
**Investigation Report
Concerning The University of Utah
Baseball Program**

October 27, 2017

To: The University of Utah Office of the General Counsel

From: Jason J. Montgomery
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Summary of Allegations and Conclusions

Student-athlete safety and well-being concerns

1. Alleged injuries as a result of the incorrect use of, or faulty, equipment – We found no evidence that any injuries sustained by baseball student-athletes were the result of incorrect use, or the failure, of equipment used by the team.

2. Alleged failure of full-time staff to accompany and transport an injured baseball student-athlete to receive medical care – On one occasion after an injured student-athlete had been treated and stabilized by the athletics training staff, a student manager (who was also the roommate of the injured student-athlete) transported the student-athlete a short distance to the closest emergency room to receive additional medical care.

3. Alleged drug-abuse problem involving baseball student-athletes – We found no evidence of drug-abuse problems involving baseball student-athletes.²

4. A former baseball staff member allegedly requested prescription medication from student-athletes – We found insufficient evidence to conclude that a former baseball staff member requested, or obtained, prescription medication from student-athletes.

5. Alleged culture of partying or other inappropriate conduct by student-athletes at away-from-home contests – We found no evidence that student-athletes engaged in inappropriate behavior during away-from-home contests. Specifically, there were no reports of a culture of parties, inappropriate activities or misconduct by student-athletes.

6. Allegation that a coach asked a student manager to perform duties outside the scope of the manager's typical duties – On approximately three occasions, the head baseball coach asked a student manager (who was 21 years old) to purchase beer for the head coach.

¹ Bond, Schoeneck & King PLLC is a full-service law firm with offices in New York, Florida and Kansas. Bond's Collegiate Sports Practice Group is a national leader in assisting colleges and universities with investigations related to NCAA rules compliance, eligibility and student-athlete and coaches' conduct issues.

² A separate allegation was made that an individual who was alleged to regularly use marijuana was allowed to participate as a staff member. We found no basis for this assertion. Further, a review of the University's drug testing results over the past four years does not support an allegation of habitual drug abuse by baseball student-athletes. See Exhibit 4.

Interviews and documents – We gathered information from persons with firsthand knowledge of the baseball program through telephonic and in-person interviews of current and former student-athletes, student managers, institutional staff members, assistant baseball coaches and the head baseball coach. In addition, we reviewed relevant documents provided by the athletics department. We conducted a total of 27 interviews, including 10 current baseball student-athletes and 11 former baseball student-athletes, some of whom transferred or otherwise voluntarily separated from the baseball program.

Exhibits – Exhibit 1 is a list of persons interviewed with the date each was interviewed. Exhibit 2 is the statement provided to each interviewee prior to the interviews that were conducted in accord with NCAA protocols. Exhibit 3 is a list of the documentation reviewed for this investigation. Exhibit 4 is an overview of the University's drug testing program and baseball student-athletes testing over the past four years.

Summary of Recommendations

1. Policy for transportation of student-athletes to receive emergency or immediately necessary medical treatment – A full-time athletics department staff member should transport, accompany or be present at the hospital medical facility when an injured student-athlete is required to receive emergency medical care.

2. The baseball program should ensure that there is adequate supervision of student athletes and that the curfew is enforced during away from home-from-contests. The baseball program should ensure that a system is in place for coaches or another designated staff member to enforce team curfew during away-from-home contests. A recommended system may include the use of a variety of methods including team management apps, text messaging, and in-person room checks.

3. Expectations for coaches during away-from-home contests – Additional education should be provided to coaches regarding athletics department policies related to alcohol use during away-from-home contests.⁵

4. Evaluation of the scholarship relinquishment process – The University should evaluate whether the University's student-athlete advocate should participate in discussions with a student-athlete about his or her rights pursuant to NCAA rules and the University's financial aid process prior to a student-athlete voluntarily relinquishing his or her athletics aid.⁶

⁵ Coaches should be instructed to only assign tasks to student managers that are within their job responsibilities.

