HUNGRY FOR VICTORY: WHY HIGH SCHOOL WRESTLING COACHES SHOULD NOT BE HELD LIABLE FOR INJURIES RESULTING FROM WEIGHT LOSS

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ABSTRACT

The purpose of this Note is to advocate for the universal application of primary assumption of the risk as a defense to a negligence cause of action involving interscholastic wrestling. Primary assumption of the risk is a defense which infers that a participant in a particular activity knew or should have known of a risk inherent in that activity. If a court deems a plaintiff to have assumed such a risk, they will be barred from recovering in a lawsuit. Jurisdictions are not in agreement in applying this doctrine in a sports setting.

Application of the doctrine in the sport of wrestling is especially precarious because of the dangers associated with the grossly unhealthy, yet astonishingly popular methods high school wrestlers utilize to drop weight. But if courts are to hold coaches liable for their wrestlers’ injuries resulting from cutting weight, a serious chilling effect might ensue. Coaches will hesitate to impose challenging training regimens on their wrestlers for fear that an injury might occur. They would not be able to implement particular strategies in deciding which wrestlers should attempt to wrestle in various weight classes.

The policy justifications behind this defense are compelling. The goals of schools to facilitate students’ social development and acceptance of responsibility are consistent with the doctrine of assumption of the risk. In order to prevent a chilling effect in interscholastic sports, high school athletes should be deemed to have assumed the risks inherent with their given sports.
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INTRODUCTION

In the fall of 1997, the sport of wrestling was devastated when three young men lost their lives while attempting to rapidly lose a significant amount of weight.\(^1\)

In November of that year, nineteen year old Billy Jack Saylor, a Campbell University wrestler, lost nineteen pounds in just four days.\(^2\) On the following day, he refused to consume any fluids during a two hour long intensive cardiovascular workout in an effort to lose an additional six pounds.\(^3\) Billy Jack Saylor subsequently died of cardiac arrest.\(^4\)

Exactly two weeks later, University of Wisconsin wrestler Joseph LaRosa was alternating between riding a stationary bicycle, running on a treadmill, and sitting in a steam room while wearing a rubber suit underneath several sweatshirts.\(^5\) Within four hours, LaRosa was pronounced dead with a body temperature of 107 degrees Fahrenheit.\(^6\)

In early December of that year, University of Michigan wrestler Jeff Reese was attempting to lose twelve pounds in a single day by vigorously exercising in a 92 degree room while wearing a rubber suit.\(^7\) During the workout, Reese collapsed and died of heart and kidney failure.\(^8\)

The events that unfolded in those few short weeks were tragic and appalling. Although these real-life examples may be appear to be improbable, a wide array of dangers, ranging from

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\(^1\) T.A. CONWAY, M.D., WRESTLING WITH WEIGHT: NUTRITION, WEIGHT CUTTING, AND SOME OTHER WEIGHTY ISSUES, 6 (BCS Publishing 2004).
\(^2\) Id.
\(^3\) Id.
\(^4\) Id.
\(^5\) Id. at 6-7.
\(^6\) Id.
\(^7\) Id. at 7.
\(^8\) Id.
minor injuries to death, are not uncommon consequences of dangerous, distinctive risks inherent in every sport.\(^9\) Wrestling is unique because of the risks associated with cutting weight.\(^10\) And although these stories depicted three college wrestlers, it is not only college wrestlers who are in danger.\(^11\) Cutting weight is also prevalent in interscholastic high school wrestling.\(^12\) When tragedies resulting from weight loss occur, who is to blame? Courts have been rather inconsistent in deciding whether an injured high school athlete is entitled to damages.\(^13\)

There is a great discrepancy from state to state on when, how, and why an injured high school athlete may recover damages from his or her coach and/or school district.\(^14\) Some courts hold coaches to a basic negligence standard, whereby he or she must merely exercise reasonable care.\(^15\) Other courts insist that a plaintiff assumes all risks inherent in a sport, and may only recover if a coach intentionally or recklessly increased those risks.\(^16\) Courts have expressed concern that if high school athletes are entitled to recover damages for seemingly minor injuries, interscholastic sports programs could cease to exist.\(^17\) One court noted that if courts do not consider athletes to have assumed dangers inherent in a given sport, and could therefore recover damages, then there could be a serious chilling effect on the sport itself.\(^18\)

\(^10\) CONWAY, supra note 1 at 13.
\(^11\) Id. at 5.
\(^12\) Id.
\(^13\) See Gerrity v. Beatty, 373 N.E.2d 1323, 1323 (Ill.1 978) (citing public policy justifications, the court held that the high school district is not immune from liability for its injured football player, and furthermore, the athlete need not allege willful or wanton conduct on the part of the school personnel in order to recover); but see Divia v. South Hunterdon Reg’l High Sch., No. HNT-L-728-02, 2005 WL 977028, *9 (N.J. Super. App. Div. April 5, 2005) (citing public policy justifications, the court noted that if we do not require a high burden of proof for a high school athlete to successfully sue his or her coach, interscholastic sports would not survive).
\(^14\) Id.
\(^16\) Khan v. E. Side Union High Sch. Dist., 31 Cal.4th 990, 1016 (Cal. 2003).
\(^17\) Divia, No. HNT-L-728-02, 2005 WL 977028 at *9.
Whether courts affirm one policy justification or the other, they must hold athletes accountable for their own actions when participating in a sport in order for interscholastic sports to continue to exist.19

This Note will show that despite the risk, cutting weight cannot be eliminated from the sport of wrestling.20 Part I will provide an overview of the defenses to a negligence cause of action in a sports setting. Part II will then discuss the nature of wrestling, including weight certification procedures and methods of cutting weight. Part III will illustrate how negligence defenses apply specifically to wrestling. It will demonstrate that the application of primary assumption of the risk is vital to wrestling because of crucial differences between the nature of wrestling and other sports.

