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September 1, 2010

VIA REGULAR & ELECTRONIC MAIL

Mr. Shepard Cooper
Director of the Committees
on Infractions
NCAA Distribution Center
1802 Alonzo Watford Sr. Drive
Indianapolis, IN 46202

Re: UConn Men's Basketball Investigation/Request for Advisory
Opinion Re: Use of Confidential Medical Records

Dear Shep:

This is a follow-up to Coach Calhoun's letter of August 31, 2010, requesting an extension to September 10, 2010, to submit his response to the Notice of Allegations.

In paragraph No. 3 of that letter, I raised concerns about whether the enforcement staff had an executed HIPAA release before obtaining what appears to be confidential medical information contained on the custodial website. As stated in the letter, the information is directly relevant to allegations directed at Coach Calhoun. As I explained, Coach Calhoun does not want to expose himself to liability by referencing information in his response that may have been obtained in violation of federal or state law.

Late last evening, the enforcement staff responded to my request concerning whether it had a HIPAA release before obtaining the confidential medical information. According to the staff, "a HIPAA release was not required by any entity that provided the staff with information." See Exhibit 1.

This response does not alleviate Coach Calhoun's concern. The information at issue consists of detailed medical records and payment information belonging to Nate

Miles.¹ There are numerous state and federal laws which recognize an individual's interest in protecting the confidentiality of his or her medical information. Courts have recognized that the breach of patient confidentiality is an actionable claim using theories like invasion of privacy, defamation and breach of contract. Courts also have recognized tort claims against third parties who without authorization induce medical providers to disclose confidential medical information. *See Biddle v. Warren Gen. Hosp.* (1999) (86 Ohio St.3d 395, 715 N.E.2d 518).²

It appears that Miles never authorized his medical providers to provide his confidential medical information to the enforcement staff. Nonetheless, Miles' medical information was provided to the enforcement staff and the information has been provided to Coach Calhoun via the enforcement staff's custodial website for use in processing this case.

Coach Calhoun has serious concerns about including or referencing any of Miles' medical information in his response to the Notice of Allegations. Because UConn is a public institution, it is likely that Coach Calhoun's response will be released to the public. Publication of Miles' medical information could expose Coach Calhoun, UConn and the NCAA to liability for illegally disclosing confidential medical information.

Accordingly, Coach Calhoun requests the COI advise whether it expects involved parties in this case to use and rely on Miles' confidential medical information in the processing of this case. In previous cases, the COI has either not received, or on its own motion has excluded from the record, information that was either provided or obtained in violation of state or federal law.³ Miles' confidential medical information appears to be in the same category of information.

If the COI does expect Coach Calhoun to use and rely on Miles' confidential medical information in the processing of this case, Coach Calhoun may require that the NCAA provide him with an indemnification and hold harmless agreement to indemnify and reimburse Coach Calhoun for any legal expenses and/or damages resulting from his use and disclosure of such confidential information.

¹ Miles was a prospective student-athlete at the time of the medical treatment who later enrolled at UConn.

² Some of Miles' medical treatment was provided by an Ohio physician and the records of that treatment are included in the custodial file in this case.

³ In the recent USC football case, the COI did not receive audio recordings that were made surreptitiously in violation of California state law. In the same case, the COI on its own motion excluded information concerning a conviction that on its face indicated it was not to be disseminated for any reason, subject to restrictions on dissemination as imposed by federal law.

Very truly yours,

STINSON MORRISON HECKER LLP



Scott W. Tompsett

ST:pc

cc: Rick Evrard
Stephanie Hannah
Tim Nevius
Sean O'Leary
Kyle Skillman
Brian Sun
James Zeszutek

Tompsett, Scott

From: Nevius, Tim [tnevius@ncaa.org]
Sent: Tuesday, August 31, 2010 10:01 PM
To: Tompsett, Scott
Cc: Hannah, Stephanie; 'revrard@bsk.com'; 'kskillman@bsk.com'; 'basun@JonesDay.com'
Subject: Re: UConn NOA Response

Scott,

The staff did not state that communications about the responses between Coach Calhoun and the institution is improper. As mentioned, the institution requested the staff's position on sharing the responses with involved parties (without reference to a specific party or parties) and the staff responded. If Coach Calhoun and the institution wish to share responses prior to submission to the COI, that is their decision.

Regarding Nate Miles medical information, the staff was provided with information related to certain medical records during the course of its investigation. A HIPPA release was not required by any entity that provided the staff with information. All information upon which the staff relied in bringing the allegations has been included in the web custodial to assist you in preparing Coach Calhoun's response to the NOA. It is up to you and your client to decide how to best use that information. The staff does not believe that this should hinder or delay the case in any regard.

