

## **Sports Medicine Services Agreement**

This Sports Medicine Services Agreement (the “**Agreement**”) is effective as of July 1, 2019 (the “**Effective Date**”), by and between Big Walnut Local School District, located at 110 Tippet Court, Sunbury, OH 43074 (“**BWLSD**”), and The Ohio State University on behalf of its Wexner Medical Center, Clinical Department of Sports Medicine, located at 2835 Fred Taylor Drive, Columbus, Ohio 43202, Suite 2229 (“**OSU**”). OSU and BWLSD are collectively referred to as the “Parties” or, separately, a “Party.”

### **RECITALS**

**WHEREAS**, OSU is an academic medical center and through its Sports Medicine Clinical Department, employs professionals in sports performance (“Sports Medicine Professional” or “SMP”); and

**WHEREAS**, BWLSD is public K-12 school district in Central Ohio; and

**WHEREAS**, BWLSD wishes to obtain the services of sports medicine professionals, from OSU to provide athletic coverage and health care to its middle school and high school student athletes, and OSU is willing to provide such services.

### **AGREEMENT**

**NOW, THEREFORE**, based on the foregoing and other covenants, conditions and promises hereinafter set forth, the Parties agree to the following:

#### **I. SERVICES**

A. OSU hereby offers to BWLSD, and BWLSD hereby accepts, the Services as detailed on Exhibit A attached hereto.

B. Obligations of OSU.

1. OSU shall assign its employed SMPs to provide the Services and make available to treat BWLSD student athletes pursuant to a mutually agreed upon schedule by the Parties, as detailed in Exhibit A, which may be amended in writing by both parties from time to time.

2. OSU shall require that SMPs be appropriately licensed and complete all credentialing and privileging requirements necessary for the performance of the Services.

3. OSU shall require SMP to comply with: (i) all federal, state and local laws applicable to the Services; (ii) the applicable standards of The Joint Commission; and (iii) applicable policies and procedures of BWLSD. OSU’s SMPs shall provide the Services with the same skill, care, competence, and diligence that is consistent with community standards, and shall at all times promote patient-centered care, good customer service, efficiency, and timeliness.

4. OSU shall be solely responsible for the collection, reporting, and payment of applicable federal, state, and local payroll taxes with respect to SMPs.

C. Obligations of BWLSD.

1. BWLSD shall provide the following:

a) All necessary facilities, equipment and space (the “Facilities”) in good working condition for OSU SMP, as mutually agreed upon to perform under this Agreement;

b) All necessary authorizations and consents from BWLSD students, and provide copies to OSU.

c) Appropriate emergency responder access to the Facilities.

2. BWLSD shall maintain documentation of performance of Services under this Agreement, and BWLSD represents and warrants that such documentation shall be sufficient to validate the time spent by SMP in performance of the Services.

3. Marketing and communication of partnership as outlined in Exhibit B.

D. Compensation. Compensation terms outlined in Exhibit C.

## II. TERM AND TERMINATION

A. Term. The term of this Agreement shall commence on the Effective Date and continue in effect for five calendar years (the “**Initial Term**”), unless earlier terminated in accordance with the terms of this Agreement. Following the Initial Term, this Agreement shall automatically renew for successive one-year terms (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”). Upon any extension or renewal of this Agreement, the parties shall assess and make necessary changes to the Compensation to ensure it remains fair market value and commercially reasonable for the Services.

B. Termination for Cause. Either Party (the “**Non-Defaulting Party**”), upon written notice to other Party (the “**Defaulting Party**”), shall have the right to terminate this Agreement in the event of a material breach by Defaulting Party. The Defaulting Party shall have 30 calendar days after receipt of a written notice to cure such breach, or, if the default is not reasonably curable within such 30 calendar day period, or the Defaulting Party has not commenced to cure the default within such time period and proceeded to cure the same with reasonable diligence thereafter, the Non-Defaulting Party shall have the right to terminate this Agreement immediately upon the expiration of such cure period.

C. Termination without Cause. Notwithstanding the above, either party may terminate this Agreement upon 90 calendar days prior written notice to the other party.

## III. RECORDS

A. Recordkeeping. The SMP(s) shall maintain timely, complete, and accurate records, charts, and other documentation, including for purposes of billing, (collectively “the **Records**”) for each student athlete receiving Services under this Agreement. The Records shall be the property of BWLSD and may not be removed from BWLSD’s property without prior consent. The Records shall be maintained in accordance with BWLSD and OSU’s bylaws, rules,

regulations, policies, and procedures and applicable state and federal laws. Upon reasonable request and in accordance with applicable laws and regulations, OSU shall make the Records available to BWLSD, and BWLSD shall have the right to review and copy the Records at no cost.