I. DEFENSES TO NEGLIGENCE IN A SPORTS SETTING

If a participant of a sport suffers an injury while participating in a sporting event or recreational activity, he or she may sue the person they think negligently caused their injury.21 In order for the court to rule in the plaintiff’s favor, he or she must successfully show that the defendant breached the duty of care he or she owed to the plaintiff.22 The plaintiff will also have to prove harm and causation.23 These elements will help to determine whether a defendant is liable, but are not determinative because of the potential of an affirmative defense.24

These defenses center on the issue of duty. That is, whether the defendant owed a duty to the plaintiff, whether the defendant breached that duty, and whether the plaintiff was negligent.25

20 CONWAY, supra note 1, at 5.
22 Id.
23 Id.
24 Id.
25 Id.
Two common defenses available to negligence in a sports setting are assumption of the risk and comparative negligence. California courts insist that it is essential to distinguish between the various defenses to accurately analyze one’s duty in a sport setting.

A. Comparative Negligence as a Defense to Negligence

California law provides that individuals are responsible for their own actions, and are liable for any injury that results from their failure to use ordinary care, whether they intentionally or recklessly strayed from that standard. But if a plaintiff is at all negligent, their damages are reduced in proportion to their own negligence. However, despite comparative negligence, courts may still forbid plaintiffs may still be barred from recovering in a sports setting.

B. Assumption of the Risk as a Defense to Negligence in a Sports Setting

Years after the California Supreme Court adopted comparative negligence, it made a monumental ruling regarding assumption of the risk in the context of sports, holding that a plaintiff could be completely barred from recovery in a sports setting.

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27 Knight, 843 P.2d at 699; see also Kovacs v. Sturgeon, 79 Cal. Rptr. 426, 428 (Cal. Dist. Cal. App. 1969); Li v. Yellow Cab Co. of Cal., 13 Cal.3d 804, 827-28 (Cal. 1975) (adopting comparative fault, the California Supreme Court abandoned the previous “all or none” theory where if a plaintiff was at all negligent, he or she would not be able to recover anything from the defendant.).
28 CAL. CIV. CODE § 1714 (West 2007).
29 Li, 13 Cal. 3d at 824; see also CAL. BAJI 3.50 (2007).
30 Id.
One case established assumption of the risk in sports setting, and provided the distinction between the various assumption of the risk defenses.\textsuperscript{31} In that case, a plaintiff suffered an injury arising from a friendly game of touch football.\textsuperscript{32} The court clarified primary assumption of the risk, holding that comparative negligence does not apply in instances where the injured party voluntarily participated in a sport, and risks that are inherent in that sport brought about the injury.\textsuperscript{33} The court held that the plaintiff had assumed the risks associated with the football game in light of the defendant’s alleged negligence.\textsuperscript{34} It ultimately decided that the defense of primary assumption of the risk was appropriate, barring plaintiff’s recovery.\textsuperscript{35}

In its ruling, the court provided the following definition: Primary assumption of the risk arises when the defendant owes no duty to protect the plaintiff from the unique risk of harm, in light of the nature of the activity and the parties’ relationship to the activity.\textsuperscript{36} While this case addressed co-participants in an activity, rather than a coach-athlete relationship, the application of the law is practically identical.\textsuperscript{37} Recently, a California court decided a case involving an alleged negligent coach.\textsuperscript{38} That court held the coach to a prudent person standard because if it were to hold coaches to a higher standard of care, it could chill a coach’s role in encouraging and pushing student athletes.\textsuperscript{39}

On the other hand, secondary assumption of the risk arises where the defendant does owe a duty to the plaintiff because the defendant increases the risks that are inherent in the sport.\textsuperscript{40} For example, if the co-participant in the Knight touch football game had picked up a stick off the

\textsuperscript{31} Knight, 843 P.2d at 704.
\textsuperscript{32} Id. at 698.
\textsuperscript{33} Id. at 707.
\textsuperscript{34} Id. at 700-01.
\textsuperscript{35} Id. at 700-01.
\textsuperscript{36} Id. at 707-08.
\textsuperscript{37} Id. at 707.
\textsuperscript{39} Id.
\textsuperscript{40} Id. at 578.
\textsuperscript{40} Knight, 834 P.2d at 704.
ground and stabbed plaintiff with it, this would clearly not be a risk inherent in a game of touch football. In this case, the defendant would owe the plaintiff a duty to not cause or increase danger, and the bar on recovery does not apply. Rather, the standard comparative fault scheme applies and the plaintiff may recover damages reduced by his or her own percentage of negligence, if any.\footnote{Id. at 707.}

