



4-1-2014

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Francis X. Baker

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Recommended Citation

Francis X. Baker, *"Half Mental": Resolving the Risks Posed by Dual Competencies in Applied Sport Psychology*, 21 Jeffrey S. Moorad Sports L.J. 185 (2014).

Available at: <https://digitalcommons.law.villanova.edu/mslj/vol21/iss1/8>

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Comments

"HALF MENTAL": RESOLVING THE RISKS POSED BY DUAL COMPETENCIES IN APPLIED SPORT PSYCHOLOGY

*"Ninety percent of the game is half mental."*¹

– Yogi Berra

I. INTRODUCTION

Yogi Berra may not have been the best at fractions, but his famously confusing observation about the prominent role played by the mind in baseball has proven almost axiomatic.² Indeed, in almost every sport, the relationship between mental health and athletic performance has been the subject of increasing interest.³ The field of sport psychology seeks to elucidate this relationship by studying and applying psychological principles of human performance in order to help athletes maximize their performance capabilities.⁴ For this reason, sport psychologists' services are employed by athletes at all levels of competition, including collegiate, professional, and Olympic teams.⁵ Other people in the athletic community, in-

1. YOGI BERRA, *THE YOGI BOOK* 69 (1998) (providing comprehensive collection of Yogi Berra quotes, insights, and observations).

2. *See generally*, H.A. DORFMAN, *THE MENTAL GAME OF BASEBALL: A GUIDE TO PEAK PERFORMANCE* (3d ed. 2002) (expounding at length on significance of mental component in major and minor league baseball).

3. *See, e.g.*, Pete Carroll, *Foreword* to W. TIMOTHY GALLWEY, *THE INNER GAME OF TENNIS: THE CLASSIC GUIDE TO THE MENTAL SIDE OF PEAK PERFORMANCE*, at xi-xii (crediting mental elements for victory of University of Southern California Trojans in 2005 National Championship).

4. *See* STEPHEN T. PORTENGA, ET AL., *APA DIVISION 47, DEFINING THE PRACTICE OF SPORT AND PERFORMANCE PSYCHOLOGY* 9 (2011), available at <http://www.apadivisions.org/division-47/about/resources/defining.pdf> (providing definition for applied sport psychology).

5. *See, e.g.*, Dan Connolly, *Orioles Notes: Arrieta Consulted Sport Psychologist to Get Back on Track*, *BALT. SUN*, Sept. 6, 2012, available at http://articles.baltimoresun.com/2012-09-06/sports/bs-sp-orioles-notes-0907-20120906_1_jake-arrieta-orioles-notes-orioles-manager (reporting that Orioles pitcher Jake Arrieta's decision to consult sport psychologist Don Carman may have helped him break streak of poor performance); *see also* Stacy St. Clair, *Sport Psychologists Raise Their Game*, *ORLANDO SENTINEL* (Aug. 10, 2012, 9:38 PM), http://articles.orlandosentinel.com/2012-08-10/sports/ct-spt-0811-olympics-sports-psychologists-20120811_1_sports-psychologists-teams-and-individual-athletes-field-hockey-teams (describing how U.S. Olympic team employs five full-time sport psychologists and that U.S. Olympic gold medalists such as Misty-May Traenkle, Kerri Walsh Jennings, and Jamie Gray consulted sport psychologists during London Olympics).

cluding families, coaches, administrators and officials, also regularly employ their services.⁶

While these practitioners and their services are in high-demand, there are currently no uniform models for training or licensing sport psychologists.⁷ The historical development of the profession has left a schism between practitioners with academic backgrounds in the sport sciences and practitioners with backgrounds in clinical psychology.⁸ This discord has resulted in the emergence of two groups of practitioners with two distinct competencies, both misleadingly referring to themselves as “sport psychologists.”⁹ In addition to violating ethical standards, this behavior could potentially jeopardize the welfare of clients.¹⁰ The risk of mishandling the mental health of athletes is made particularly salient by the string of recent suicides among professional and collegiate athletes suffering from sport-related mental illnesses.¹¹

This Comment will begin with a brief survey of sport psychology, including what it is and how the rift within the profession

6. See APA *Sport Psychology Proficiency*, APA DIVISION 47 EXERCISE & SPORT PSYCHOL., <http://www.apadivisions.org/division-47/about/sport-proficiency/index.aspx> (last visited Dec. 28, 2013) (listing types of clients that sport psychologists typically serve); see also Katherine Harmon, *Sports Psychologists Extend Their Counseling to Athletes Coaches and Families*, SCI. AM. (Aug. 1, 2012), <http://www.scientificamerican.com/article.cfm?id=olympics-sports-psychology> (describing how sport psychologists' services are now being employed by coaches and families, not just athletes).

7. See Travis D. Porter, *Attitudes and Opinions of Sport Psychologists on Training and Ethics in Sport Psychology 3* (2007) (unpublished Psy.D. dissertation, University of the Rockies) (on file with author) (“Currently, there is no established model for training nor is there licensure available specifically for sport and exercise psychology.”) (quoting E.F. Etzel & J. C. Watson II, *Introduction to the special issue: Ethics in sport and exercise psychology*, 16 ETHICS & BEHAVIOR 1, 2 (2006)); see also *id.* at 13 (stating that sport psychology training does not have established curriculum).

8. See Jim Taylor, *Examining the Boundaries of Sport Science and Psychology Trained Practitioners in Applied Sport Psychology: Title Usage and Area of Competence*, 6 J. APPLIED SPORT PSYCHOL. 185, 185 (1994) (describing division that emerged within sport psychology between physical education trained practitioners and psychologists).

9. See PORTENGA, *supra* note 4, at 6-7 (explaining how sport psychology was traditionally understood as providing only performance enhancement services, but that clinical psychologists have begun referring to psychotherapy performed on athletes as “sport psychology” as well).

10. See Taylor, *supra* note 8, at 191 (suggesting that practice outside of areas of competence could violate ethical principles designed to safeguard welfare of clients).

11. For a detailed discussion identifying several athletes, both college and professional, who have recently committed suicide after suffering from chronic traumatic encephalopathy (CTE), see *infra* note 70 and accompanying text.

emerged.¹² This Comment will then discuss how this dualism has created the potential for practice outside areas of competence and why this poses a serious ethical problem.¹³ Thereafter, this Comment will explore theories of liability for sport psychologists practicing outside of areas of competence, including causes of action that may be initiated by injured clients or by the state.¹⁴ After exploring theories of liability, this Comment will recommend that states pass certification laws for sport psychologists in order to help ensure that sport psychologists practice within their areas of competence, both minimizing potential liability for practitioners and protecting clients.¹⁵ Next, this Comment will briefly introduce features of the proposed certification law, including the advantages and limitations of such a law.¹⁶ This Comment will then review the constitutional parameters of certification legislation based on analogous case law.¹⁷ This discussion will culminate in the conclusion that new certification laws for applied sport psychologists are necessary in order to both legitimize the services of qualified practitioners and help protect clients.¹⁸

II. APPLIED SPORT PSYCHOLOGISTS: WHO ARE THEY AND WHAT DO THEY DO?

Defining applied sport psychology precisely is a challenging and controversial task, but it is crucial to resolve the profession's identity crisis and to formulate an appropriate training model for

12. For a detailed discussion of the historical context of division within sport psychology, endorsing clearer definition of sport psychology, see *infra* notes 19-43 and accompanying text.

13. For a detailed discussion of the ethical problems associated with practice outside of areas of competence, see *infra* notes 44-88 and accompanying text.

14. For a detailed discussion surveying possible legal liability for both physical education trained practitioners and clinical psychologists who practice outside their areas of competence, see *infra* notes 93-130 and accompanying text.

15. For a detailed discussion advancing the argument that states ought to pass certification laws regulating use of the job title "sport psychologist" in order to help standardize competencies among practitioners and help protect consumers from incompetent practitioners, see *infra* notes 131-143 and accompanying text.

16. For a detailed discussion weighing the possible benefits and limitations of certification law for sport psychologists, see *infra* notes 145-166 and accompanying text.

17. For a detailed review of relevant case law regarding licensure and certification for psychologists, see *infra* notes 164-178 and accompanying text.

18. For a detailed discussion concluding that certification laws for practicing sport psychologists are most effective solution to ethical and safety problems posed by educational division within profession, see *infra* notes 179-189 and accompanying text.

practitioners.¹⁹ There is considerable disagreement within the profession about what applied sports psychology is, the training that practitioners should receive, the skills they should possess, the services they should provide, and the client populations they should serve.²⁰ To understand how such a variety of competing theories emerged, a historical survey of the development of the sport psychology profession is required.²¹

A. Brief History

Sport psychology in the United States began in the early twentieth century with the work of Coleman Roberts Griffith, a trained psychologist who pioneered the application of psychological principles to the improvement of sports performance.²² Although his background was in psychology, Griffith's work focused primarily on reaction, psychomotor skills, motor learning, and the relationship between personality variables and physical performance.²³ Griffith's emphasis on mechanics and motor learning, instead of pure psychological analysis, was due in part to his belief that the field of psychology had not developed sufficiently to answer all of his questions.²⁴ The feeling was mutual in the psychological community, which took little interest in Griffith's work on sport performance during the 1920s and 1930s.²⁵

For this reason, although psychological principles were still an important part of the professional's toolbox, the early study of sport psychology was mainly the province of kinesiology and physical edu-

19. See PORTENGA, *supra* note 4, at 5 (stating that clear definition of sport psychology is essential to developing training model for practitioners and ensuring delivery of competent service to clients).

20. See *id.* at 3-6 (surveying diversity of definitions for sport psychology and obstacle this diversity creates to reaching consensus on training models).

21. See *id.* at 6 (suggesting historical perspective of development of sport psychology is most helpful in elucidating division within profession and ascertain more precise definition of profession).

