

UNIVERSITIES & SPORTS BETTING

ALERT

MAY
2019

A Three Step Approach to Managing the Institutional Risks Associated with Sports Betting

By Laurel Gift and Randall P. Hsia

Although the Supreme Court's decision in *Murphy v. National Collegiate Athletic Association* opened the door for individual states to regulate sports betting, the decision likewise introduced a bevy of considerations and potential pitfalls that will impact universities, casinos, online gambling operators, and a variety of other businesses and organizations. Entities affected by state-regulated sports wagering should be cognizant of potential concerns and implement procedures to address issues related to gambling operations.

Even though universities and other organizations impacted by sports betting represent a diverse group, there are a number of mechanisms and procedures that any entity can put in place to manage the institutional risks associated with these activities. These action steps fall into three general categories: (1) data collection; (2) adopting an investigation and response plan; and (3) conducting thorough and prompt investigations when warranted.

Step #1: Data Collection

Universities and other organizations directly or indirectly engaged in or impacted by the business of sports gambling should consider adopting internal systems designed to gather, monitor, and analyze information and intelligence in order to detect any irregularities that may indicate an underlying problem.

Initially, the organization may consider identifying potential sources of information, determining which categories of available data warrant collection and analysis, and establishing who receives this infor-

mation and when such reports will occur. The sources of information and intelligence may exist in a variety of forms. For example, in order to ferret out sports wagering corruption, universities which analyze performance metrics for student-athletes and teams could collect information from officials, coaches, and team medical staff, such as game performance data for individuals, team scoring trends, or injury-related information. Routinely collected relevant data may also be maintained by event staff, athletics compliance departments, and third-party entities, such as athletic conferences. In the case of sports betting businesses, potential sources of intelligence could include records of bets placed and payouts made to customers, the identity of gamblers, and the timing of wagers.

While the specifics for each organization will vary according to the available information, the purpose of collecting and analyzing this data remains the same – to promptly detect possible red flags and preserve potentially valuable investigative material. After the organization has established these systems, it should designate and train staff to collect, monitor and analyze the incoming data.

Step #2: Investigation Plan and Response

Proactive thinking and planning prepare an organization to respond effectively and decisively during potential crises. Organizations should consider viewing internal investigations as a basic part of their compliance program. An effective compliance program will have procedures designed to: (1) uncover wrongdoing; and (2) expose those individuals respon-

sible for wrongdoing. An internal investigation is one tool in the toolbox – a “procedure” designed to explore the scope of the wrongdoing and identify those individuals engaged in misconduct.

In advance of scandal, an organization should consider adopting a response plan that provides for: (a) a communication protocol; (b) notification procedures, which may include self-reporting to law enforcement if warranted; (c) the factors to consider when determining whether to launch an internal inquiry or investigation; and (d) procedures to preserve and collect potentially relevant information. In addition to identifying the circumstances or set of circumstances that may trigger an investigation, a comprehensive plan will also determine those events that may warrant use of outside counsel to quarterback the investigation.

An internal investigation allows universities and other organizations to evaluate their operations, identify concerns, determine appropriate remedial measures, and ideally prevent future incidents. Failing to conduct an investigation in the face of looming problems can have disastrous consequences both for the organization and its leadership. Accordingly, response plans should err on the side of requiring inquiries or investigations.

Use of outside counsel may be particularly important in matters involving potential civil or criminal liability. Advantages for entrusting investigations to outside counsel include allowing in-house counsel and other employees to focus on the organization’s day-to-day legal and operational needs, while also serving as an outward signal that the organization is serious about addressing potential concerns.

Step #3: Conducting the Investigation

Once the investigation is underway, the organization should explore how to best share investigative developments. Conducting a comprehensive internal investigation, disseminating the information gleaned from the investigation, and implementing procedures to address the misconduct, not only promote a culture of transparency and compliance within the organization, but also serve to protect and, if necessary, repair the organization’s reputation.

Ensuring investigation integrity should be the primary focus of those with oversight over the inquiry. Early conversations regarding confidentiality, communications, and access to information will go a long way toward maintaining the integrity of an internal investigation.

In addition, there are other best practices that can foster an effective investigation:

- *Scope and Direction.* An investigation should be targeted and focused on rooting out relevant facts, documents, and other evidence. The scope of an investigation should be organically expanded to follow leads and developments.
- *Resources.* Needlessly costly and overbroad investigations will not serve the organization and could result in undue delay and disruption of operations. The focus should be on uncovering relevant information as opposed to turning over every rock.
- *Communications.* The scope, direction, and resource allocation should be clearly communicated among the investigations team and internal decision makers. This also includes communications regarding expectations, end product, and timelines.

Conclusion

Universities and other organizations will certainly face challenges from the anticipated proliferation of sports gambling operations in Pennsylvania and across the country. Organizations with effective mechanisms and procedures designed to (1) collect data, (2) implement an investigation and response plan, and (3) provide for independent and transparent internal investigations will be better prepared to tackle these challenges. The goal is to identify potential problems before they become full-blown crises and to manage difficult situations to protect organizational integrity. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Sports Betting Team or to speak with a member of the firm, please contact:

Karen Baillie

Co-Chair of the Higher Education Practice Group
412-577-5118
kbaillie@schnader.com

Jo Bennett

Co-Chair of the Labor & Employment Practices Group
215-751-2134
jbennett@schnader.com

Laurel Gift

Chair of the Criminal Defense Practice Group
Chair of the Internal Investigations, Ethics and Compliance Practice Group
412-577-5115
lgift@schnader.com

Randall P. Hsia

Partner and Member of the Criminal Defense Practice Group and the Internal Investigations, Ethics and Compliance Practice Group
215-751-2462
rhsia@schnader.com

Theresa E. Loscalzo

Co-Managing Partner
Co-Chair, E-Commerce & Technology Practice Group
215-751-2254
tloscalzo@schnader.com

Joseph E. Lundy

Chair of the Nonprofit Practice Group
Partner and Member of the practice groups for Tax and Higher Education
215-751-2525
jlundy@schnader.com

Stephenie Wingyuen Yeung

Co-Chair, Privacy and Data Security Practice Group
215-751-2277
syeung@schnader.com

- ❖ This client alert is part of Schnader's series of articles about sports betting issues affecting colleges and universities. See the other articles online here –
<https://www.schnader.com/blog/sports-betting-and-the-impact-on-colleges-and-universities/>
- ❖ Sign up here to receive Schnader's client alerts in your areas of interest –
<https://www.schnader.com/publications-sign-up/>

www.schnader.com
© 2019 Schnader Harrison Segal & Lewis LLP
All rights reserved.
* See: www.schnader.com/jakarta