Duty is a critical issue in the application of assumption of the risk.\footnote{Id.} Although normally under California law everyone owes a duty of reasonable care to avoid harm to others, this duty may change in a sports setting.\footnote{Id.; see also CAL. CIV. CODE § 1714 (West 2007).} Conduct or conditions which might otherwise appear to be dangerous in everyday settings are considered common in sports because of the very nature of the sport itself.\footnote{Knight, 834 P.2d at 708.}

Holding people or entities liable for injuries resulting from the risks inherent in a given sport would create a chilling effect.\footnote{Id.} The \textit{Knight} court illustrated that moguls in skiing are a prime example of this.\footnote{Id.} Moguls may be dangerous, but they are so integral in the sport of skiing that ski resorts need not remove them, nor should they be subject to liability for having them on their ski slopes.\footnote{Id.}

\textbf{C. Jurisdictions Differ in their View of Assumption of the Risk}

Jurisdictions are far from consistent in deciding when, where, and how primary assumption of the risk applies. California recognizes primary assumption of the risk in a sports

\begin{footnotes}
\footnote{Id. at 707.}
\footnote{Id.}
\footnote{Id.; see also CAL. CIV. CODE § 1714 (West 2007).}
\footnote{Knight, 834 P.2d at 708.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
setting, and is not alone in this view. A Vermont statute declares that a person who engages in a sport accepts all obvious and necessary dangers inherent in that sport. In Wyoming, the law is even more defendant-friendly. There, a plaintiff who participates in a recreational sport or activity assumes all inherent risks, whether known or unknown. The Restatement Second of Torts is more forgiving to the plaintiff in suggesting that a plaintiff must know of a risk and its magnitude in order to assume the risk.

However, not all states apply this doctrine of implied assumption of the risk in a sports setting. For example, Oregon has completely abolished the implied assumption of the risk doctrine. There, absent an express agreement, such as a waiver or release signed by the participant (or parent of a minor participant), a plaintiff can only recover in negligence if he or she has not been negligent at all. This is problematic because if athletes who voluntarily participate in a sport are able to recover from their coach or school district for an injury resulting from an inherent risk of a sport, then a potentially devastating chilling effect on interscholastic sports might ensue.

D. The Duty Owed By Public High School Coaches

48 VT. STAT. ANN. tit.12, § 1037 (2007); WYO. STAT. ANN. § 1-1-123 (2007).
49 § 1037.
50 See § 1-1-123.
51 Id.
52 RESTATEMENT (SECOND) OF TORTS § 496D (1965).
54 Id.; see also Stiles v. Freemotion, Inc., 59 P.3d 548, 551 (Or. Ct. App. 2002) (holding that assumption of the risk will only apply to those settings explicitly set forth in legislation; in all other instances, assumption of the risk will only be recognized when a participant has signed an express waiver or release); Supra note Error! Bookmark not defined.
55 Courts have limited the scope of waivers, holding that while athletes may sign releases acknowledging their informed consent, they are not consenting to be injured by negligent acts of others (Knight v. Jewett, 834 P.2d 696,705-06 (Cal. 1992)). Although informed consent via waiver or release is applicable to injured interscholastic athletes, it is outside the scope of this Note.
56 Knight, 834 P.2d at 705-06.
The general duty that everyone owes to everyone else under California law⁵⁸ may be more or less strict, depending on the nature of the parties’ relationship and the context of the allegedly negligent behavior.⁵⁹ For instance, California Education Code provides that a school employee who supervises a recreational activity owes a duty to its students equivalent to that of the students’ parents.⁶⁰ However, this heightened duty does not necessarily trump the primary assumption of the risk doctrine.⁶¹

The California Court of Appeals ruled on an issue regarding a wrestling coach and his duty to prevent injury in light of this California Education Code.⁶² The plaintiff contended that the coach was responsible for ensuring that his athletes did not get injured, and therefore breached his duty when one of his wrestlers, the plaintiff, broke his arm while demonstrating a new move.⁶³ The Appellate Court disagreed with the plaintiff’s contention, insisting that while the Education Code may have modified the coach’s duty, it by no means imposed a duty to protect student athletes from risks inherent in a sport.⁶⁴ The court emphasized the importance of the primary assumption of the risk doctrine by noting that if it imposed this type of duty, it would alter the fundamental nature of sports, and threaten the existence of scholastic sports.⁶⁵ Schools might be reluctant to offer extracurricular sports, which would have significant social ramifications.⁶⁶ A student athlete who chooses to participate in a sport must understand that there are inherent risks in all sports, and that those risks may be accompanied by adverse results