22. See Porter, *supra* note 7, at 8-9 (describing how Coleman Roberts Griffith is credited as father of sport psychology in United States); see also PORTENGA, *supra* note 4, at 6 (stating that Griffith was "first person to apply psychological principles systematically to improve sport performance").

23. See PORTENGA, *supra* note 4, at 6 (explaining how Griffith's work emphasized motor learning, as well as connection between personality variables and physical performance); see also Porter, *supra* note 7, at 9 (describing how Griffith emphasized athletic and psychomotor skills, as well as personality variables).

24. See Porter, *supra* note 7, at 9-10 (stating that Griffith believed that state of psychology at time was ill-equipped to handle inquiry into athletic performance).

25. See *id.* at 11 (noting that psychological community did not take much interest in sport performance during 1920s or 1930s); see also PORTENGA, *supra* note 4, at 6 (stating that Griffith's colleagues in psychology showed little interest in his work).

education departments.²⁶ Early graduate programs gave students comprehensive instruction in sport science, including statistics, research methods, exercise physiology, motor learning, and biomechanics.²⁷ By the 1950s and 1960s, sport psychology had begun to gain academic independence from exercise physiology, motor learning, and motor control.²⁸ Nevertheless, the field was still primarily academic, favoring research over clinical application.²⁹

Around the same time, clinical psychologists began to take an interest in sport psychology.³⁰ However, rather than blending psychological concepts with the standing theories of performance evaluation and enhancement, early clinical psychologists relied exclusively on familiar psychological theories to treat general life issues and mental health issues in athletic clients.³¹ Clinical psychologists who provided psychotherapy to athletes began referring to their services as "sport psychology," even though their services disregarded the emphasis on performance *enhancement* that had been the trademark of sport psychology until that time.³²

26. See John M. Silva, *Toward the Professionalization of Sport Psychology*, 3 *SPORT PSYCHOL.* 265, 268 (1989) (describing how sport psychologists were traditionally trained in physical education departments in specialized graduate programs); see also PORTENGA, *supra* note 4, at 6 ("ultimately, the academic home of sport psychology shifted into physical education . . . departments."); see also Porter, *supra* note 7, at 12 ("historically sport psychology has been relegated to departments such as kinesiology or physical education.").

27. See Silva, *supra* note 26, at 268 (describing curriculum of early graduate programs in sport psychology).

28. See PORTENGA, *supra* note 4, at 6 ("During the 'formative years' from the 1950s to the 1980s, sport psychology started to be its own discipline, separate from exercise physiology, motor learning, and motor control.").

29. See Porter, *supra* note 7, at 12-13 (explaining how early in history of profession, sport psychology was not practiced clinically, but rather was subject of academic inquiry and research).

30. See *id.* at 9 (recounting how Ogilvie and Tutko's use of psychological assessments and personality theory in sport psychology in 1966 marked first fusion between clinical psychology and study of athletic performance). Similarly, 1972 saw the first attempt to introduce "cognitive behavioral principles of relaxation training and imagery [with] behavioral rehearsal technique to enhance sport performance." See *id.* at 11.

31. See PORTENGA, *supra* note 4, at 7 ("psychologists did not bring their psychological knowledge to the developing theories of performance, but rather stuck to their theories of personality.").

32. See *id.* (describing how "psychologists with training in psychotherapy focused on psychopathology and addressing general life issues often refer to their treatment of athletes as 'sport psychology.'"). Psychotherapy is "a general term for treating mental health problems by talking with a psychiatrist, psychologist or other mental health provider." *Psychotherapy*, MAYO CLINIC, <http://www.mayoclinic.com/health/psychotherapy/MY00186> (last visited Dec. 28, 2013) (defining psychotherapy). The goals of psychotherapy are to encourage the patient to exercise greater control over his or her life and to develop healthy coping mecha-

B. Sport Psychology Organizations: The AASP and Division 47

In reaction to the history of sport psychology outlined above, disagreement broke out over what exactly the practice of sport psychology entailed, the skills that practitioners should possess, and how those skills should be acquired.³³ To help unify the profession and impose some organizational oversight in the profession, John Silva founded the Association of Applied Sport Psychology (“AASP”).³⁴ Silva has been an outspoken advocate for reconciling the rivalry between sport scientists and clinical psychologists.³⁵ Silva proposes that this reconciliation can be accomplished by the creation of an interdisciplinary certification for practitioners to integrate training in both clinical psychology and the sport sciences.³⁶

Almost contemporaneously, the American Psychological Association (“APA”) created a special division for sport psychology called Division 47.³⁷ In February 2003, the APA formally approved a proficiency in sport psychology, recognizing postgraduate specialization in sport psychology after an individual acquires a doctoral degree in one of the core areas of psychology.³⁸ This proficiency is designed to help “the general public in recognizing the appropriate services and skills of psychologists who describe themselves as ‘sport psychologists’ and assists psychologists in recognizing and under-

nisms by studying the patient’s moods, behaviors, thoughts, and feelings. *See id.* (describing basic goals of psychotherapy).

33. *See* Taylor, *supra* note 8, at 185 (describing divergent paths along which sport psychology has developed, i.e. between those who study motor learning and those with backgrounds in psychological specialty).

34. *See* Porter, *supra* note 7, at 2 (stating that AASP was founded “in response to widespread practice of sport psychology in a variety of settings with minimal or a complete absence of oversight by professional organizations”); *see also Our History*, AASP.ORG, <http://www.appliedsportpsych.org/About> (last visited Dec. 28, 2013) (providing background information on AASP).

35. *See* John M. Silva, Sport Psychology Professor Emeritus at Univ. N.C. Chapel Hill, Keynote Presentation at Association for Applied Sport Psychology 25th Anniversary Conference, No One Told You When to Run: The Past and Present is Not the Future of Sport Psychology 20 (Oct. 30, 2010), *available at* <http://www.bgsu.edu/downloads/lib/file96561.pdf> (calling for end to “turf battles” between practicing professionals).

36. *See id.* (advocating for legal recognition of “Sport Psychology Consultant” title, accompanied by legal education and training requirements).

37. *See Division History*, APADIVISIONS.ORG, <http://www.apadivisions.org/division-47/about/history/index.aspx> (last visited Dec. 28, 2013) (giving historical background about foundation of Division 47 within APA).

38. *See APA Sport Psychology Proficiency*, *supra* note 6 (summarizing what APA proficiency in sport psychology entails, including specialized knowledge required for proficiency, persons and groups served, and procedures of practice that proficient practitioners may employ).

standing the knowledge and skills considered appropriate for psychologists practicing in this particular area of expertise.”³⁹

C. Working Definition of Applied Sport Psychology

Based on this historical background, and using the APA proficiency as a conceptual skeleton, applied sport psychology is properly understood as “the study and application of psychological principles of human performance in helping athletes consistently perform in the upper range of their capabilities and more thoroughly enjoy the sport performance process.”⁴⁰ While the emphasis of sport psychology services is directed primarily toward performance *enhancement*, sport psychologists often find that athletes suffer from mental health issues that interfere with their ability to perform in their sports.⁴¹ The provision of these services, classified more accurately as performance *restoration*, is often necessary before the sport psychologist can begin providing performance enhancement services.⁴² For this reason, applied sport psychologists who wish to accurately identify themselves as sport psychologists should receive the education and training necessary to develop competencies in *both* performance enhancement and performance restoration.⁴³

III. THE ETHICAL PROBLEM POSED BY PRACTICING OUTSIDE OF AREAS OF COMPETENCY

Because training of applied sport psychologists has proceeded along two separate tracks, practitioners have developed incongruent competencies in performance enhancement and performance

39. *Division History*, *supra* note 37 (noting that primary reason for creation of proficiency in sport psychology was to protect public).

40. PORTENGA, *supra* note 4, at 9 (providing definition of applied sport psychology properly understood).

41. *See id.* at 12 (stating that “[s]ometimes sport psychologists do need to ameliorate a mental health issue to be able to teach performance psychology principles.”).

42. *See id.* at 12-13 (explaining concept of performance restoration versus performance enhancement); *see also APA Sport Psychology Proficiency*, *supra* note 38 (listing intervention for mental illnesses common among athletes, e.g., eating disorders, substance abuse, sexual identity issues, grief, depression, suicidal thoughts, as being one of several procedures of practice that sport psychologist might be expected to employ).

43. *See* PORTENGA, *supra* note 4, at 20 (arguing that sport psychologists should develop competencies in both psychology of performance and mental health counseling, as well as in consulting psychology theories and interventions).

restoration.⁴⁴ But the close interplay between performance enhancement and performance restoration services in applied sport psychology creates the risk that a practitioner who only possesses one of these two competencies may attempt to provide services that he or she is unqualified to provide.⁴⁵ This behavior violates the ethical codes of both the APA and the AASP.⁴⁶ Section 2.01 of the American Psychological Association's Ethical Standard states that practitioners must "provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience."⁴⁷ Similarly, the AASP's Ethical Principles and Standards states that AASP members must "recognize the boundaries of their professional competencies and the limitations of their expertise" and "provide only those services and use only those techniques for which they are qualified by education, training, or experience."⁴⁸

For both the APA and AASP, the linchpin for determining competence in a given area is the practitioner's education, training, and experience.⁴⁹ These seemingly straightforward criteria provide surprisingly little guidance when evaluating a practitioner's competence in a given area.⁵⁰ In practice, the individual practitioner is

44. See Porter, *supra* note 7, at 13 (noting that educational sport psychologists were mostly researchers and academics, while clinical sports psychologist were by and large reciprocally unfamiliar with principles of sports science).

45. See *id.* at 12-13 (explaining performance enhancement and performance restoration often go hand in hand in applied sport psychology).

46. For a detailed discussion explaining how practicing outside of one's area of competence violates the ethical principles of both APA and AASP, see *infra* notes 47-48 and accompanying text.

47. APA, ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT § 2.01 (June 1, 2010), available at <http://www.apa.org/ethics/code/principles.pdf> [hereinafter APA ETHICAL PRINCIPLES].

