAA prohibits student-athletes from using any form of cannabis.⁶⁶ At the same time, however, they fail to provide student-athletes with any mechanism for comprehensive education, evaluation, or treatment in a supportive environment. Because the consequences of using cannabinoids may include the loss of eligibility for a part or all of a competition season, even if medically necessary, student-athletes face an impossible choice between not benefiting from the medical and pain relief benefits of cannabinoids or risking the loss of eligibility if they use any products with cannabinoids, including CBD.

Thus, at a time when student-athletes who have any hope of playing professionally are effectively required to attend an NCAA member institution,⁶⁷ the loss of one season of eligibility can have a dramatic effect on the likelihood that a student-athlete is drafted in a position to make an impact as a professional athlete.⁶⁸ Even for student-athletes who may not be looking to make a career as a professional athlete, the loss of a season of eligibility can result in that student losing his or her scholarship if the coaching staff decides not to renew a scholarship for an ineligible athlete.⁶⁹

By delegating the responsibility of drug education to its member institutions, the NCAA places universities and student-athletes in a vulnerable position. The NCAA's statement that it is committed to the well-being of student-athletes in an environment that is fair, safe, and honest is incongruent with a cannabis policy that places student-athletes in a position where they are unable to seek support, treatment, or medical exceptions without jeopardizing the eligibility necessary to maintain their scholarships or invest in a future professional career.⁷⁰

66. Burns, *supra* note 41.

67. See NBA & NBPA, *supra* note 45, at 273 (requiring that players wishing to enter the NBA draft be at least one year removed from high school, colloquially referred to as the "One and Done" rule); see also Collective Bargaining Agreement Between National Football League & National Football League Player's Association 17 (2011) [hereinafter NFL & NFLPA], <https://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf> [<https://perma.cc/5ZJP-RXN3>] (requiring that players must be three seasons removed from high school before they are eligible for the NFL draft); WNBA & WNBAPA, *supra* note 46, at 110 (requiring that players must be a minimum of twenty-two years old or a graduate of a college or university to be eligible for the draft).

68. Jeremy Woo, *Analyzing James Wiseman's NBA Draft Stock After Likely Being Ruled Ineligible*, SPORTS ILLUSTRATED (Nov. 13, 2019), <https://www.si.com/nba/2019/11/13/james-wiseman-memphis-nba-draft-stock-ncaa-eligibility> [<https://perma.cc/FQZ4-BA9E>] ("While one game is just a small piece of any holistic evaluation of a prospect, every minute of live basketball does mean a little bit more from a scouting perspective when a player's college career is dangling from a short leash.")

69. *Scholarships*, NCAA, <http://www.ncaa.org/student-athletes/future/scholarships> [<https://perma.cc/5TLQ-4LL9>].

70. See NCAA DRUG TESTING PROGRAM 2019–2020, *supra* note 14, at 4.

The stories of C.J. Harris and Lauren Goss show how the NCAA's approach to cannabis puts student-athletes in a vulnerable position. Although C.J. Harris has not tested positive for levels of THC above the NCAA threshold,⁷¹ he accepts the risk that there may be a minimal amount of THC contained in the oil that he uses to control his seizures. Additionally, the cumulative effects of C.J.'s continued use may trigger a positive test similar to Lauren Goss's test.⁷²

IV. THE NCAA MUST FOCUS ON STUDENT-ATHLETE HEALTH

In December 2019, wide receiver Josh Gordon was suspended indefinitely from the NFL for violations of its substances of abuse policy⁷³ after a long history of substance abuse violations throughout both his collegiate career at Baylor University⁷⁴ and his professional career in the NFL.⁷⁵ During his six seasons in the NFL, Gordon played only thirty-three games since the Cleveland Browns drafted him in 2012.⁷⁶ In a 2017 interview, Gordon admitted to drinking alcohol and smoking marijuana regularly before games⁷⁷:

We would stay at the team hotel and then players are allowed to go back home, get what they need, and then go to the game. So[,] I'd leave the hotel early morning, go home, eat breakfast, do my little ritual, whatever it may be, some weed, some alcohol, and then go to the game.⁷⁸

However, Gordon's marijuana use began well before he was drafted into the NFL.⁷⁹ While in college at Baylor, Gordon was arrested for

71. Bogage, *supra* note 12.

72. Loudin, *supra* note 24.

73. Jeremy Bergman, *Seahawks WR Josh Gordon Suspended Indefinitely*, NFL (Dec. 16, 2019), <http://www.nfl.com/news/story/0ap3000001088876/article/seahawks-wr-josh-gordon-suspended-indefinitely> [https://perma.cc/NKS7-XXMQ].

74. Bryan Flaherty, *Josh Gordon Says He Was Making \$10,000 per Month Selling Marijuana in College*, WASH. POST (Nov. 28, 2017), <https://www.washingtonpost.com/news/early-lead/wp/2017/11/28/josh-gordon-says-he-was-making-10000-per-month-selling-marijuana-in-college/> [https://perma.cc/8NK8-XVUD].

75. Bergman, *supra* note 73.

76. Christian D'Andrea, *Josh Gordon's Most Recent Suspension Might Be the Last We See of Him in the NFL*, SBNATION (Dec. 16, 2019), <https://www.sbnation.com/nfl/2019/12/16/21025073/josh-gordon-nfl-ped-suspension-drug-history-seahawks-career-future> [https://perma.cc/7HU2-WRF5].