⁵⁸ CAL. CIVIL CODE § 1714 (West 2007).
⁵⁹ CAL. EDUC. CODE § 44807 (West 2007).
⁶⁰ Id.
⁶² Id.
⁶³ Id. at 640.
⁶⁴ Id. at 643.
⁶⁵ Id. (expressing concern, via dicta, that holding coaches liable in many circumstances could deter people from coaching, and that it is conceivable that schools would have to carry more liability insurance, which could cut into the interscholastic athletics budget).
⁶⁶ Id. at 643.
of that risk. These types of policy arguments are prevalent in courts’ analyses of assumption of the risk in sports; many assert that if the risk or danger is integral in the sport, the court will not eliminate it.\footnote{See generally Record v. Reason, 73 Cal. App. 4th 472, 484 (Cal. Ct. App. 1999); Divia v. South Hunterdon Reg’l High Sch., No. HNT-L-728-02, 2005 WL 977028, *9 (N.J. Super. App. Div. April 5, 2005); Knight v. Jewett, 843 P.2d 696, 711-12 (Cal. 1992).}

When an injured public high school wrestler sues a coach for negligence, the court should first consider what duty, if any, the coach owed the wrestler in light of the nature of the sport of wrestling.\footnote{Lilley, 80 Cal.Rptr.2d at 641.} Then it should determine whether the wrestler’s injury was inherent in wrestling (in which he or she voluntarily participated).\footnote{Id.} If it was not, assumption of the risk will not apply, and he or she may recover damages from the coach, less any amount in proportion to their own negligence.\footnote{Knight, 843 P.2d at 704.} On the other hand, if the wrestler’s injury did arise from an inherent risk of wrestling, the coach may assert primary assumption of risk.\footnote{Id. at 707.} If the injury was caused by risks or dangers inherent in wrestling, and the coach did not breach his or her duty to the wrestler, then primary assumption of the risk should apply, completely barring the wrestler from recovering.\footnote{Id.} If the coach did breach the duty owed to the wrestler by increasing the risk beyond the scope of wrestling then secondary assumption of the risk will apply and a comparative negligence analysis is appropriate.\footnote{Id.}

\section*{II. THE NATURE OF THE SPORT OF WRESTLING}

Wrestling is unique in that it contains inherent risks that are very uncommon in other sports. Two of the most prevalent risks associated more with wrestling than other sports are skin

\footnote{Lilley, 80 Cal.Rptr.2d at 641.}

\footnote{Knight, 843 P.2d at 704.}

\footnote{Id. at 707.}

\footnote{Id.}
disorders and weight loss. In particular, a staggering numbers of wrestlers are losing weight in unhealthy ways due to the nature of weight classes in the sport of wrestling. Although this is less of a problem at the college level because of adequate supervision, weight loss in high school programs is rampant.

A. Cutting Weight in Wrestling

Despite the deaths of the three young men in 1997, the American College of Sports Medicine (ACSM) estimated that in that same year, approximately one-third of all high school wrestlers engage in weight-cutting more than ten times per season. A later study surveyed various high school wrestling programs in Michigan in 2001. Two-thirds of the wrestlers admitted to losing weight, fifty admitted losing over five pounds, and 5% admitted to losing twenty pounds. An astonishing 72% of the wrestlers admitted to taking diet-related drugs or starving themselves. The ACSM suggests that the primary methods of rapid weight loss are exercising, fasting, and intentional dehydration.

A survey conducted at one high school in 2004 further evidenced that approximately 58% of the study’s high school wrestlers were engaged in weight loss, despite its potential for

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74 CONWAY, supra note 1 at 189 (explaining that skin conditions may range from temporary to permanent, and are typically very highly contagious. The three most common skin conditions are ringworm, impetigo, and herpes. Wrestlers are particularly susceptible to these infections because of the contact nature of the sport. The infections are not airborne; rather, they spread primarily through direct contact).
75 Id. at 5.
76 Id.
79 Id.
80 Id.
81 CASE, supra note 77.
impaired muscle recovery, cardiac complications, or even death.\textsuperscript{82} In addition to those figures, researcher Jim Grizell of the National Institute of Mental Health suggested that an estimated 32\% of wrestlers at one time or another had some type of eating disorder.\textsuperscript{83}

\textbf{B. Why Wrestlers Engage in Such Risky Conduct}

Wrestling is structured by weight classes, and wrestlers are typically motivated to wrestle at the lowest allowable weight.\textsuperscript{84} It is suggested that they do this for two reasons: (1) it is better to be the heaviest wrestler in a weight class than the lightest, and (2) because so many wrestlers are cutting weight, one is essentially wrestling others who have a larger muscle mass, and would therefore have an advantage.\textsuperscript{85} By the time a wrestler that cuts weight actually competes, he or she will weigh more than they did at the time of the weigh-in. This is because weigh-ins are typically two or more hours before competition, so wrestlers are given time to eat and drink prior to stepping on the mat. If a wrestler who naturally weighs 125 pounds is competing in the 125 pound weight class, there is a strong possibility that their opponent had cut weight to compete at the same weight class. Therefore, by the time they actually compete, the wrestler who originally cut weight might weigh 130 pounds or more, thereby giving him an advantage against his lighter


\textsuperscript{83} Id.

\textsuperscript{84} CASE, \textit{Supra} note 77.