48. James Whelan, *Ethics Code: AASP Ethical Principles and Standards*, APPLIED-SPORTPSYCH.ORG, <http://www.appliedsportpsych.org/about/ethics/ethics-code/> (last visited Dec. 28, 2013) (explaining ethical requirements for AASP members regarding practice within areas of competence).

49. See Taylor, *supra* note 8, at 189 ("Both the states and the APA assess competence in terms of professionals' education, training and experience."); see also APA ETHICAL PRINCIPLES, *supra* note 47 (defining competency boundaries according to psychologist's "education, training, supervised experience, consultation, study or professional experience").

50. See Taylor, *supra* note 8, at 189 (maintaining that beyond basic standards set by state regulations and APA ethical principles, there is little clarity regarding how to judge competency in practice). "Keith-Spiegel and Koocher (1985) write that 'ethical codes, for example, are general in nature and give too few specifics to permit easy identification of incompetent practice.'" *Id.* (quoting GERALD P. KOOCHEER & PATRICIA KEITH-SPIEGEL, ETHICS IN PSYCHOLOGY: PROF'L STANDARDS AND CASES 226 (2nd ed. 1985)).

often responsible for evaluating whether he or she is competent to diagnose or treat a client.⁵¹ Unfortunately, practitioners are notoriously imperfect at judging their own strengths and limitations.⁵² Additionally, only members of these organizations are bound by these ethical codes, further limiting these codes' effectiveness.⁵³ The ambiguity and weak regulatory force of these competency requirements have done little to dispel the fundamental confusion over what services a sport psychologist should offer, allowing a risky overlap of services between practitioners trained exclusively in performance enhancement and practitioners with backgrounds in clinical psychology.⁵⁴

A. Sport Scientists Inappropriately Treating Psychological Conditions

Applied sport psychologists with education and training exclusively in the sport sciences are capable of acquiring competence only in performance enhancement.⁵⁵ They are not qualified to address general life issues or treat mental illnesses and therefore cannot ethically provide these services to their clients.⁵⁶ Nevertheless, as noted above, athletes as a client population often suffer from mental illnesses that may interfere with any meaningful perform-

51. See *id.* (explaining that, "determination of competence is left to the professional"). The APA's Division 47 has posted a "Knowledge and Skills Checklist" on their website to aid practitioners in self-evaluating their competency. See *Sport Psychology: Knowledge and Skills Check List*, APADIVISIONS.ORG, <http://www.apadivisions.org/division-47/about/resources/checklist.pdf> (last visited Mar. 18, 2013) (providing checklist for sport psychologists to evaluate specialized knowledge, knowledge of persons and groups, and skills).

52. See Taylor, *supra* note 8, at 189 (claiming that practitioners "are not often effective evaluators of their own strengths and limitations"); but see *In re Barnes*, 31 Ohio App.3d 201, 205 (1986) (noting that Dr. Barnes was aware that he was practicing outside of his area of competence, but attempted to treat his client anyway).

53. See Taylor, *supra* note 8, at 189 ("[M]any applied practitioners do not have to adhere to the APA Ethical Principles. In fact, only psychologists, members of APA, and those who choose to must follow these guidelines.").

54. For a detailed explanation of how the lack of clarity and limited application of ethical standards for competent practice have created an environment in which practitioners can easily stray into areas beyond their competence, see *supra* notes 50-53 and accompanying text.

55. See Taylor, *supra* note 8, at 191 (arguing that sport scientists are "restricted to addressing performance-related problems for which they receive formal training and supervised experience solely within sport").

56. See *id.* at 192 (stating that "sport science trained professionals should only address problems that are clearly isolated to the sport performance realm" and should not address general life issues such as relationship or school problems).

ance enhancement services.⁵⁷ It is possible that the athletic culture, which values resilience and high pain thresholds, could precipitate and exacerbate some of these conditions.⁵⁸ Some research even suggests that student-athletes may be at a higher risk than their non-athlete peers of suffering from mental health problems, including alcohol abuse, social anxiety, and depression.⁵⁹

Indeed, there is a range of psychological conditions that are particularly common among athletes at all levels of competition, none of which a sport psychologist trained exclusively in performance enhancement would be qualified to diagnose or treat, but many of which a practitioner may encounter in practice.⁶⁰ One of these is eating disorders.⁶¹ Eating disorders tend to develop most frequently among female athletes in aesthetic sports such as figure skating or gymnastics.⁶² Due to the seriousness of these conditions, a sport psychologist without any formal psychological training who discovers that a client may be suffering from an eating disorder could not ethically treat that client, and he or she would be obligated to refer the client to a qualified clinician.⁶³

Additionally, athletes who engage in excessive, high-intensity training and conditioning exercises can develop a psychological

57. See PORTENGA, *supra* note 4, at 12 (explaining that sport psychologists may need to resolve mental health issues before they can begin enhancing athlete's performance).

58. See Sam Maniar, *Suicide Risk is Real for Student-Athletes*, NCAA.COM (Nov. 7, 2005, 10:53 AM), <http://fs.ncaa.org/Docs/NCAANewsArchive/2005/Editorial/suicide%2Brisk%2Bis%2Breal%2Bfor%2Bstudent-athletes%2B-%2B11-7-05%2Bncaa%2Bnews.html> ("Reasons for this rate may stem from the culture of athletics, which emphasizes being 'mentally tough,' 'showing no sign of weakness' and 'fighting through the pain.'").

59. See *id.* ("[S]tudent-athletes may be more at-risk than their non-athlete peers for experiencing mental health difficulties, such as alcohol abuse, social anxiety and depressive symptoms.").

60. For a detailed discussion of some mental illnesses common among athletes, see *infra* notes 61-72 and accompanying text.

61. See *Eating Disorder Statistics*, NAT'L ASS'N OF ANOREXIA NERVOSA AND ASSOCIATED EATING DISORDERS, <http://www.anad.org/get-information/about-eating-disorders/eating-disorders-statistics/> (last visited Dec. 28, 2013) (citing study that shows eating disorders were more common among elite athletes than in female control group).

62. See *id.* (explaining that eating disorders are particular common among female athletes who participate in "aesthetic sports," such as gymnastics, figure skating, and ballet).

63. See Zella E. Moore, *Ethical Dilemmas in Sport Psychology: Discussion and Recommendations for Practice*, 34 PROF. PSYCHOL.: RES. & PRAC. 601, 603-04 (2003) (submitting that sport psychologist providing performance enhancement services for athlete-client may be operating outside of area of competence if eating disorder is discovered during course of consultation with client).

condition known as overtraining syndrome.⁶⁴ The syndrome has been reported in ten percent of endurance athletes involved in intense training and includes symptoms such as chronic fatigue, sleep disturbance, irritability, depressed mood, anxiety, and loss of confidence.⁶⁵ Accurate diagnosis of this condition depends on the psychologist's familiarity with the physiology of endurance training and inquiry into the patient's training habits—areas that a psychologist without the proper training could easily overlook.⁶⁶ This condition highlights not only the importance of a practitioner's skill in psychopathology, but also the importance of a practitioner's familiarity with the athletic culture surrounding a client's sport.⁶⁷

Lastly, one of the most serious sport-specific psychological conditions that an athlete can develop is chronic traumatic encephalopathy ("CTE").⁶⁸ CTE is a progressive neurodegenerative disease caused by repeated blows to the head, making it a more common disease among athletes in contact sports such as football,

64. See Amy B. Stapleton, *Ethical Considerations in Applied Sport Psychology*, 41 PROF. PSYCHOL.: RES. & PRAC. 143, 145 (2010) (describing population most at risk for developing overtraining syndrome).

65. See *id.* (describing incidence of overtraining syndrome in endurance athletes involved in intense training).

66. See *id.* (suggesting that familiarity with physiology of endurance training can be instrumental in diagnosing and treating some psychological conditions).

67. For a discussion of the importance of a practitioner's familiarity with client's individual sport dynamics and practices in providing effective services, see *infra* notes 85-88 and accompanying text. Psychopathology is defined as "the study of psychological and behavioral dysfunction occurring in mental disorder or in social disorganization." *Psychopathology*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/psychopathology> (last visited Oct. 17, 2013) (stating definition of psychopathology).

68. See J. John Mann, *Suicide in Professional Athletes: Is It Related to the Sport?*, DANA FOUND. (July 2012), http://www.dana.org/news/features/detail_rop.aspx?id=39354 (discussing increased attention given to prevalence of CTE in organized sports, including massive litigation against National Football League ("NFL") for allegedly ignoring evidence that repeated head trauma could cause disease). Several thousand former NFL players sued the league alleging that the NFL knew about the long-term health risks associated with sustaining multiple concussions, but concealed these risks from its players. See *NFL, Ex-players Agree to \$765M Settlement in Concussions Suit*, NFL.COM (Aug. 29, 2013, 12:42 PM), <http://www.nfl.com/news/story/0ap1000000235494/article/nfl-explayers-agree-to-765m-settlement-in-concussions-suit> (explaining basis for suit against NFL). Many of these players eventually developed depression, dementia, and Alzheimer's disease. See *id.* (identifying players' diseases allegedly caused by head trauma received during NFL games). On August 29, 2013, the NFL agreed to settle the suit for \$756 million. See Press Release, Irell & Manella LLP Alt. Dispute Resolution Ctr., NFL, Retired Players Resolve Concussion Litigation; Court-Appointed Mediator Hails Historic Agreement (Aug. 29, 2013), available at <http://static.nfl.com/static/content/public/photo/2013/08/29/0ap2000000235504.pdf> (last visited Dec. 29, 2013) (announcing settlement agreement between players and NFL).

ice hockey, soccer, boxing, and wrestling.⁶⁹ Athletes who develop the disease after successive head traumas have reportedly suffered from dementia and depression, and some, including several professional football players, have even committed suicide.⁷⁰ A sport psychologist without training in psychopathology could easily miss the telltale psychological symptoms of CTE, potentially leading to tragic consequences.⁷¹ Given the neurological nature of the disease, even sport psychologists trained in psychopathology and psychotherapy may not be expected to formally diagnose and treat CTE in their clients; however, their understanding of psychopathology should be sufficient to identify when one of their clients may be suffering from the disease and to refer them to a specialist for additional testing.⁷²

B. Psychologists Inappropriately Attempting to Provide Performance Enhancement Techniques

Clinical psychologists may also operate outside of their areas of competence when, without any relevant training or experience working with athletes or athletic personnel, they hold themselves out as sport psychologists.⁷³ This risk is significant given that very

69. See *id.* (explaining that “repeated blows to the head trigger chronic traumatic encephalopathy, or CTE, a progressive neurodegenerative disease caused by repetitive trauma to the brain which has been linked to dementia and depression”); see also Nadia Kounang, *Brain Bank Examines Athletes’ Hard Hits*, CNN.COM (Jan. 27, 2012, 7:04 AM), <http://www.cnn.com/2012/01/27/health/big-hits-broken-dreams-brain-bank/index.html> (reporting that athletes as young as seventeen have been diagnosed with CTE).