77. Clay Skipper, *Josh Gordon on Addiction, His NFL Comeback, and Using Before Games*, GQ (Nov. 6, 2017), <https://www.gq.com/story/josh-gordon-nfl-2017-interview> [https://perma.cc/DGD6-4QWT].

78. *Id.*

79. Matt Bonesteel, *'I Can Be a Better Man': Suspended Browns WR Josh Gordon Comes Clean About His Drug Use*, WASH. POST (Oct. 10, 2017), <https://www.washingtonpost.com/news/early-lead/wp/2017/10/10/i-can-be-a-better-man-suspended-browns-wr-josh-gordon-comes-clean-about-his-drug-use/> [https://perma.cc/3ZCN-M9YC].

possession of marijuana and was enabled to continue using marijuana by one of his coaches.⁸⁰ Gordon explained how a coach taught him how to detox before a mandatory drug test: “He showed me how to drink them, showed me how to take them. That was my real first experience with getting over on the system and that authority not really being taken seriously because it was kind of being guided by somebody that’s employed by the same university.”⁸¹

Gordon’s story reveals a disconnect in the NCAA’s policy of supporting student-athlete well-being while not also providing comprehensive resources for coaches and athletics staff to lean on when they identify a student who could benefit from treatment for drug abuse. If Gordon had been supported by his coaches rather than enabled to simply pass drug tests, he may have found the treatment that he needed.

V. THE NCAA MUST CONSIDER AN INCLUSIVE APPROACH TO CANNABIS

A true commitment to the well-being of student-athletes requires that the NCAA provide a comprehensive framework to address cannabis use and expand the support available to student-athletes. First, the NCAA should provide an educational curriculum that is consistent across all member institutions. Second, the NCAA must provide medical exemptions for the use of cannabis. Finally, the NCAA must implement a cannabis policy that more closely mirrors those of the professional leagues and provides student-athletes with confidential testing and treatment focused on their physical and mental well-being.

First, the NCAA should provide an educational curriculum that is consistent across all member institutions. The current model of education regarding substances of abuse and banned drugs delegates the development and implementation of the curriculum to each member institution with only general suggestions provided by the NCAA.⁸² An approach where student-athletes attending different universities receive different information is simply inadequate. In a field where pain management is a priority and education remains paramount, young students deserve to have a consistent and comprehensive curriculum, regardless of the university they attend or conference within which they compete. Such a curriculum must address not only substances of abuse and banned performance enhancing drugs from the perspective of testing, but also address the causes and triggers of substance abuse and dependency to serve student-athletes throughout their lives. As an organization committed to the well-being of the student-athlete as a whole person, this

80. *Id.*

81. *Id.*

82. See NCAA DRUG TESTING PROGRAM 2019–2020, *supra* note 14, at 4.

curriculum must be created and delivered by the NCAA and not delegated to the member institutions.

Second, the NCAA must provide medical exemptions for the use of cannabis. Cannabis and cannabinoids are increasingly used for medical purposes in sports medicine, including pain management and epilepsy.⁸³ The NCAA also clearly recognizes the need for some student-athletes to receive medical exemptions for the use of banned substances for a variety of previously existing reasons.⁸⁴ As the medical uses of cannabis increase, it is important that the NCAA keep pace and recognize that student-athletes, like C.J. Harris, benefit from the use of cannabinoids to control life-threatening conditions. Further, medical exemptions for the use of cannabinoids will allow athletic training departments and medical personnel to consider the use of CBD products shown to be beneficial in pain management among athletes.

Finally, student-athletes need a supportive environment where they can speak candidly about the benefits experienced while using CBD or other cannabis derivatives. In a culture that is increasingly embracing cannabis use for both medical and recreational purposes, the NCAA should provide an understanding environment among coaches and athletics staff where student-athletes may confide that they need support to manage their use of substances of abuse. Not only does the NHL substance abuse policy allow for appropriate confidentiality, because neither the league, the team, or the player's association is notified that an athlete is seeking help, but the policy also ensures an athlete is more likely to reach out for support knowing they will not be sanctioned.⁸⁵ For these reasons, the NCAA should follow the NHL's inclusive approach to cannabis.

In an environment where Lauren Goss would have received education and been able to speak candidly about the CBD cream she used for pain management, she may have been able to more closely monitor her THC levels and not have been disqualified at a triathlon that was one of her last opportunities to qualify for the 2020 Olympics. In a collegiate landscape that would have allowed C.J. Harris to receive a medical exemption for the use of cannabinoid oil, he may have spent his first two post-high school seasons playing for a premier Division I football program and preparing for a professional career. In a setting where Josh Gordon would have had a supportive framework to reach out to his coaches to talk about his previous marijuana use and ask for help, he may have found the

83. See generally Kogan & Mechoulam, *supra* note 15; Lafaye et al., *supra* note 23; Ware et al., *supra* note 13; Zeiger et al., *supra* note 26.

84. NCAA DIVISION I MANUAL, *supra* note 13, at 332.

85. See Kaplan, *supra* note 52.

treatment to address his physical and emotional needs in a way that set him up for success in the NFL.

Only in a supportive environment that addresses each student-athlete's educational, medical, and psychological needs can the NCAA honestly stand behind their commitment to the well-being of a student-athlete as a whole person.