⁶ Throughout the course of the 21 interviews of current and former student-athletes, there were issues outside the scope of the allegations that were raised and those issues were thoroughly explored. One student-athlete identified concerns regarding his voluntary relinquishment of aid. Effective in 2015-16, the Pac-12 Conference mandated four-year financial aid agreements for all students receiving athletics aid. The issue did not involve an NCAA rules violation. A full narrative of that issue on which this recommendation is based can be found on page 13.

after sustaining an injury during practice was transported from the practice facility to the nearest hospital by a baseball manager. This occurred, in part, because the full-time staff certified athletics trainer who was present at the time of the injury could not accompany the student-athlete to the hospital because the trainer was required to remain on site for the supervision and safety of the other team members who were still engaged in practice.

Drug Abuse: An allegation was made that there is a problem with drug abuse by some members of the baseball program. There was also an allegation that one member of the baseball staff had asked student-athletes for Adderall.

The review found no evidence of a drug-abuse problem involving baseball student-athletes. The majority of student-athletes interviewed stated that the University's comprehensive random drug-testing program served as a deterrent for student-athletes to use drugs. A detailed overview of the drug-testing program as applied to baseball student-athletes was provided which demonstrated regular, random, drug testing of baseball student-athletes and showed only one positive test during a four-year period. See Exhibit 4. Further, there was insufficient evidence to conclude that a member of the baseball staff ever received or requested prescription drugs from student-athletes.

Student-Athlete Conduct during Away-from-Home Contests: An allegation was made that students-athletes misbehaved during away contests and the coaching staff imposed no consequences for the misbehavior.

The review found no evidence of a culture of student-athlete misbehavior during away-from-home contests. On one occasion, a student-athlete missed curfew and thereafter the team bus to the airport because he had been out the night before and overslept. The student-athlete arrived at the airport and boarded the plane with his teammates. The review found that the baseball program relied on its student-athletes to enforce the team's curfew during away contests, as opposed to a baseball staff member or designated administrator.

Alcohol Use by the Baseball staff: Two allegations were made concerning alcohol and the baseball staff. The first allegation was that Kinneberg requested that a student manager buy beer for him. The second allegation was that the director of operations became intoxicated at an away game and was unable to perform a task that was his responsibility.

Kinneberg acknowledged that he requested a 21-year-old student manager to go to the store to purchase beer for him on two occasions at away-from-home contests. Kinneberg provided money to the student manager for the purchase. The student manager confirmed purchasing one or two cans of beer on approximately three occasions. Kinneberg stated that he had one beer in the evening with dinner.

Detailed Analysis of the Issues

1. Did the incorrect use of, or faulty, equipment create an unsafe environment for baseball student-athletes?

The totality of the information gathered in the course of this review does not suggest that equipment used by the baseball program was unsafe or incorrectly set up for drills. Generally, all student-athletes reported that the equipment used by the program was safe and in appropriate working order. However, a few student-athletes expressed concern as to the accuracy of a pitching machine that was used for bunting practice.

The student-athletes' concerns related to the accuracy of a pitching machine arose because two student-athletes over the past two years were struck by baseballs and injured while attempting to bunt from a pitching machine, although it was unclear whether the same pitching machine was involved in both incidents. One student-athlete sustained an injury to the mouth when he was struck by a baseball while attempting to execute a bunt from a pitching machine during practice. Another student-athlete sustained a fractured finger when he was struck by a baseball while attempting to bunt. There was no evidence that the injuries were the result of the incorrect use of the pitching machines.

The baseball program uses multiple pitching machines (approximately four to six) for fielding drills, outfield drills, bunting and hitting. The pitching machine used for regular hitting practice is a three-wheel machine set up year-round in a separate building. The other pitching machines, which may be either two- or three-wheel machines, are set up by managers for drills prior to practice. Student managers reported that they receive a one-day training session prior to starting their duties as managers, which included the regular use of pitching machines. No student-athletes reported that the managers incorrectly used the pitching machines or that the student managers' operation of the machines created any concern.