70. See Mann, *supra* note 68 (citing recent suicides of several professional football players as evidence of causal relationship between sports-related head trauma and psychological distress); see also Barry Wilner, *NFL’s Junior Seau Had Brain Disease CTE When He Killed Himself*, WASH. TIMES, Jan. 10, 2013, <http://www.washingtontimes.com/news/2013/jan/10/nfls-junior-seau-had-brain-disease-cte-when-he-kil/> (reporting that NFL linebacker Junior Seau was suffering from CTE when he committed suicide in 2012); see also Mike Tierney, *Football Player Who Killed Himself Had Brain Disease*, N.Y. TIMES, July 26, 2012, at B16, available at http://www.nytimes.com/2012/07/27/sports/football/ray-easterling-autopsy-found-signs-of-brain-disease-cte.html?_r=0 (reporting that Atlanta Falcons safety Ray Easterling was suffering from CTE when he committed suicide in 2012).

71. See Mann, *supra* note 68 (identifying uniquely psychological symptoms of CTE, including depression and dementia).

72. See Terry Zeigler, *Chronic Traumatic Encephalopathy (CTE)*, SPORTSMED.COM (Feb. 1, 2012), <http://www.sportsmd.com/articles/id/44.aspx> (explaining that there are currently no reliable methods for definitively diagnosing CTE in living athletes and recommending that athletes who suspect that they may be suffering from CTE consult with sports medicine doctor or physical therapist).

73. See Silva, *supra* note 26, at 271 (pointing out that psychologists are equally capable of practicing outside of areas of competence when they, “with no formal coursework or training experiences in sport psychology or the sport and exercise sciences, label themselves sport psychologists and work with athletes of profes-

few psychologists actually specialize in sport psychology.⁷⁴ Most psychologists have a more general educational background in a core area of practice, such as clinical or counseling psychology, and they merely provide what they call "sport psychology services" as part of their practices.⁷⁵ But licensed psychologists with general clinical or counseling experience may not possess the competence necessary to work with athletic personnel and, consequently, they cannot presume to publicly identify themselves as sport psychologists.⁷⁶

In order to ethically and accurately identify oneself as a sport psychologist, a psychologist must commit to understanding the culture and mechanics of athletic participation and acquire the necessary training and experience working with an athletic client population.⁷⁷ It is insufficient for psychologists merely to apply generic intervention skills without regard to the unique pressures and challenges germane to the specific client population.⁷⁸

Even within the athletic community, there is so much variation in the challenges and pressures faced by athletes that it would be inaccurate to define the client population merely as "athletes."⁷⁹ While experience working with one group of athletes is better than total inexperience working with athletes, work with one group of athletes may not equip a practitioner to effectively handle clients from a different cross-section of the athletic community.⁸⁰ Indeed,

sional teams"); *see also* Moore, *supra* note 63, at 604 (stating that psychologists "can also practice outside of their area of competence by accepting positions or work involving application of sport psychology while having little or no education or training in this professional domain").

74. *See* Stapleton, *supra* note 64, at 144 (observing that while psychologists may offer services in sport psychology, few work full-time as sport psychologists).

75. *See id.* (explaining that most practicing psychologists' educational backgrounds focus on core area such as clinical or counseling psychology).

76. *See* Taylor, *supra* note 8, at 188 (arguing that "licensed psychologists do not have de facto grounds to hold themselves out to the public as sport psychologists").

77. *See* Stapleton, *supra* note 64, at 144 ("[U]sing the word 'sport' in front of 'psychologist' indicates that a *person* has obtained additional specialized education and training in order to fully understand the various aspects of athletics, the science and specific culture of sport, and how to apply this knowledge to athletes, coaches, and parents."); *see also* Taylor, *supra* note 8, at 188 ("Only with adequate experience and supplemental training would it be reasonable for them to use the title, 'sport psychologist.'").

78. *See* Taylor, *supra* note 8, at 193 ("The possession of certain intervention skills and experience in treating a particular problem does not necessarily assure competence without consideration of the client population in which the services will be provided.").

79. *See id.* (suggesting that referring to client population of sport psychologists merely as "athletes" may be inaccurate given diversity among athletes).

80. *See id.* ("Experience in working with one group does not ensure competence to work with another that is demographically different.").

as one sport psychologist who switched from working with the Baltimore Orioles to working with a hockey team reportedly confessed, "A big part of this is a learning process for me. After all those years with the Orioles I still don't understand the infield fly rule and now I have to learn about icing the puck."⁸¹

Each cross-section of the athletic community contains unique issues that a psychologist must be familiar with in order to competently provide sport psychology services.⁸² The sport, the athlete's level of participation, and the physical demands of the sport are some of the factors integral to effectively and competently treating clients as a sport psychologist.⁸³ For example, professional athletes who are always under public scrutiny may need to handle the difficulties that come from celebrity status, whereas consultation with the parents of younger athletes may require a greater emphasis on adolescent cognitive development.⁸⁴

Accurate diagnosis of sport-specific mental illnesses may also depend on the practitioner's familiarity with the demands of the client's sport and the client's individual training and performance habits.⁸⁵ This is especially true of conditions such as overtraining syndrome, which can only be diagnosed with inquiry into the client's individual training habits.⁸⁶ Beyond diagnosis, knowledge of a client's athletic habits may also be instrumental in facilitating an effective treatment regimen, especially if some particular feature of the client's athletic routine is aggravating the client's condition or

81. See Silva, *supra* note 26, at 271 (quoting sport psychologist who struggled with learning sport-specific language while providing sport psychology services to professional teams).

82. See Taylor, *supra* note 8, at 193 (noting that "there may be issues unique to athlete subgroups that must be addressed in order to establish competence to work with particular groups within the athlete population").

83. See *id.* (listing "age, gender, race/ethnicity, level of ability, type of sport (individual or team), physical demands (e.g. fine or gross motor skill, aerobic or anaerobic), type of individual (e.g. athlete, coach, administrator, or parent), or amateur of professional status" as factors with which competent sport psychologist should be familiar); see also Stapleton, *supra* note 64, at 144-45 (stating that work with athletes at varying levels of participation and performance present different challenges, e.g. youth sports, club organizations, collegiate sports, and professional performers each present unique challenges).

84. See Stapleton, *supra* note 64, at 145 (providing examples of types of situations in which customized interventions may be necessary based on client's athletic profile).

85. See Taylor, *supra* note 8, at 191 (explaining that knowledge of client's sport and client's individual practices within that sport may be required to effectively diagnose certain sport-specific mental illnesses).

86. See Stapleton, *supra* note 64, at 145 (suggesting that familiarity with biophysiological bases of endurance training can be instrumental in diagnosing and treating some psychological conditions).

impeding treatment.⁸⁷ For these reasons, a competent sport psychologist must be familiar with the systems, language, and other relevant features unique to the client's specific sport.⁸⁸

To be clear, it is permissible for clinical psychologists to treat clients who happen to be athletes.⁸⁹ Indeed, as noted above, athletes are prone to a variety of mental illnesses, especially self-confidence and anxiety issues, which a clinical psychologist can and should treat.⁹⁰ While treating these conditions may have the effect of restoring performance, these treatments are not properly classified as sport psychology services.⁹¹ Unless clinical psychologists are also trained and experienced in providing performance enhancement services, they cannot refer to themselves as "sport psychologists" merely because they provide psychotherapy to athletes.⁹²

IV. LEGAL LIABILITY FOR SPORT PSYCHOLOGISTS

A. Title Concerns for Unlicensed or Uncertified Professionals Practicing Sport Psychologists

Although there are currently no state laws providing for the licensure of sport psychologists specifically, almost every state regulates the licensure of psychologists generally.⁹³ States are empowered to promulgate these regulations by their duty to protect the public health.⁹⁴ State laws regulating the licensure of psychologists achieve this goal simply by preventing people who lack sufficient

87. See *id.* (stating, for example, that familiarity with details of athletic anticipation can aid in treatment of overtraining syndrome).

88. See Stapleton, *supra* note 64, at 145 (stressing that psychologists need to understand system and attitudes of unique sport in which their clients are performing).

89. See Moore, *supra* note 63, at 604 (stating that psychologists can ethically treat patients who happen to be athletes under certain circumstances).

90. See Taylor, *supra* note 8, at 191 (explaining that self-confidence issues and anxiety are two common psychological problems among athletes).

91. See PORTENGA, *supra* note 4, at 13 (stating that while treatment of mental health problems may result in restoration of performance, it does not result in improvement of performance beyond previous base level, and it therefore does not address performance enhancement component of sport psychology).

92. See *id.* (describing how labeling psychologists who provide psychotherapy to athletes and refer to their services as "sport psychology" is misleading because it lacks performance enhancement component).