Tim

From: Tompsett, Scott [mailto:STompsett@stinson.com]
Sent: Tuesday, August 31, 2010 08:29 PM
To: Nevius, Tim
Cc: Hannah, Stephanie; revrard@bsk.com <revrard@bsk.com>; kskillman@bsk.com <kskillman@bsk.com>; basun@JonesDay.com <basun@JonesDay.com>
Subject: RE: UConn NOA Response

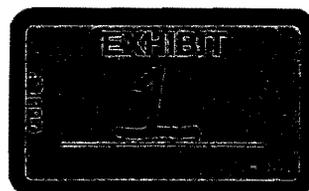
Tim,

Thank you for your response.

Please explain what "concerns about integrity" the staff has or had about UConn sharing its draft response with Coach Calhoun. Your statement suggests that the staff believes there is something improper about UConn and Coach Calhoun communicating about their respective draft responses. I am requesting that you explain the concerns of the staff specifically in this regard.

Also, as I said in my earlier email to you and in Coach Calhoun's request for an extension, such a request is unprecedented in my experience and I am aware of no authority for the staff to ask an institution not to share its draft response with its head coach. Please identify any authority for the staff's earlier request that UConn not share its draft response with Coach Calhoun.

I did receive the Hathaway interview CD but not until mid-afternoon after I had submitted Coach Calhoun's request for an extension. It appears your assistant shipped the CD via "UPS NEXT DAY AIR SAVER," which is the afternoon delivery. I am having a transcript prepared but it will not be ready until late tomorrow at the earliest.



Finally, please respond to my email of yesterday requesting whether the staff had a HIPAA release to obtain Miles' medical information. This is an important matter for Coach Calhoun and we need an answer.

Regards,
Scott

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From: Nevius, Tim [mailto:tnevius@ncaa.org]
Sent: Tuesday, August 31, 2010 7:03 PM
To: Tompsett, Scott
Cc: Hannah, Stephanie; 'revrard@bsk.com'; 'kskillman@bsk.com'; 'basun@JonesDay.com'
Subject: Re: UConn NOA Response

Scott,

Yesterday, the institution asked for the enforcement staff's position regarding sharing its response with involved parties but did not indicate which parties in particular. The staff responded to that prompt today and asked that the responses not be shared due to concerns about integrity. The staff has since learned that a portion of the institutions response was shared with you after the institution asked for feedback from the staff but prior the staff's response. The staff has informed the institution that the decision to share the rest of the response is up to them.

Regarding the recording of Mr. Hathaway's interview, in which you were a participant, a copy was sent overnight on Monday for arrival this morning. The file has also been loaded to the web custodial. Additionally, it is my understanding the documents referenced in that interview were to be provided to you this afternoon by the institution.

Tim

From: Tompsett, Scott [mailto:STompsett@stinson.com]
Sent: Tuesday, August 31, 2010 04:10 PM
To: Nevius, Tim
Cc: Hannah, Stephanie; revrard@bsk.com <revrard@bsk.com>; kskillman@bsk.com <kskillman@bsk.com>; Brian A Sun <basun@JonesDay.com>
Subject: FW: UConn NOA Response

Tim,

Please see below and call me at your earliest convenience to discuss. I would like to know why the staff has asked UConn not to share its response with Coach Calhoun until all responses are submitted to the COI. Also, I would like you to direct me to any authority for the staff's request.

Regards,
Scott

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From: Tompsett, Scott
Sent: Tuesday, August 31, 2010 1:32 PM
To: 'Evrard, Richard'
Cc: 'Brian A Sun'; 'kskillman@bsk.com'
Subject: RE: UConn NOA Response

Rick,

We have already received UConn's draft response from Kyle and I have shared a copy with Coach Calhoun. What is the staff's reason for its request? This type of request is unprecedented in my experience and I am aware of no authority for the enforcement staff to direct an institution not to communicate with its head coach about the institution's response.

Please call me at your earliest convenience to discuss. I have not copied the staff on this email but I intend to communicate my concerns to them very soon.

Regards,
Scott

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From: Evrard, Richard [mailto:EvrardR@bsk.com]
Sent: Tuesday, August 31, 2010 1:25 PM
To: Skillman, Kyle
Cc: Tompsett, Scott
Subject: Fw: UConn NOA Response

Kyle,

I just received this from Tim. Please hold on sending te draft to counsel for the coaches.

Rick

From: Nevius, Tim [mailto:tnevius@ncaa.org]
Sent: Tuesday, August 31, 2010 12:17 PM
To: Evrard, Richard
Subject: UConn NOA Response

Rick,

The enforcement staff requests that the institution not share its response with any of the other involved parties until all responses are submitted to the COI. Thanks.

Tim

Timothy M. Nevius

Assistant Director of Information

National Collegiate Athletic Association

317/917-6026

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