Over the past two years, it was reported that both two-wheel and three-wheel pitching machines have been used for bunting practice. Bunting practice is conducted by setting up a pitching machine in the outfield or, if conducted indoors, in a separate area at the indoor facility. Groups of student-athletes then rotate through the bunting station taking turns using the machine. Baseballs are fed into the machine by either a student manager or another student-athlete. Regular, two-seamed baseballs are used for the bunting drills. The baseball program reportedly purchased new balls every month or two, and student managers periodically identified worn or scuffed balls that were to be replaced.

Student-athletes reported that when using any pitching machine, both at the University and in their prior experience, baseballs can occasionally come out of the machine in an unpredictable manner. Both student-athletes and coaches stated that baseballs coming out of a pitching machine in an unpredictable manner can be caused for a variety of reasons, including a scuffed baseball or one with a loose seam. In

monoacetylmorphine (e.g., heroin), oxycodone, and ritalinic acid. None of the random tests conducted of baseball student-athletes have detected illegal substances or Adderall use by students who do not have a prescription for that medication. The University regularly tests its baseball student-athletes for the presence of prohibited drugs. The results of those drug tests show no positive drug tests for baseball student-athletes in the past nearly four years. See Exhibit 4.

Consistent with the drug testing that the University has conducted, there was no evidence of widespread drug abuse among baseball student-athletes. Although a few of the student-athletes speculated that some other students on the team might misuse Adderall because it was known to be a common performance-enhancing substance in the sport of baseball, no student was able to identify any particular student(s) with this alleged problem. One student-athlete who was not prescribed Adderall stated that he tried Adderall one time. All student-athletes reported their awareness of the athletics department's random drug-testing policy for student-athletes, and the vast majority of student-athletes stated that the athletics department's drug policy had a deterrent effect.

4. Did a member of the baseball staff request prescription medication from student-athletes?

One former student-athlete, Student B, stated that he was not prescribed Adderall, but that on one occasion at a practice, a baseball staff member asked Student B whether he possessed any Adderall.⁸ Student B believed that the former staff member was attempting to obtain Adderall from him for the staff member's own use. However, Student B also noted that many of his teammates and coaches joked with him about the need for him to use Adderall in order to be focused because of what Student B described as a high-strung personality. No other student-athletes identified any firsthand knowledge of the former staff member or any other staff members requesting Adderall from student-athletes for their own personal use.

The information is not sufficient to conclude that Adderall was requested by the former staff member from Student B for the former staff member's own personal use. This conclusion is made, in part, based on the evaluation of the entirety of Student B's interview, and the fact that Student B was not prescribed Adderall, nor possessed Adderall to provide to the former staff member.

5. Were student managers required to perform duties that were inappropriate or should have been designated to full-time staff members?

Student managers are generally responsible for equipment management, setting up the field for practice, laundry, charting, and other activities to assist the coaches before, after and during practice and contests. Student managers also travel with the team to away-from-home games. Two circumstances involving a student manager ("Student Manager") were reviewed for purpose of this analysis.

⁸ The alleged involved staff member is no longer employed by the University. Based on the lack of corroborating information, the alleged involved staff member was not interviewed regarding this issue as part of this review.

Although retrieval of equipment was not outside the scope of Student Manager's duties, care should be taken to ensure that requests of student managers are reasonable, given all of the circumstances. Here, the information suggests that the involved Student Manager agreed to travel with Staff Member 2 on his own accord, the Student Manager was not required to drive, Staff Member 2 was not impaired in any way, and the trip was for a legitimate team purpose. Therefore, the Student Manager's participation in the retrieval of equipment was not unreasonable or inherently dangerous.

6. Did student-athletes have a culture of parties or other inappropriate conduct during away-from-home contests?

We found no evidence that there was a culture of student-athletes engaging in inappropriate behavior during away-from-home contests in their hotel rooms. Specifically, there were no reports of a culture of parties, inappropriate activities or misconduct by student-athletes. All student-athletes reported that there was a curfew, but there were not regular room checks to confirm student-athletes met curfew requirements. Kinneberg reported that there were not room checks during the 2016-17 season because the team was responsible for holding each other accountable, and student-athlete leadership did so.