93. See Taylor, *supra* note 8, at 188 ("[M]ost states only specify a few specialty areas within psychology: clinical, counseling, industrial/organizational, and school.").

94. See 61 AM. JUR. 2D *Physicians, Surgeons, Etc.* § 42 (2012) ("In the performance of its duty to protect the public health, a State has the right to regulate psychology, and the statutes that regulate and prescribe for the licensing or certification of psychologists have been upheld as valid against various constitutional objections.").

training and experience from providing psychological services to people suffering from mental illnesses.⁹⁵

While licensure laws may vary from state to state, most require the satisfaction of certain minimum education, training, and experience criteria before a practitioner can legally be considered a “psychologist.”⁹⁶ Violation of state licensure laws and laws regulating use of the “psychologist” job title is of particular concern for practitioners with a background in sport science.⁹⁷ Sport scientists and other practitioners who do not meet the statutory requirements for the practice of psychology may risk subjecting themselves to legal action if they adopt the job title “sport psychologist.”⁹⁸

Jack Llewellyn, a sport-science-trained professional working with the Atlanta Braves, encountered such constraints when he was told that he could not refer to himself as a “sport psychologist” because doing so violated Georgia’s state licensure laws.⁹⁹ Llewellyn has a Ph.D. in physical education concentrating in sport science with an emphasis in sport psychology, but he did not pass the national or state licensing exam required for certification in Georgia.¹⁰⁰ In Georgia, practicing without a license constituted a civil misdemeanor carrying a fine of \$100-\$500 per consultation per cli-

95. See *id.* (“When the legislature enacts a statute to regulate psychologists, it intends to prevent laypeople from engaging in activities constituting the practice of psychology, and the various treatments used by psychologists when providing care to patients with mental illness.”).

96. See Taylor, *supra* note 8, at 188 (“[S]tate boards stipulate threshold criteria of education, training, and experience necessary to use the title, ‘psychologist.’”).

97. See *id.* at 187 (explaining that sport science trained professionals “who do not meet exemptions are violating the law and subject to legal action”).

98. See *id.* (indicating that sports scientists and practitioners who use “sport psychologist” designation may open themselves up to legal liability). “[P]ractitioners in the field must carefully consider the risk of legal action when choosing to use this title [sport psychologist] in their professional lives.” *Id.* (quoting F. L. Gardner, *Professionalization of Sport Psychology: A Reply to Silva*, 5 SPORT PSYCHOLOGIST 55, 57 (1991)).

99. See *id.* (using Llewellyn as example of individual who risked legal action for referring to himself as sport psychologist without acquiring license to practice); see also Joe Strauss, *Llewellyn Plans to Meet with State Authorities, Continue Work with Braves*, ATLANTA J.-CONST., Jan. 1, 1992, at F7 (reporting that Llewellyn wanted to avoid conflict with state licensing board over his job title). Llewellyn is credited with helping Braves pitcher John Smoltz turn around his 1991 season. See Norman Arey, *Norman Arey’s SportsScene Llewellyn: No License Required*, ATLANTA J.-CONST., Feb. 11, 1992, at G2 (attributing Braves’ success that season to Smoltz’s performance).

100. See Strauss, *supra* note 99 (reporting that Llewellyn graduated from Florida State University in 1972 with Ph.D. in physical education, concentrating in sport science with emphasis in sport psychology, but he did not pass national or state licensing exam required for certification in Georgia).

ent.¹⁰¹ Llewellyn insisted that he had always referred to himself as a “sport psychology consultant” and never as a psychologist.¹⁰² In most cases, liability for sport scientists like Jack Llewellyn stems from the inclusion of the word “psychologist” in their job titles without acquiring the necessary license or certification.¹⁰³ Sport scientists can therefore reduce their liability significantly by simply using an alternative title to more accurately describe the services that they provide, such as “mental training consultant.”¹⁰⁴

Sport scientists who hold themselves out as sport psychologists and negligently attempt to render sport psychology services also risk being sued for malpractice.¹⁰⁵ Because these sport scientists are holding themselves out as sport psychologists, they are expected to observe the standard of care expected of a competent sport psychologist.¹⁰⁶ This proposition is based on the holding in *Brown v. Shyne*, where the Court of Appeals of New York held the defendant—who had claimed to be a chiropractor and had provided chiropractic services to the plaintiff—to the standard of care of a licensed chiropractor even though he was not a licensed chiropractor.¹⁰⁷ Because there is currently no statutory licensing or certification scheme for sport psychologists, the standard of care to which sport scientists would be held in a lawsuit for malpractice is unclear; however, it is likely that the standard of care would be based on

101. See *id.* (reporting that practicing without license is civil misdemeanor in Georgia, subjecting Llewellyn to fine of \$100-\$500 per consultation per client).

102. See Arey, *supra* note 99 (“I refer to myself as a sports psychology consultant. I don’t do clinical psychology things – I do performance enhancement work. I’ve never projected myself in any other way, although I think I’ve been projected as a psychologist.”).

103. See Taylor, *supra* note 8, at 187 (suggesting that use of term “psychologist” in their job titles is root cause of liability for sport scientists claiming to be sport psychologists or sport psychology consultants).

104. See *id.* (proposing “mental training consultant” as possible alternative job title for sport scientists looking to avoid legal action).

105. See ROLAND A. CARLSTEDT, EVIDENCE-BASED APPLIED SPORT PSYCHOLOGY: A PRACTITIONER’S MANUAL 468 (2012) (identifying potential for malpractice when practitioners conduct sport psychology services in negligent manner).

106. For a discussion examining the legal principle in *Brown v. Shyne* – that individuals who practice without necessary qualifications are held to standard of care as individual in profession who has acquired necessary qualifications, see *infra* note 107 and accompanying text.

107. See *Brown v. Shyne*, 151 N.E. 197, 199 (N.Y. 1926) (holding that “the defendant in offering to treat the plaintiff held himself out as qualified to give treatment” and that he “must meet the professional standards of skill and care prevailing among those who do offer treatment lawfully”).

proficiency guidelines promulgated by sport psychology organizations like the APA's Division 47 or AASP.¹⁰⁸

B. Liability for Licensed Psychologists Practicing Sport Psychology Outside Areas of Competence

Although licensed or certified psychologists generally do not run afoul of state licensure or certification laws, they may still be susceptible to tort actions if they practice outside of their areas of competence and consequently fail to adequately diagnose or treat a patient's condition.¹⁰⁹ All psychologists have a duty to accurately diagnose their patients.¹¹⁰ Although psychologists are not expected to diagnose all of their patients with perfect accuracy one hundred percent of the time, tort law does impose liability on psychologists who exercise a standard of care less than that of a reasonably prudent health care provider under the circumstances.¹¹¹ Therefore, if an injured patient can establish that the sport psychologist either did not possess the learning, skill, or experience required by state statute or that the psychologist did not use reasonable or ordinary care in diagnosing the patient, then the psychologist may be held liable for negligently diagnosing the patient.¹¹²

Negligent diagnosis of patients is a serious risk for clinical psychologists who claim to offer sport psychology services without receiving adequate training in the diagnosis and treatment of sport-specific injuries.¹¹³ As indicated above, some sport-related mental illnesses, like CTE, can cause psychological symptoms such as de-

108. See *APA Sport Psychology Proficiency*, *supra* note 6 (listing procedures of practice that proficient sport psychologist would be expected to be familiar with); see also Porter, *supra* note 7, at 13 (describing how AASP and U.S. Olympic Committee use AASP's certification for sport psychology consultant as indicator of competence).

109. See Moore, *supra* note 63, at 603 (warning that failure to adhere to APA ethical standards regarding areas of competence "places the practitioner of sport psychology at risk for charges of negligence (through ignorance or unawareness) and malpractice and may significantly increase the risk of client and organizational harm").

110. See 25 AM. JUR. PROOF OF FACTS 3D 117, § 5 *Negligent Diagnosis* (1994) (stating that psychologists have duty to accurately diagnose their patients).

111. See *id.* (conceding that psychologists are not "insurer[s] of the accuracy of the diagnosis," and that standard of care "depends on the level of care, skill, and treatment that is recognized, in the light of all the circumstances, as acceptable and appropriate by reasonably prudent similar health care providers").

112. See *id.* (laying out elements for successful negligent diagnosis action). The patient would also need to establish that the psychologist's failure was the proximate cause of the patient's injury. See *id.* (presenting burden that patient bears when filing negligent diagnosis action).

113. See *id.* (stating cause of action for negligent diagnosis).

mentia and depression, occasionally severe enough to cause suicide.¹¹⁴ Failure to properly diagnose depression that results in suicide may lead to tort liability for practitioners.¹¹⁵ In *O'Sullivan v. Presbyterian Hospital in City of New York at Columbia Presbyterian Medical Center*, a psychiatrist was sued for negligently failing to diagnose a patient's major depression that resulted in the patient committing suicide.¹¹⁶ In this case, the defendant psychiatrist had clearly failed to meet the standard of care required of a licensed psychiatrist by ignoring obvious symptoms of depression and neglecting to provide a physical exam of the patient.¹¹⁷ Because a standard of care has not yet been established for practicing sport psychologists, it is unclear where the threshold of liability would lie for the negligent diagnosis of serious psychological conditions in athletic clientele.¹¹⁸ However, using the APA's proficiency requirements as a model, a reasonable sport psychologist would be expected to be capable of accurately diagnosing psychological conditions most common to athletes, including depression, substance abuse problems, and eating disorders.¹¹⁹

Liability for practice outside of areas of competence may also be imposed on psychologists by the state.¹²⁰ In *In re Barnes*, the

114. For a more detailed discussion of the psychological symptoms of CTE and the potential for individuals suffering from the disease to commit suicide, see *supra* note 70 and accompanying text.

