

## NCAA Concussion Settlement Agreement

As you are likely aware, the class-action litigation *Arrington v. NCAA* was settled establishing a \$70 million “medical monitoring fund” for NCAA student-athletes who participated at any institution in any sport prior to July 15, 2016. While individual institutions were not named in the lawsuit, they may enjoy the protection of a release for related claims if they comply with the requirements set forth in the Settlement Agreement, which was finalized on November 18, 2019. These requirements include updating concussion protocols for Athletic Trainers, certification requirements, and education for both athletic department staff and faculty. In order for your institution to enjoy the release of liability, you must certify to the Program Administrator [here](#) by May 18, 2020 that the requirements of the Settlement Agreement have been met.

Unfortunately, the requirements incorporate terms that are not defined in the Settlement Agreement, and the NCAA has advised its member institutions through a series of FAQs that “Because the Settlement Agreement is a legal document, we encourage you to work with institutional general counsel and/or other risk management staff to identify a reasonable and defensible interpretation of what ‘\_\_\_\_’ means and the other requirements of this provision, after taking into consideration all relevant factors and variables that may impact the individual risks and compliance needs of your institution.”

This qualifying statement applies to terms contained in four of the five certification requirements under the Settlement Agreement:

- Every student-athlete at every NCAA member institution will undergo pre-season baseline testing for each sport in which they participate prior to participating in practice or competition.
- Any NCAA student-athlete diagnosed with a concussion by medical personnel must be cleared by a physician before being permitted to return to play in practice or competition.
- NCAA member institutions shall ensure that medical personnel with training in the diagnosis, treatment and management of concussions are present at all Contact Sports games for Divisions I, II and III.
- NCAA member institutions shall ensure that medical personnel with training in the diagnosis, treatment and management of concussions are available at all Contact Sports practices for Divisions I, II and III.

We understand that each institution is unique, and that what is “reasonable and defensible” takes into account medical standards of care, resources available to an institution and numerous other individualized factors. If your institution is struggling to understand the compliance requirements, we would be happy to assist in any way we can. Please feel free to contact Kyle Ritchie at [kritchie@bsk.com](mailto:kritchie@bsk.com) or any other member of our [Collegiate Sports Practice Group](#) if you have any questions or would like to discuss further.



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