However, there was one incident during the 2016-17 season in Tucson, Arizona, where Student B missed the team bus to the airport the following morning after completion of a baseball series. Student B was able to get to the airport in order to catch the flight. Student B reported that he missed the team bus because he had spent time with his girlfriend that evening after the team's series had concluded. Kinneberg reported that he spoke with Student B at length regarding the transgression and that because he had not had any previous problems with Student B, Kinneberg did not implement any sanctions.

The evidence did not suggest student conduct issues at away-from-home contests. However, the baseball program lacked a systematic approach among the coaching staff to ensure student-athletes were abiding by the curfew.

7. Were coaches intoxicated during overnight away-from-home trips?

A baseball staff member ("Staff Member 1") reported that on some occasions during away-from-home trips, he and his roommate, another baseball staff member ("Staff Member 2"), were intoxicated in the privacy of their own hotel room. No student-athletes reported observing Staff Member 1, Staff Member 2 or any other coaches intoxicated, and there is no evidence that any coaches were ever unable to perform their job duties as a result of any alcohol consumption. In addition, no student-athletes reported abusive behavior by the coaches or that the student-athletes were unable to receive assistance at away-from-home games because a coach was impaired.

4. Evaluation of the scholarship relinquishment process

In the course of this review, a variety of topics were discussed by student-athletes. Former baseball student-athlete Student "C" reported that in the summer of 2016, he voluntarily relinquished his scholarship at the request of a member of the baseball staff. Student C reported that he felt as though he had to sign the document relinquishing his scholarship. Student C declined to discuss the situation further.

While this appears to be a rare circumstance in the sport of baseball, the University should evaluate whether the University's student-athlete advocate should participate in discussions with student-athletes related to the voluntary relinquishment of athletics aid prior to the execution of any such agreement. The student-athlete advocate's involvement could assist the involved student-athlete in fully understanding the process and thereby document that aid was relinquished without any undue influence. This is especially relevant given the Pac-12 Conference mandate effective during the 2015-16 academic year that all students receiving athletics aid should receive four-year financial aid agreements.

Current and Former Student-Athletes

[REDACTED], August 14, 2017
[REDACTED], August 8, 2017
[REDACTED], July 21, 2017
[REDACTED], July 21, 2017
[REDACTED], July 16, 2017
[REDACTED], September 19, 2017
[REDACTED], August 9, 2017
[REDACTED], July 21, 2017
[REDACTED], August 8, 2017
[REDACTED], August 8, 2017
[REDACTED], July 26, 2017
[REDACTED], August 9, 2017
[REDACTED], August 10, 2017
[REDACTED], August 14, 2017
[REDACTED], August 10, 2017
[REDACTED], July 26, 2017
[REDACTED], July 20, 2017
[REDACTED], July 26, 2017
[REDACTED], August 10, 2017
[REDACTED], August 10, 2017
[REDACTED], August 10, 2017

Mangers, Institutional Staff and Coaches

Jay Brossman, assistant baseball coach, September 19, 2017
Craig Chelette, athletic trainer, September 19, 2017
Mike Crawford, associate head baseball coach, September 19, 2017
[REDACTED], student manager, September 19, 2017
[REDACTED], student manager, September 19, 2017
Bill Kinneberg, head baseball coach, September 19, 2017

Documents Reviewed

Athletics Department Drug Testing Program Policy and Procedure

Athletics Department Travel Policy

Baseball Student-Athlete Historical Drug Testing Data, 2013-14 to present

Baseball Student-Athlete Exit Interviews

Summary of Purchases and Repairs to Pitching Machines

Emergency Medical Plan

2016-17 Baseball Countable Athletically Related Activity Reports

2016-17 Student-Athlete Handbook