\textsuperscript{85} ANAND, \textit{Supra} note 82 (explaining that a high school wrestler competed against opponents with smaller muscle mass, thereby giving him an advantage. He competed at 103lbs, but his natural weight was approximately 118lbs. He added that if he were to wrestle at his natural weight, then he would be wrestling opponents whose natural weights are higher than his, and therefore he would be at a disadvantage).
opponent. This concept, along with the subsequent fear of being at a disadvantage, makes it practically impossible to eliminate weight loss.

C. How Wrestlers Choose to Lose Weight

The wrestling community is aware that improper weight loss can lead to serious health problems. Dr. T.A. Conway, a former wrestler, a father of several wrestlers, and now a physician, has defined what he refers to as the seven deadly sins of wrestling regarding weight loss. Starvation, binging, self-induced vomiting, laxatives, drugs, improper nutrition, and dehydration are, according to Dr. Conway, the most common unhealthy ways that wrestlers attempt to achieve their weight goals.

Each of these improper, but popular methods of weight loss has its own serious consequences. Starvation will reduce the amount of energy stored in the muscles, and can easily lead to injuries during training and competition. Binging is a very common practice, whereby a wrestler will starve themselves, weigh in, and then binge immediately before competition. In addition to the dangers of starvation, a wrestler who binges is also at risk for mild to severe gastrointestinal problems due to the stretching of the stomach. The next “sin” which logically follows binging is self-induced vomiting. This puts a wrestler at risk for damage to their stomach and esophagus, and will tend to rid the body of essential electrolytes, thereby creating

87 CONWAY, supra note 1 at 5.
88 Id. at 13.
89 Id. at 11.
90 Id.
91 Id. at 13.
92 Id.
93 Id.
94 Id. at 14.
the potential for more injuries during competition.95 This is because the human body needs electrolytes in order for its organs to function properly, and when they are not properly balanced, there is potential for organ failure.96

The next two “sins,” laxatives and drugs, result in similar dangers.97 Both almost inevitably result in dehydration, rid the body of essential electrolytes, and can cause the body to become dependent upon them.98 Improper nutrition, the next sin, is very common, and can also result in dehydration.99 Last but definitely not least is dehydration itself, which is quite possibly the most common of all of these seven “sins.”100 Dehydration can result from the other unhealthy weight loss methods, or directly through attempts to maximize sweating to lose water weight, such as working out in a sauna or wearing a rubber suit while exercising.101 When wrestlers are dehydrated, they are more prone to a wide array of injuries in addition to a lower level of endurance and performance.102 As illustrated, some instances of severe dehydration can even lead to death.103

Some people might wonder, with risks and dangers like these, why would a wrestler decide to cut weight? Further, how can high schools possibly keep this potentially dangerous situation under control?

D. Current Approaches to Managing Weight Loss in Wrestling

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95 Id.
97 CONWAY, supra note 1 at 15.
98 Id.
99 Id. at 16.
100 Id. at 14-15.
101 Id. at 14.
102 Id.
103 Id. at 6-7.
States have introduced weight management handbooks which set forth recommendations for monitoring wrestlers’ weight standards. Most of these declare that the minimum body fat percentage is seven percent for a male wrestler and twelve percent for a female. Prior to the commencement of the season, a trainer will measure a wrestler’s body fat percentage and, based on his current weight, will calculate his weight at the minimum body fat allowance. This is deemed to be the lowest weight at which a wrestler can safely compete. The wrestlers are then “certified” at that weight, and cannot compete lower than that certification. Some schools also provide guidelines for losing weight by not allowing wrestlers to lose more than 1.5% of their body weight per week. However, their efforts to enforce weight loss often stop at that initial certification. This lack of supervision has led many high school wrestlers to take extreme measures in order to achieve their weight goals.

How can schools manage and control weight loss in high school wrestling programs? States have made attempts to model their high school regulations after the NCAA, which is capable of devoting extensive time and effort in order to ensure that its athletes are safe. But

\[104\] MAINE PRINCIPALS’ ASSOCIATION: WRESTLING WEIGHT MANAGEMENT HANDBOOK (2006); See eg., WHSAA WRESTLING WEIGHT MANAGEMENT PROGRAM (2007-08); AHSAA WRESTLING WEIGHT CERTIFICATION PROGRAM (2006-07).
\[105\] Id.
\[106\] I have chosen to use masculine pronouns because an overwhelming majority of wrestlers are male. Please note, however, that women who wrestle and cut weight face the very same dangers as their male counterparts.
\[108\] Id.
\[109\] Id.
\[110\] Pat Tocci, CIF/CSS 2007-2008 Wrestling Weight Management Program http://www.cifcss.org/Wrestling%20Weight%20Management%20Main%20Page.htm (last visited January 25, 2008). This weight management programs call for a coach to try to check the wrestler’s weight periodically to ensure that they are on pace to make their goal. It does not, however, implement any hydration testing to ensure that the wrestler is dropping weight while maintaining proper hydration levels as the NCAA does.
\[111\] See SCHNIRRING supra note 107.
the problem is, schools do not have a single governing body that can pull off such a monumental task.112

The NCAA wrestling programs are capable of weighing each wrestler daily, providing professional nutritional experts to aid the wrestler in diet, and can have trainers administer urine tests to ensure that the wrestlers maintain hydration.113 This is possible because the governing body of college athletics (the NCAA), has funding to allocate to relatively few colleges in comparison to the number of high school wrestling programs nationwide. To put it in perspective, there are an estimated 250,000 high school wrestlers, and merely 6,000 of them will make it to the collegiate level.114 Therefore, the NCAA is much more capable of ensuring that athletes are complying with weight loss regulations because there are much fewer collegiate wrestlers (and wrestling programs) than there are at the high school level.