115. See *O'Sullivan v. Presbyterian Hosp. in City of N.Y. at Columbia Presbyterian Med. Ctr.*, 634 N.Y.S.2d 101 (N.Y. App. Div. 1st Dept. 1995) (holding that psychologist could be held liable for negligently diagnosing and treating patient suffering from major depression who ultimately committed suicide).

116. See *id.* at 102-03 (stating cause of action).

117. See *id.* (stating that after patient sought psychiatric treatment at Presbyterian Hospital, he was referred to and rejected from several group therapy sessions, and that no interim therapy or medication was provided). The patient was also not given a physical examination despite his abnormally low weight. See *id.* (detailing facts of case).

118. For a detailed discussion suggesting that standard of care for sport psychologist would likely be based on guidelines proposed by professional organizations such as APA's Division 47 or AASP, see *supra* note 108 and accompanying text.

119. See *APA Sport Psychology Proficiency*, *supra* note 6 (identifying interventions for psychological disorders such as depression and eating disorders as type of services in which proficient sport psychologist should be skilled). Again, due to the neurological nature of CTE, a sport psychologist would not be expected to formally diagnose CTE in clients, but he or she should at least be aware that depression is a symptom commonly linked to CTE and that athletes that participate in contact sports are at risk of suffering from CTE. See Zeigler, *supra* note 72 and accompanying text (explaining that there are currently no reliable methods for conclusively diagnosing CTE in living athletes).

120. See *In re Barnes*, 510 N.E.2d 392 (Ohio Ct. App. 1986) (upholding Ohio Board of Psychology's decision to suspend license of psychologist who had been found to be practicing outside of his area of competence).

Ohio State Board of Psychology elected to suspend the license of Dr. Barnes because he had practiced outside of his area of competence.¹²¹ When renewing his license, Dr. Barnes had identified his competency as “counseling” and printed the job title ‘Clinical Psychologist’ under his signature.¹²² The Board of Psychology determined that Dr. Barnes had “no academic training in psychopathology and no formal didactic or practicum training in psychotherapy.”¹²³ Furthermore, the Board found that his “only practicum work and experience was in school guidance, [and] that he had no supervised experience of a clinical nature under a psychologist.”¹²⁴ Even though Dr. Barnes argued in his defense that there was no statutory definition of the term “clinical psychologist” in the Ohio regulations, the court observed that Dr. Barnes should have been aware that he was straying from his area of expertise because the term “clinical psychologist” already has a particularized meaning within the field of psychology.¹²⁵ Indeed, Dr. Barnes freely admitted that he knew at the time that he was treating the patient that he was practicing outside of his area of expertise.¹²⁶

Additionally, the Board of Psychology in *Barnes* charged Dr. Barnes with misrepresenting his expertise to his patient in violation of a board rule of professional conduct.¹²⁷ Although Dr. Barnes argued that he could not be charged with misrepresentation because he had not injured the patient by making the misrepresentation, the court determined that in the regulation of a profession as important as psychology, misrepresentation can be established without showing that a patient has been injured by the professional’s action or inaction.¹²⁸ The court reasoned that state laws governing

121. *See id.* at 399 (stating holding of case).

122. *See id.* at 395-96 (describing ways in which Dr. Barnes had allegedly misrepresented his abilities to clients).

123. *See id.* at 395 (noting Board of Psychology determination that Dr. Barnes’s master’s and doctoral degrees in guidance and counseling did not constitute sufficient academic training in psychopathology).

124. *Id.* (observing Dr. Barnes’s lack of supervised experience as clinical psychologist).

125. *See id.* at 397 (“[C]linical psychologist’ has a clear, definite meaning in the field of psychology”). The court noted that “clinical” also had a clear meaning based on its definition in everyday use, meaning work that entails “direct observation of living patients and the description, evaluation, and modification of human behavior.” *See id.*

126. *See id.* (noting that Dr. Barnes knew he was not competent to treat patient at time of treatment).

127. *See id.* (addressing Dr. Barnes’s alleged misrepresentation of his competency to his patient).

128. *See id.* (“[I]n the regulation of a profession (such as psychology), a violation of a rule against ‘misrepresentation’ can be established by the actions (and in

professional practice are designed to prevent injury from misrepresentations *before* they occur.¹²⁹ While there has not yet been a parallel case condemning the misrepresentation of a sport psychologist, *Barnes* should serve as a cautionary tale for clinical psychologists who misrepresent themselves as sport psychologists without the proper education and training.¹³⁰

V. POLICY RECOMMENDATIONS

While the current legal framework may be effective in addressing abuses in practice *after* they occur, it has done very little to prevent abuses in practice *before* they occur.¹³¹ Legal recognition of a certification in sport psychology, modeled after the AASP's Sport Psychology Consultant Certification, would be a more proactive way to promote competent practice.¹³² To maximize their effectiveness, state licensing laws for sport psychologists must be accompanied by educational reforms that promote comprehensive training in sport psychology and emphasize supervised reformation so that practitioners may develop professional competency early in their careers.¹³³

A. AASP Certification

The best solution for improving competency standards among sport psychologists is the adoption of certification laws based on the satisfaction of certain minimum standards of education and train-

some circumstances, the inactions) of a professional without the necessity of demonstrating that any other person (patient, client, customer, or other professional) has been misled to his/her damage.”).

129. *See id.* at 398 (explaining that whole point of regulating professions is “to prevent damage from misrepresentations about a professional’s competence before any person in the general public is damaged. It is preventive rather than retributive justice”).

130. For a detailed discussion of the risk of state legal action for practicing outside of areas of competency, see *supra* notes 120-129 and accompanying text.

131. *See, e.g.,* *In re Barnes*, 510 N.E.2d at 398 (describing how state laws governing professional practice are designed to prevent injuries before they occur). However, considering that the patient’s symptoms were worsened by Dr. Barnes’s incompetent treatment and her belief that she would need to seek remedial therapy to recover from Dr. Barnes’s treatment, it seems as though these regulations do more to provide relief after the damage has already been done. *See id.* at 395.

132. *See Benefits of Certification*, APPLIEDSPORTPSYCH.ORG, <http://www.appliedsportpsych.org/certified-consultants/benefits-of-certification/> (last visited Dec. 30, 2013) (stating that certification is beneficial because it allows people to identify competent practitioners before employing their services).

133. For a detailed discussion setting forth steps that graduate programs in applied sport psychology need to take in order to help certification laws achieve their goals of promoting competent practice, see *infra* notes 157-163 and accompanying text.

ing in sport science and psychology.¹³⁴ The AASP in particular has pioneered certification for sport psychologists and advocated for legal recognition of the job title Sport Psychology Consultant.¹³⁵ The standard AASP certification requires the applicant to have received a doctoral degree from an accredited institution in an area “clearly related to sport science or psychology.”¹³⁶ In addition to the degree requirement, the certification requires applicants to have completed coursework in both the sport sciences and clinical psychology.¹³⁷ Applicants must also complete at least 400 total hours of mentored experience, a quarter of which must be spent in direct contact with clients.¹³⁸

1. *Certification v. Licensing*

The main difference between licensing laws and certification laws for psychologists is that licensing laws prohibit individuals who have not met the requirements of licensure from practicing psychology in a given state.¹³⁹ Conversely, psychology certification

134. See *Become a Certified Consultant*, APPLIEDSPORTPSYCH.ORG, <http://www.appliedsportpsych.org/Consultants/become-certified> (last visited Dec. 30, 2013) (outlining minimum education requirements needed for certification); see also *Benefits of Certification*, *supra* note 132 (listing benefits of certification).

135. See Silva, *supra* note 35, at 20 (advocating for legal recognition of title Sport Psychology Consultant based on achievement of certain educational training and experiences).

136. *Become a Certified Consultant*, *supra* note 134 (setting forth doctoral degree requirements needed for certification); see also Silva, *supra* note 35, at 19 (recommending that undergraduate students interested in practicing sport psychology double major in both kinesiology and psychology to give students sense of interdisciplinary nature of profession).

137. See *Become a Certified Consultant*, *supra* note 134 (listing coursework requirements for certified practitioners). Applicants must have completed at least one course in each of the following areas: Professional Ethics and Standards; Biomechanical and/or Physiological Bases of Sport; Historical, Philosophical, Social, or Motor Behavior Bases; Psychopathology and its Assessment; Counseling Skills (a graduate course); Research Design, Statistics, or Psychological Assessment; Biological Bases of Behavior; Cognitive-Affective Bases of Behavior; and Individual Behavior. See *id.*

138. See *id.* (requiring applicants to achieve at least 400 total hours of supervised experience and 100 hours of client interaction in order to become certified).

139. See *Nat'l Psychological Assn. for Psychoanalysis v. Univ. of State of N.Y.*, 168 N.E.2d 649, 651 (N.Y. 1960) (describing primary function of psychology licensing law compared to psychology certification law). In this case, four members of the National Psychological Association for Psychoanalysis (“NPAP”) challenged the constitutionality of article 153 (§§ 7601-7614) of the Education Law Consol. Laws, c. 16 (L.1956, ch. 737). See *id.* at 650 (identifying plaintiffs in lawsuit). Article 153 was a certification law for psychologists regulating the use of the professional job title “psychologist,” not a licensing law prohibiting unqualified individuals from rendering psychological treatment. See *id.* at 651 (explaining content of article 153). The plaintiffs in this case argued that the statute violated due process because it did not include a definition of “psychologist” or its derivatives. See *id.* at

laws typically do not prohibit individuals from practicing in a state, but they do require that individuals acquire certification before they can legally use the professional title "psychologist," or similar derivatives when rendering services for compensation.¹⁴⁰ A certification law for sport psychologists would prevent anyone from legally using the title "sport psychologist" or any related job title without first meeting the requirements of certification.¹⁴¹

Some individuals argue that certification laws for psychologists are not as successful as licensing laws at preventing incompetent individuals from practice because certification laws merely regulate the use of professional titles.¹⁴² This concern is unfounded, however, because certification laws empower consumers to identify qualified practitioners based on their job titles.¹⁴³ The title of "sport psychologist" earned by certification indicates not only that the practitioner has satisfied certain minimum education and training requirements, but it is also a strong indicator of professional competence.¹⁴⁴

2. *Benefits of Certification*

Giving legal status to a sport psychology certification has several advantages.¹⁴⁵ First, a coherent certification stands to reconcile the tension between applied sport psychologists with backgrounds in kinesiology and those with backgrounds in clinical psychology.¹⁴⁶ Harmonizing this division will help unify the profes-

652 (summarizing plaintiff's main constitutional arguments). The court rejected the plaintiffs' argument, concluding that the statute had in fact adopted a definition "by way of qualifying standards." See *id.* at 653-54 (stating court's holding).

