



News Release

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**NCAA DIVISION II MANAGEMENT COUNCIL SUBCOMMITTEE ON INFRACTIONS
AND MEMBERSHIP COMMITTEE APPEALS
UPHOLDS DECISION FOR UNIVERSITY OF THE INCARNATE WORD
FORMER HEAD COACH**

INDIANAPOLIS – The NCAA Division II Management Council Subcommittee on Infractions and Membership Committee Appeals has upheld the appealed violation findings and penalty for the former head men's basketball coach at University of the Incarnate Word. The former coach appealed the NCAA Division II Committee on Infractions' findings of failure to monitor, extra benefits and unethical conduct violations against him, as well as his two-year show cause order.

Under this show cause penalty, should the former head coach seek athletically related employment with any NCAA institution during this time period, he and the hiring institution must appear before the Committee on Infractions to determine whether his duties should be limited.

In February 2009, the Committee on Infractions issued a report that included findings of several major violations in the men's basketball program. The case involved a failure to monitor and

unethical conduct by the former head coach, unethical conduct by the former assistant coach and violations involving impermissible recruiting inducements and extra benefits.

In his written appeal, the former head coach asserted the findings of extra benefits, unethical conduct and failure to monitor violations should be set aside as clearly contrary to the evidence presented. In addition, he asserted that the show cause penalty should also be overturned. The Infractions Appeals Subcommittee may overturn a violation finding only if it is contrary to the evidence presented; the facts do not constitute a violation; or a procedural error affected the reliability of the information. The Infractions Appeals Subcommittee affirmed the findings, noting they were not contrary to the evidence and stating it found no basis for modifying the penalty.

The members of the Infractions Appeals Subcommittee who heard this case are Ann M. Jirkovsky, Bellarmine University, chair; Rick Cole, Dowling College; Bob Fortosis, Eckerd College; Frances Nee, Indiana University of Pennsylvania; and Glenn Stokes, Columbus State University.

REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION II MANAGEMENT COUNCIL SUBCOMMITTEE ON INFRACTIONS
AND MEMBERSHIP COMMITTEE APPEALS

December 14, 2009

Report No. 292

Former Head Men's Basketball Coach

University of the Incarnate Word

San Antonio, Texas

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The former head men's basketball coach at University of the Incarnate Word appealed to the Division II Management Council Subcommittee on Infractions and Membership Committee Appeals specific findings of violations and penalties as determined by the NCAA Division II Committee on Infractions. In this report, the Infractions Appeals Subcommittee addresses the issues raised by former head men's basketball coach (hereinafter referred to as former head coach).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 292 February 5, 2009, in which the committee found violations of NCAA legislation in the men's basketball program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [February 5, 2009, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing failure to monitor, extra benefit and unethical conduct.

After the Committee on Infractions issued its report, former head coach filed a timely notice of appeal February 19, 2009. A written appeal was filed April 28, 2009. The Committee on Infractions filed its response May 26, 2009. Former head coach filed his rebuttal to the Committee on Infractions response June 15, 2009. The case was considered by the Infractions Appeals Subcommittee November 7, 2009 (see Section VI below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated February 5, 2009.]

B - 3. FAILURE TO MONITOR. [NCAA Constitution 2.8.1]

The scope and nature of the violations detailed in Finding B-1-d demonstrate that the former head basketball coach failed to monitor former assistant coach A's activities in order to ensure compliance with NCAA extra-benefit legislation.

B - 4. EXTRA BENEFITS. [NCAA Bylaws 16.02.3, 16.11.2.1 and 16.11.2.3]

Over a four-year period from the 2000-01 through 2003-04 academic years, the former head basketball coach provided impermissible extra benefits to eight student-athletes by giving them prescription medicine. The eight student-athletes were student-athletes 2, student-athlete 3 and student-athlete 4 plus men's basketball student-athletes (student-athlete 6, student-athlete 7, student-athlete 8, student-athlete 9 and student-athlete 10). During this time, the former head

basketball coach was not licensed to prescribe or provide prescription medications.

B - 5. UNETHICAL CONDUCT BY THE FORMER HEAD BASKETBALL COACH.
[NCAA Bylaws 10.01.1, 10.1, 10.1-(c) and 10.1-(d)]

The former head basketball coach failed to deport himself in accordance with the generally recognized high standards of honesty normally associated with the conduct and administration of intercollegiate athletics when he committed the violations detailed in Findings B-4 above and when he supplied false and misleading information on July 17, 2007, regarding the violations to investigators.

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The Committee on Infractions imposed additional penalties because of the involvement of the former head coach in a number of the violations. The penalty in which the former head coach was cited was section C - 7. **[Please note that the cites below are the cites as they appear in the Committee on Infractions report dated February 5, 2009.]**

“...the former head basketball coach compromised the welfare of eight student-athletes when, without medical supervision or any medical knowledge, he dispensed a prescription anti-inflammatory drug to the young men when he felt they needed it.