With so many high school wrestlers and relatively few resources for monitoring and controlling dangerous weight loss, assumption of the risk is the most reasonable means of limiting liability.

III. ASSUMING THE RISK FOR LOSING THE WEIGHT: PRIMARY ASSUMPTION OF THE RISK APPLIED IN WRESTLING

When courts determine whether to apply primary assumption of the risk, they must determine what risks are inherent in the sport.115 In attempting to determine what risks are within the scope of wrestling, where should a court draw the line? Is a wrestler who

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114 IRVING, supra note 112.
115 Record v. Reason, 73 Cal.App.4th 472, 484 (Cal. Ct. App. 1999) (looking at all of the aspects of the activity in order to determine whether or not the conduct was inherent in the sport for the applicability of assumption of the risk).
independently exercises after practice in order to shed a few more pounds for the next day’s competition within the scope of the sport?

Imagine a scenario where a soccer coach tells one of his athletes that he is not in great shape, and suggests that he take some extra time to run on his own outside of practice. At the same time, a wrestling coach suggests to his athlete that he would be more competitive if he wrestled at one weight class lower. The soccer player decides to go for a run that evening, and injures himself. The wrestler decides to lose weight rapidly, and suffers a heart attack as a result of intensive independent workouts in addition to not eating. The soccer player would most likely not consider bringing a negligence suit against the coach for suggesting that he get in shape. However, the wrestler might try to place the blame on the coach. One might be more sympathetic to the wrestler, but the law needs to treat these two athletes equally. The wrestling coach, in merely suggesting that the wrestler compete at the lower weight class, did not increase the inherent risks. The wrestler took it upon himself to lose the weight in an unhealthy fashion. The wrestler assumed the risk of injury when he decided to lose weight.

A. Injuries are Common in all Athletics, and Wrestling is no Exception

Generally speaking, injuries are common in the sports context. Courts often make determinations of what risks are inherent in various sports, including football, swimming, soccer, skiing, golf, ice skating, and even inner-tubing.

117 Khan v. E. Side Union High Sch. Dist., 31, 33 Cal. 4th 990, 996-97 (Cal. 2003) (holding that a swimmer breaking one’s neck while practicing a racing dive is an inherent risk of swimming).
When athletes are engaged in physical contact, there is a potential for serious injury. For instance, just as football players may suffer serious injuries if they hit an opponent at a particular angle, so too can wrestlers if they land awkwardly on the mat with an opponent. Moreover, there are particular inherent risks unique to wrestling, such as cutting weight. Any athlete injured because of this unique, inherent risk cannot recover under primary assumption of the risk.

B. Weight Cutting is Inherent in Wrestling

An athlete’s conduct must be within the scope of the sport if an around-the-clock preparation scheme is to fall within primary assumption of the risk. If the preparation is inherent in the sport, then an athlete cannot recover for an injury that arises out of his engagement in such a practice because it is within the scope of that sport. As previously discussed, weight management is inherent in wrestling because of the structure of the sport. The numerous studies showing how many wrestlers engage in various weight loss techniques are also indicative of how widespread and common these practices are.

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119 Cheong v. Antablin, 16 Cal. 4th 1063, 1071 (Cal. 1997) (holding that colliding with another skier is an inherent risk of skiing); see also Mastro v. Petrick, 93 Cal. App. 4th 83, 90 (Cal. Ct. App. 2001) (holding that a skier cannot recover from the snowboarder with whom he collided because a collision is well within the inherent risk of the sport, and noting that the snowboarder owed the skier no increased duty).
120 Shin v. Ahn, No. S146114, 2007 WL 2445130, *9 (Cal. Aug. 30, 2007) (holding that while not ascertaining the whereabouts of another golfer prior to hitting one’s own golf ball may be a violation of golf etiquette, it is no grounds for legal liability because getting hit in the head by another’s golf ball is an inherent risk of the sport).
122 Record v. Reason, 73 Cal.App.4th 472, 484-85 (Cal. Ct. App. 1999) (holding that even if a driver of a boat dragging an inner-tube drove faster than the recommended speed of the tube manufacturer, such risky actions are inherent in the sport of inner-tubing, and therefore barred the injured plaintiff from recovery).
125 Knight, 843 P.2d at 707.
126 CONWAY, supra note 1 at 5.
127 See Generally supra notes 82,86,96.
1. For Most Wrestlers, Preparation Requires More than Merely Organized Practice

Practice and training are essential methods of preparing for athletic competitions. Like athletes of other sports, wrestlers engage in practice sessions in an effort to fine-tune their skills and increase their endurance. However, in addition to this training, most wrestlers’ preparation must include weight management. This aspect of preparation for wrestling is much more complex than, for instance, a daily team practice. Rather, monitoring one’s weight entails an “around-the-clock” mentality.