140. See *id.* (describing how psychologist certification law functions).

141. See *Silva*, *supra* note 35, at 20 (describing how use of legally recognized title Sport Psychology Consultant or similar job title would be conditioned upon satisfaction of educational and training criteria).

142. See *Pitts v. State Bd. of Exam'rs of Psychologists*, 160 A.2d 200 (Md. 1960) (involving lawsuit in which psychologist challenged Maryland certification law because it did not prevent uncertified professionals from practicing, but instead merely prevented him from using job title "psychologist").

143. See Nat'l Psychological Assn., 168 N.E.2d at 652 ("Through the medium of official certification of qualifications, it helps the public to identify those who have appropriate training and background in the profession of psychology.").

144. See *id.* (explaining that certification laws "[afford] protection against the incompetent practitioner by providing a yardstick by which the public can judge the competence of persons offering psychological services").

145. See *Benefits of Certification*, *supra* note 132 (identifying some benefits of certification).

146. See *Silva*, *supra* note 26, at 271 ("Sound certification and accreditation programs developed through interdisciplinary efforts can deflect the development of adversarial relationships between 'sport psychologists' trained in the sport sciences and 'sport psychologists' trained in psychology.").

sion, allowing sport psychologists to provide the most comprehensive services to their clients and enhance the credibility of the profession.¹⁴⁷ Second, certification would help protect consumers.¹⁴⁸ By regulating use of the title “sport psychologist,” certification laws can help consumers identify those practitioners who have achieved certain minimum standards of education and training in sport psychology, which is indicative of competency in the field.¹⁴⁹ Meanwhile, certification laws will help protect consumers from those practitioners who have not achieved these minimum standards by prohibiting uncertified practitioners from advertising their services as “sport psychology.”¹⁵⁰ Finally, clear standards for certification as a sport psychologist will increase accountability among both certified sport psychologists and those who refer to themselves as sport psychologists without seeking certification.¹⁵¹ Certification would achieve this accountability by codifying a standard of care for sport psychologists accused of negligence, providing courts with a rubric for the knowledge and skills that a reasonable sport psychologist would be expected to possess.¹⁵²

3. *Limitations of Certification*

Certification does have its limitations, the most valid of which is that it cannot *guarantee* competence.¹⁵³ Certification only serves to verify that an individual has satisfied certain minimum requirements for the completion of academic coursework and applied practice.¹⁵⁴ It is possible, therefore, that a sport psychologist could

147. See Porter, *supra* note 7, at 14 (identifying enhanced credibility as one of many key benefits of certification).

148. See Silva, *supra* note 26, at 269 (arguing that certification would help consumers defend against incompetent practitioners).

149. See Nat’l Psychological Assn., 168 N.E.2d at 651-52 (describing how certification laws help public identify qualified practitioners).

150. See *id.* (explaining how regulation of title among practitioners gives consumers way to judge competence based on whether practitioner has earned certification necessary to use title).

151. See Porter, *supra* note 7, at 14 (“Certification brings ‘accountability, credibility, professional preparation, and public awareness.’”) (citation omitted).

152. For a detailed discussion explaining how there is currently no clear standard of care against which to measure sport psychologists, see *supra* note 118 and accompanying text.

153. See Porter, *supra* note 7, at 14 (relating one criticism that certification is merely “self-serving and not a guarantee of expertise”) (citation omitted).

154. See *id.* at 3 (observing that certification only proves “that the individual has completed specified requirements in terms of coursework and applied practice and does not require an assessment of knowledge”) (quoting E. F. Etzel & J. C. Watson II, *Introduction to the Special Issue: Ethics in Sport and Exercise Psychology*, 16 ETHICS & BEHAVIOR 1, 2 (2006)).

be certified to practice and still not possess the level of competency needed to ethically provide sport psychology services to clients.¹⁵⁵ Ultimately, however, promulgating certain minimum education and training requirements for sport psychologists has the desirable effect of encouraging high professional standards, even if it does not guarantee them.¹⁵⁶

4. *Educational Reforms*

To comply with the requirements of the proposed certification laws and help maximize the effectiveness of these laws, statutory certification of sport psychologists should be supported by improvements in the educational and training models used to prepare sport psychologists for practice.¹⁵⁷ The cornerstone of education in applied sport psychology education should be supervised experience.¹⁵⁸ Until recently, most graduate programs in sport psychology have been primarily research-oriented, focusing on academic inquiry rather than application to clients.¹⁵⁹ Graduate programs are now beginning to incorporate more practical educational experiences into their curricula, including internships and practicums.¹⁶⁰ Providing graduate students with opportunities

155. See Taylor, *supra* note 8, at 188 (“State laws authorize licensed psychologists to engage in a wide variety of clinical services, for example, biofeedback and neuropsychological assessment, yet licensed individuals may not be competent to practice in those areas.”) (citation omitted).

156. See *id.* (articulating belief held by some scholars that “while credentialing is an arduous process, high professional standards should always be maintained”) (citation omitted).

157. See Silva, *supra* note 26, at 268-269 (suggesting that graduate programs ought to be structured so as to help students conform with requirements for certification). Silva also recommends that graduate programs work closely in collaboration with professional sport psychology organizations such as the APA’s Division 47 and the AASP to stay up to date on the latest scientific developments in the field. See *id.* at 268.

158. See Stapleton, *supra* note 64, at 144 (noting infrequency of supervised experience working with athletes, coaches, parents, and medical staff, and suggesting that more practitioner interaction and supervision, both during education and practice, could help protect clients). Sport psychologists who do not wish to practice in a clinical setting, but instead seek to conduct sport psychology in a purely academic setting would be subject to separate curriculum requirements, perhaps without as much emphasis on supervised experience. See Silva, *supra* note 26, at 269 (suggesting that sport psychologists who wish to practice should be held to different criteria than those who wish merely to study sport psychology in academic setting).

159. See Silva, *supra* note 26, at 268 (claiming that graduate models “have been geared toward the discipline with relatively little training or attention devoted to the application of knowledge or provision of service”).

160. See *id.* (stating that there has been some recent movement toward “supervised practicums, internships, or postdoctoral training specializing in applied aspects of sport psychology”).

to apply principles of sport psychology under the supervision of an experienced practitioner is one of the best ways to develop professional competency from an early stage.¹⁶¹ Indeed, practicing outside of areas of competence is one of the most common mistakes made by graduate students in sport psychology.¹⁶² Identifying and correcting these mistakes early in the practitioner's career in a controlled, supervised setting could help the practitioner avoid serious ethical abuses later on in the practitioner's career.¹⁶³

B. Constitutional Parameters of Licensing Laws

Like all licensing and certification laws, a statute certifying sport psychologists will need to fall within constitutional parameters, especially due process rights.¹⁶⁴ Based on the case law in this area, a sport psychology certification modeled after the AASP's Consultant Certification would be upheld against constitutional challenges.¹⁶⁵

1. "Course of Study" Requirements

One of the most common academic requirements in state licensing and certification laws for psychologists is that individuals

161. See Moore, *supra* note 63, at 604 (espousing benefit of supervision and regular consolation with more experienced sport psychology providers to ensure that practitioners are operating within areas of competence).

162. See Mark B. Anderson, *When Sport Psychology Consultants and Graduate Students Are Impaired: Ethical and Legal Issues in Training and Supervision*, 12 J. APPLIED SPORT PSYCHOL. 135, 137 (2000) (describing how straying into areas outside of student's competence is one mistake commonly made by graduate students in their supervised practicums or internships).

163. See *id.* at 138 (stressing importance of early intervention in training of sport psychologist to avoid competency mistakes later on in practice). As a matter of legal interest, supervisors of graduate students in sport psychology may be liable for the actions of the students under their supervision if they result in any harm to a client. See *id.* at 144 (warning that supervisors may be liable if they give bad treatment advice to their supervisees or ask supervisees to perform tasks beyond their competency). Supervisors are held to the same standard of care as practicing sport psychologists. See *id.* (explaining standard of care expected of supervisors).

164. See H.G. Hirschberg, Annotation, *Validity of Legislation Regulating, Licensing, or Prescribing for Certification or Psychologists*, 81 A.L.R.2d 791 (1962) ("[T]he police power of a state to make regulations for the protection of the health and welfare of its citizens forms the basis for the prescription of rules and the licensing or certification of practitioners of psychology, and that legislation in these respects will be sustained when it appears reasonably related to the exercise of such power, is free of discrimination and arbitrariness, and does not result in taking property without due process of law").

165. See *id.* (stating that licensing or certification law "will be sustained when it appears reasonably related to the exercise of such power, is free of discrimination and arbitrariness, and does not result in taking property without due process of law").

have completed a degree in a particular area of study or have completed particular coursework.¹⁶⁶ In *Matter of Partin*, the North Carolina Court of Appeals reversed the Superior Court's judgment that a state licensing law requiring "a program of studies the content of which was primarily psychological" was too vague or uncertain.¹⁶⁷ The Court of Appeals held that the licensing law was not vague or uncertain and that the law contained sufficient standards for objective application.¹⁶⁸

It should be noted, however, that some academic requirements built into state licensing laws have been struck down for lack of specificity.¹⁶⁹ In *Athay v. State, Dept. of Business Regulation, Registration Division*, the court held that a section of the state law licensing psychologists was arbitrary because it failed to establish guidelines for curriculum or criteria for course content.¹⁷⁰ A certification for sport psychologists modeled on the AASP certification would not be vulnerable to challenge on these grounds because the certification clearly states what coursework is required for certification.¹⁷¹

166. See Taylor, *supra* note 8, at 188 (explaining that state laws often require that competence be documented with particular coursework, as well as training and supervised experience).