7. The former head basketball coach compromised the welfare of eight student-athletes by dispensing a prescription anti-inflammatory drug to them without authorization or medical supervision. Further, he provided false and misleading information when asked about the matter by an NCAA investigator. Therefore, the former head basketball coach will be informed in writing by the NCAA that, due to his involvement in the violations of NCAA legislation found in this case, if he seeks employment or affiliation in an athletically related position at an NCAA member institution during a two-year period (February 5, 2009, through February 4, 2011), he and the involved institution shall be required to appear before the Committee on Infractions to consider whether the member institution should be subject to the show-cause procedures of Bylaw 19.5.2.2-(k), which could limit his athletically related duties at the new institution for a designated period.”

V. ISSUES RAISED ON APPEAL.

In his written appeal, the former head coach asserted that the findings of violations (B-3, B-4 and B-5) against him should be set aside in that the findings are clearly contrary to the evidence presented to the Committee on Infractions. (Bylaws 32.10.4 and 32.10.4.1) Further, the former head coach asserted that penalty C-7 should be set aside on the grounds that the penalty is excessive such that it constitutes an abuse of discretion.

VI. APPELLATE PROCEDURE.

In considering the former head coach's appeal, the Infractions Appeals Subcommittee reviewed the notice of appeal; the transcript of the institution's October 16, 2008, hearing before the Committee on Infractions and the submissions by the former head coach and the Committee on Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Subcommittee November 7, 2009, in Indianapolis, Indiana. The former head coach was present and was represented by his attorney. The Committee on Infractions was represented by the chair of the Committee on Infractions and the associate director of the Infractions Committees. Also present were the vice president of enforcement, director of enforcement and assistant director. Representatives of Incarnate Word attended the hearing as silent observers. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

VII. INFRACTIONS APPEALS SUBCOMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

Findings of Violations B-3, B-4 and B-5:

In reviewing the report in this case, the Infractions Appeals Subcommittee may overturn a determination of fact or finding of violation only if:

- a. The committee's finding clearly is contrary to the evidence presented to the committee;
- b. The facts found by the committee do not constitute a violation of the Association's rules; or

- c. A procedural error affected the reliability of the information that was used to support the committee's finding. [Bylaw 32.10.2]

"A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding." (University of Mississippi, Public Infractions Appeals Committee Report, Page No. 10, May 1, 1995.)

In this case, the former head coach argued that the findings of violations were clearly contrary to the evidence presented to the Committee on Infractions. The evidence considered by the Committee on Infractions with respect to the violations involving the former head coach included: interview responses of former assistants of the former head coach; the response to the notice of allegations of former assistant coach A; responses to the notice of allegation of the former head coach; testimony from a student-athlete regarding the provision of the prescription drug Vioxx; and testimony of Incarnate Word staff. Based on the record, the findings of violations were not clearly contrary to the evidence.

Additionally, the former head coach argued that his provision of Vioxx was not a violation of the extra benefit or unethical conduct legislation since the language of the relevant bylaws does not specifically prohibit such actions. The former head coach's interpretation of the application of the legislation is inaccurate. For a benefit to be considered an extra benefit, it is not required that the legislation specifically prohibited that benefit. Thus, if the provision of a benefit is not expressly authorized by the legislation, it generally will be considered an extra benefit¹. Further, the unethical conduct legislation specifically states that the actions outlined in the bylaw are not an

¹ Receipt of a benefit by student-athletes or their relatives or friends is not a violation of NCAA legislation, if it is demonstrated that the same benefit is generally available to the institution's students or their relatives or friends or to a particular segment of the student body (e.g., foreign students, minority students) determined on a basis unrelated to athletics ability.

exhaustive list of actions that could result in an unethical conduct violation (Bylaw 10.1).²

Therefore, findings B-3, B-4 and B-5 are affirmed and we find no basis for modifying penalty C-7.

VIII. CONCLUSION.

Findings B-3, B-4 and B-5, as well as penalty C-7, are affirmed.³

NCAA Infractions Appeals Subcommittee

Rick Cole

Bob Fortosis

Ann Jirkovsky, chair

Frances Nee

Glenn Stokes

² It should be noted that the modification of Bylaw 10.1 per editorial revision was a clarification of the application and not the addition of new application. (NCAA Division II Proposal No. ER-2008-27)

³ According to the Division II Infractions Appeals Subcommittee Policies and Procedures (See III.A.2.d at Page No. 4), any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the notice of appeal by the appellant and ends with the public release of the subcommittee's decision. Therefore, the appellant's affirmed penalty C-7 (two-year show cause order) shall be applied December 14, 2009, through December 13, 2011.