2. Cutting Weight is a Lifestyle Change

My toughest match is not on the mat...It’s at the dinner table and the fast food restaurants...It’s hearing about the party I can never go to...It’s realizing that being a great wrestler is not a sport...It’s a life.
- Stephen Neal (3x NCAA Champion, World Champion)

For those wrestlers who need to lose weight in order to compete, the process of cutting weight is just as crucial as other preparation, such as a team practice. Dr. Conway suggests that proper weight management must begin with a change in one’s lifestyle.

Whether wrestlers choose to lose weight in a healthy or unhealthy fashion, they do so around the clock. For instance, those wrestlers who decide to starve themselves prior to competition do so all day long, regardless of whether they are with the team. The same goes for those who decide to stick to a healthy diet. They ensure that all of their meals conform to their commitment to losing weight.

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128 Conway, supra note 1 at 5.  
129 Id.  
130 Id.  
131 Id. at 95.  
132 Id. at 13.  
133 Id. at 134-35.
This idea is unparalleled in other sports. Although athletes in other sports may be weight-conscious, their weight is not a criterion for competition, per se. They may feel pressured by their coach, or by society as a whole, to fulfill a certain image, but they can technically compete regardless of what number appears on the scale that they stand on. It follows that while those athletes may engage in some around-the-clock training, it is not for the sole purpose of losing weight in order to compete. Their decision to go for an early morning or late evening run does not affect them in the same way that a healthy diet or an unhealthy starvation-binge period affects a wrestler.

C. High School Coaches Play a Unique Role in Primary Assumption of the Risk

California has applied the assumption of the risk defense to various high school sports and determined what falls within the inherent nature of a sport. In those cases, the plaintiff athletes were suing because of injuries resulting from their participation in team practices or competitions. However, no court has been required to determine whether a wrestler, injured outside of practice, but in the course of losing weight, was acting within the scope of the sport. How would a court rule on this issue?

There are certain considerations that courts consider regarding the scope and nature of particular sports. One consideration is whether there is a difference between in-season and off-season training? One California court ruled on a case regarding a high school gymnast who

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134 Stephanie L. Hamilton, The Feasibility Of A Negligence Cause Of Action For Gymnasts With Severe Eating Disorders, 2 U.C. DAVIS J. JUV. L. & POL’y 44 (1997). (losing weight in gymnastics may be prevalent, but is more of a body image problem, while losing weight in wrestling goes to the very nature of the sport).
135 Id.
136 Id.
138 Supra note 137.
139 Acosta, 31 Cal. App. 4th at 471.
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sustained an injury during an off-season practice with an assistant coach.\textsuperscript{140} The defendant school district alleged immunity under California Government Code § 831.7, whereby a public entity is free from liability from any person injured while engaged in a hazardous recreational activity.\textsuperscript{141} The court noted that if it considered all interscholastic activities as hazardous recreational activities, then, under the statute, schools would be free from liability in negligently supervising virtually all school-sponsored sports.\textsuperscript{142} The court ultimately held that the defendant in this instance was liable because he failed to exercise due care in supervising the gymnast.\textsuperscript{143}

This may appear to be similar to a wrestler who independently cuts weight because both the wrestler and the plaintiff gymnast were engaged in an activity related to their participation in the school-sponsored sport outside of the team environment. Note, however, that they are crucially distinct for the following two reasons: (1) the gymnast was practicing in the off-season, and (2) the gymnast was being supervised, albeit negligently, by an assistant coach.\textsuperscript{144} The hypothetical wrestler would be engaged in weight loss (1) during the season, and (2) absent the supervision of a coach.

The wrestling situation is especially precariously because, technically, the wrestler is losing weight in order to participate in a school-sponsored activity, during the active season. However, unlike the gymnast, the wrestler has no supervision. The wrestler cutting weight is within the scope of the sport,\textsuperscript{145} and even if acting upon the advice of his coach, is doing so without the supervision of that public school employee.

\textsuperscript{140} Id.
\textsuperscript{141} Id. at 475.
\textsuperscript{142} Id. at 477.
\textsuperscript{143} Id. at 480.
\textsuperscript{144} Id. at 471-72.
\textsuperscript{145} CONWAY, Supra note 1 at 5.
California courts have addressed the issue of assumption of the risk with regards to training versus competition.\textsuperscript{146} When a professional horseback rider tried to sue another rider for a collision during a practice session, the courts refused to grant her damages.\textsuperscript{147} The court’s justification was that the other rider had not increased the risks of the sport, and therefore had not breached her duty.\textsuperscript{148}

Because courts consider all aspects of a sport when determining the applicability of assumption of the risk,\textsuperscript{149} it follows that they would view a wrestler who cuts weight as doing so within the scope of the sport of wrestling. Preparation or practice is part of the sport and any participant is barred from recovering for any injury sustained during practice or preparation as a result of any dangers inherent in the sport.\textsuperscript{150} So a wrestler preparing for wrestling in a certain weight class is participating in the sport. If the wrestler sustains any injuries as a result of weight cutting, his recovery is barred by primary assumption of the risk.