167. See *Matter of Partin*, 246 S.E.2d 519, 521 (N.C. Ct. App. 1978) (reversing lower court decision that provisions of North Carolina's licensing rules requiring particular course of study were unconstitutionally vague and uncertain). In this case, Dr. Partin had been denied a temporary license to practice psychology because he did receive his doctoral degree in "a program of studies the content of which was primarily psychological," and he had not completed the sixty hours of graduate study in psychology courses required by the State Board of Examiners for licensure. See *id.* at 521. He also had not acquired the supervised experience needed to obtain a license. See *id.*

168. See *id.* at 524 ("The requirement of the statute that the applicant must have received 'his doctoral degree based on a program of studies the content of which was primarily psychological from an accredited educational institution,' is in our opinion neither vague nor uncertain."). Furthermore, the court determined that the challenged provision provides objective standards and sufficiently clear guidelines for application and bore a "rational relationship to the purposes of the Practicing Psychologist Licensing Act." *Id.*

169. See *Athay v. State, Dept. of Bus. Regulation, Registration Div.*, 626 P.2d 965 (Utah 1981) (upholding trial court's determination that Utah's provision requiring that applicants for certification as psychologists have received doctorate degree that was "primarily psychological" was unconstitutionally vague and ambiguous).

170. See *id.* at 968 (stating holding of case). The state Psychology Examining Committee had determined that the applicant's coursework and degree in Educational Psychology was not "primarily psychological" but, as the trial court noted, "no rules, regulations, guidelines, or description of any kind relating to the type of courses which would be considered by the Committee to be 'primarily psychological' had been published or communicated to applicants." *Id.* at 966.

171. See *Become a Certified Consultant*, *supra* note 134 (listing courses required for certification).

2. "Accredited University"

Requirements that practicing psychologists receive their degree "from an accredited university" will also typically withstand legal challenge.¹⁷² In *Brown v. State Board of Examiners of Psychologists*, the plaintiff argued that a particular provision of Georgia's licensing law for psychologists, requiring applicants to receive a doctoral degree from a college that was accredited at the time the degree was conferred, was arbitrary and capricious as applied to him.¹⁷³ The court held that the accreditation provision was not arbitrary or capricious because the provision was authorized by the licensing statute and was reasonable.¹⁷⁴

3. *Strictness Compared to Licensing*

Certification may encounter resistance from psychologists worried that certification will allow individuals without proper training to render psychotherapeutic services.¹⁷⁵ For example, in *Pitts v. State Board of Examiners of Psychologists*, psychologists challenged Maryland's psychologist certification law because it failed to prevent incompetent individuals from practicing in the state.¹⁷⁶ The law merely prevented uncertified persons from using the words "psychological," "psychologists," or "psychology" in their job title.¹⁷⁷ The court held that the law was not unconstitutional; noting that so

172. See *Brown v. State Bd. of Exam'rs of Psychologists*, 378 S.E.2d 718 (Ga. Ct. App. 1989) (holding that provision of psychologist licensing law requiring that applicants receive degree from accredited college did not violate plaintiff's due process rights); see also *In re Miller*, 486 N.E.2d 217 (Ohio Ct. App. 1984) (holding that provision of psychology licensing law forbidding use of "Dr." in job title if practitioner's doctorate was acquired from unaccredited university did not violate defendant's due process rights). "Consumers should not be led to believe that a person from whom they are receiving treatment possesses a doctorate degree in psychology from an accredited institution if that is not the case. Hence, application of the board rule to appellant does not constitute a violation of [the defendant's] due process rights." *Id.* at 221.

173. See *Brown*, 378 S.E.2d at 719 (1989) (stating accreditation rule and plaintiff's argument against it). The plaintiff in this case met the requirements of the prior accreditation rule, requiring only that the college be accredited at the time that the applicant sat for the licensing exam. See *id.* (explaining terms of Georgia's previous accreditation requirement).

174. See *id.* at 720 (explaining opinion of court with respect to validity of accreditation statute). The updated accreditation statute had also been in effect fifteen months prior to the plaintiff applied to take the licensing exam. See *id.*

175. See *Pitts v. State Bd. of Exam'rs of Psychologists*, 160 A.2d 200 (Md. 1960) (holding that certification law was constitutional exercise of state's police power to protect public even though it may not have been as strict as licensing law).

176. See *id.* at 201 (stating that entire basis for lawsuit was fact that law provided for certification and not licensing).

177. See *id.* (stating that Maryland certification law also failed to define any of these terms).

long as the law was substantially related to protecting the public from unqualified psychological practitioners, the fact that the law was not as strict as it could be was no basis for invalidating the law.¹⁷⁸

VI. CONCLUSION

Sport psychologists are in a position to help athletes unleash their true potential and to achieve goals they never thought possible.¹⁷⁹ However, the absence of consensus on the skills and training that a sport psychologist should possess has allowed practitioners in two exclusive camps—sport sciences and clinical psychology—to misappropriate the title of sport psychology.¹⁸⁰ Because applied sport psychology requires practitioners to provide both performance enhancement and performance restorative services, practitioners with competency in only one of these two services cannot ethically practice sport psychology.¹⁸¹ Attempting to provide performance enhancement or restorative services without the proper training can result in serious legal repercussions.¹⁸² However, the current legal remedies do little to protect clients from incompetent practice *before* it occurs.¹⁸³ This is particularly concerning given the range of serious sport-specific psychological conditions from which athletes suffer, all of which require a practitioner who is competent in both sport science and psychopa-

178. See *id.* (“The fact that the Legislature did not go as far as it might have done, to protect the public from incompetent practitioners, cannot invalidate a less drastic regulation, if the method chosen has a substantial relation to the evil sought to be remedied.”).

179. For several examples of how services of sport psychologists have been employed to enhance performance of athletes, see *supra* note 5 and accompanying text.

180. For a detailed description of how applied sport psychology has proceeded along divergent professional path, resulting in confusion over what constitutes authentic sport psychology, see *supra* notes 19-32 and accompanying text.

181. For a detailed discussion explaining that applied sport psychology, properly understood, incorporates both performance enhancement and performance restorative services, and arguing that component practitioners should therefore have adequate education and training in both disciplines, see *supra* notes 40-43 and accompanying text.

182. For a detailed discussion surveying legal theories under which both sport scientists and clinical psychologists may be held liable for practicing outside their areas of competence, see *supra* notes 93-130 and accompanying text.

183. For a detailed discussion arguing that current legal mechanisms for addressing practice outside areas of competence are reactionary and insufficient to adequately protect the public, see *supra* note 131 and accompanying text.

thology in order to be effectively diagnosed and, if possible, treated.¹⁸⁴

To best protect athlete clients from the risks associated with practice outside of areas of competency, states must use their police power to articulate a clear and decisive definition of applied sport psychology.¹⁸⁵ The most effective way to achieve this is through a certification law based on the AASP's certification model for sport psychology consultants.¹⁸⁶ A statutory certification would address the risks posed by these competing competencies by requiring minimum education requirements in both psychopathology and the sport sciences.¹⁸⁷ Only practitioners who meet these comprehensive education and training requirements would be permitted to refer to themselves as sport psychologists, thus empowering consumers to identify qualified practitioners before engaging their services.¹⁸⁸ Furthermore, the analogous case law regarding certification law supports the conclusion that a certification law modeled after the AASP certification would withstand legal challenge.¹⁸⁹ Until states exercise their police power to codify professional standards for the practice of sport psychology, the profession will continue to be torn by disagreement at the expense of vulnerable clients.¹⁹⁰ Certification laws will finally provide applied sport psychology with a coherent professional identity, allowing practitioners

184. For a detailed discussion of some mental illnesses common to athletes requiring specialized knowledge in both the sport sciences and psychopathology, see *supra* notes 60-72 and accompanying text.

185. See *Validity of Legislation Regulating, Licensing, or Prescribing for Certification or Psychologists*, *supra* note 164 (explaining that states have authority to use their police power to promulgate licensing and certification regulations for psychologists in order to protect health and welfare of the states' citizens).

186. For a detailed discussion introducing features and benefits of certification law for sport psychologists, see *supra* notes 134-152 and accompanying text.

187. For a detailed discussion describing how certification law would contain comprehensive academic requirements including both performance enhancement and performance restoration, see *supra* notes 134-138 and accompanying text.

188. For a detailed discussion arguing that certification will help protect consumers by regulating use of professional title "sport psychologist," see *supra* notes 148-150 and accompanying text.

189. For a detailed discussion surveying relevant case law regarding constitutionality of licensing and certification laws for psychologists and arguing that certification law based on AASP certification model would withstand legal challenge, see *supra* notes 165-178 and accompanying text.

190. See *Validity of Legislation Regulating, Licensing, or Prescribing for Certification or Psychologists*, *supra* note 164 (explaining that state authority to regulate practice of psychology is legitimate exercise of police power).

to provide the competent and comprehensive services that athletes need and deserve in order to help them play their best.¹⁹¹

*Francis X. Baker**

191. For a detailed discussion of the benefits of certification law for sport psychologists, see *supra* notes 134-152 and accompanying text.

* J.D. Candidate, May 2014, Villanova University School of Law; B.A. *magna cum laude*, College of the Holy Cross, 2011. Thank you to Professor Ellen Wertheimer, Villanova University School of Law, who provided valuable guidance during the writing of this article.