One might argue that while the wrestler may ultimately choose to lose weight, it is not necessary in order to compete. Therefore, cutting weight is not necessarily inherent in the sport. This argument lacks merit because although a wrestler might choose to lose weight, because he could have simply competed at a higher weight class, it is fundamental to the sport that athletes try to compete at the lowest possible weight.\textsuperscript{151} A wrestler chooses to lose weight because he is

\begin{footnotesize}
\begin{enumerate}
\item[147] Id.
\item[148] Id. at 326.
\item[149] Knight, 834 P.2d at 708.
\item[150] Acosta, 31 Cal. App. 4th at 478.
\end{enumerate}
\end{footnotesize}
not only at an advantage by losing weight, but he might be at a disadvantage by not losing weight.\footnote{152}

\textit{D. Coaches Will Only Be Liable if They Increase the Risks Beyond the Scope of the Sport}

Critics may contend that a coach could pressure his wrestler to lose weight, thereby increasing the risk of the sport. However, a coach is not necessarily negligent if he merely suggests that an athlete wrestle at a certain weight. In order to be negligent, a coach would have to create a dangerous environment or personally put the athlete in a dangerous situation, not merely make a suggestion to the athlete.\footnote{153} If a coach goes beyond what is reasonable in forcing his athlete to lose weight or suggesting unhealthy weight loss techniques, he could be subject to liability for an injury the athlete suffers as a result.\footnote{154}

For instance, consider the following two hypothetical scenarios. A coach tells his 170 pound wrestler to compete at 160 pounds. The coach stays after practice with that wrestler, providing additional training sessions to allow him to lose weight. This would most likely be acceptable if the weight loss is in compliance with the minimum weight requirement\footnote{155} because the coach is not necessarily increasing the risk beyond the scope of wrestling. In contrast, imagine a coach who insists that the 170 pound wrestler compete at 140 pounds. He makes that wrestler stay after practice to continue working out, refuses to allow him to consume water during any training session, and if circumstances allow, raises the temperature in the wrestling room to create a sauna-like atmosphere. In each of these situations, imagine that the wrestler who is cutting weight injures themselves during an additional training session. In the first

\footnote{152 \textit{See infra} note 85.}
\footnote{153 \textit{Lilley v. Elk Grove Sch. Dist.}, 80 Cal.Rptr.2d 638,643 (Cal.Ct.App. 1998).}
\footnote{154 \textit{Khan v. E. Side Union High Sch. Dist.}, 31 Cal.4th 990, 996 (Cal. 2003) (stating that a coach may be liable for injuries that resulted from their intentional or reckless conduct).}
\footnote{155 \textit{See MAINE, supra} note 104.}
scenario, it would be hard to hold the coach liable for the wrestler’s injury because he did not increase the risks beyond the scope of wrestling. In the second scenario, the coach increased the risk, and should therefore be held liable. Primary assumption of the risk should apply to the first scenario, but not to the second.

In an ideal situation, wrestlers would not resort to unhealthy means to achieving weight loss goals. However, as evidenced by the various studies, and despite the incidents of death or serious injury, wrestlers continue to engage in unsafe weight loss practices.\textsuperscript{156} Although the wrestling community would be relieved to see a change, it appears very unlikely that high schools will be able to completely rectify this problem as shown by the continuing popularity of these weight loss practices.\textsuperscript{157}

Perhaps high school wrestling programs could implement mandatory nutritional education.\textsuperscript{158} In the end, however, it is up to the wrestlers themselves to lose the weight. The schools and coaches cannot supervise them twenty-four hours a day. If a wrestler decides not to heed the advice and warnings provided, then the consequences of their actions rest ultimately with themselves.

CONCLUSION

This Note began with the brief stories of three young men who lost their lives while attempting to lose an astonishing amount of weight in an extraordinarily short period of time. Although these stories resulted in deaths, other less-obvious, but nonetheless dangerous,
consequences exist from cutting weight. Discussing various affirmative defenses to a negligence cause of action, this Note showed that courts that favor primary assumption of the risk, such as California, do so keeping the most rational policy in mind.

The wrestler who chooses to lose weight in an unhealthy manner should be barred from recovery. If courts were to hold wrestling coaches negligent for suggesting to their wrestlers that they lose weight, a devastating chilling effect could result. As previously stated, schools might be reluctant to offer extracurricular sports, which would have significant social ramifications. A student athlete who chooses to participate in a sport must understand that there are inherent risks in all sports, and those risks may be accompanied by adverse results of that risk. “Primary assumption of the risk in the extracurricular sports setting is consistent with...the goals and responsibilities of...schools.

The only feasible way that a wrestler could successfully sue his or her coach would be if the coach breached their duty by increasing the risks beyond what is inherent in the sport.

A wrestler who cuts weight assumes the risks and dangers associated with such practices, as does a football player tackling a competitor, a soccer player injuring their ankle, or one skier colliding with another.

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159 Conway, supra note 1 at 11-17.
161 Id.
162 Id.
163 Benitez, 541 N.E.2d at 31
165 Cheong v. Antablin, 16 Cal.4th 1063, 1071 (Cal. 1997).