B. Access to Records. If applicable, the Parties shall comply with the provisions of Section 1861(v)(1)(i) of the Social Security Act (as amended), and any regulations promulgated thereunder, and shall make available, upon written request of the Comptroller General of the United States or the Secretary of the Department of Health and Human Services or any of their duly-authorized representatives, any books, documents, and records that are necessary to verify the nature and extent of costs incurred by either party under this Agreement.

#### **IV. PRIVACY**

BWLSD and OSU acknowledge that SMP(s) will have access to the names and other personally identifying information of OSU's patients. BWLSD and OSU agree that OSU shall have custody and control of all patient identifiable health information ("**PHI**"). All patient records, films, charts, billing records, reports, insurance records, and any other document containing any PHI is confidential information utilized for purposes of the treatment, payment and health care operations necessary for providing treatment to student athletes. OSU shall provide SMP(s) with a copy of its Notice of Privacy Practices consistent with the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164 ("**Privacy Rule**").

#### **V. NOTICE**

Notices or communications required or permitted to be given under this Agreement shall be given by, and be deemed given when (i) delivered by personal delivery; (ii) deposited in U.S. first class mail, postage prepaid; or (iii) sent by telecopy or electronic mail with confirmation of receipt, addressed to the address set forth below or to such other address as either party may designate in writing to the other party from time to time:

To Big Walnut Local School District:  
Brian Shelton  
Athletic Director  
Big Walnut High School  
555 S Old 3C Rd  
Sunbury, OH 43074

If to OSU:  
Bob Sweeney, MS, AT  
Associate Director, Sports Medicine Outreach  
Ohio State University Wexner Medical Center  
Jameson Crane Sports Medicine Institute  
2835 Fred Taylor Drive, Suite 2229  
Columbus, OH 43202

With a copy to:

The Ohio State University Wexner Medical Center  
Office of Legal Services  
650 Ackerman Road  
Columbus, OH 43202  
Attention: Associate General Counsel

## VI. MISCELLANEOUS

A. Non-Solicitation. BWLSD shall not, without prior written consent of OSU, directly or indirectly, solicit, hire or attempt to hire, whether as an employee or as a consultant, or retain the services of through a third party, anyone employed by OSU to provide the services under this agreement during the term of this agreement and for twelve (12) months thereafter.

B. Confidentiality. Each party shall maintain the confidentiality of any information provided to it by the other party that is identified as confidential or can reasonably be regarded as confidential (collectively, the “**Confidential Information**”) and shall at all times protect Confidential Information from unauthorized disclosure using the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care. Confidential Information does not include any information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) was rightfully in the receiving party’s possession at the time of disclosure without restriction on use or disclosure; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; (iv) was or is rightfully obtained by the receiving party from a third party not under a duty of confidentiality and without restriction on use or disclosure; or (v) is required to be disclosed by law, including, to the Ohio Public Records Act.

C. Independent Contractors. The Parties acknowledge and agree that performance of OSU and BWLSD hereunder shall be as independent contractors and not as employees, partners of, or joint venturers with one another. By entering into this Agreement, neither Party to this Agreement is, in any way, assuming any liabilities, debts or obligations of the other party, whether now existing or hereafter created. Neither OSU nor any SMP shall have any claim against BWLSD for vacation pay, sick leave, benefits, Social Security, workers’ compensation, disability, unemployment benefits, or any other benefits provided to OSU employees by OSU. Any other arrangements OSU or an SMP may have with BWLSD are expressly outside the scope of this Agreement.

D. Third Party Beneficiaries. This Agreement is solely for the benefit of BWLSD and OSU and no provision of this Agreement shall be deemed to confer upon third parties, any remedy, claim, liability, reimbursement, claim or other right in excess of those existing without reference to this Agreement.

E. No Assignment. No Party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other Party, and any attempted assignment or delegation without such consent shall be void and of no effect.

F. Unenforceability. Should any part of this Agreement be determined to be legally invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining portions.

G. Authorization. Each individual signing this Agreement warrants that such execution has been duly authorized by the party for which he/she is signing. The execution and performance of this Agreement by each Party has been duly authorized by all necessary corporate action, and this Agreement constitutes the valid and binding obligation of each Party, enforceable against such Party in accordance with its terms.

H. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Ohio.

I. Amendment: Binding Effect. This Agreement may not be modified except in writing executed by both Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

J. Pursuant to R.C. 9.46 (B), BWLSD warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Term of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the Effective Date:

**THE OHIO STATE UNIVERSITY**  
**on behalf of its Clinical Department of Sports Medicine**

By: \_\_\_\_\_  
David P. McQuaid, FACHE  
CEO, The OSU Health System  
COO, The OSU Wexner Medical Center

**Big Walnut Local School District**

By: \_\_\_\_\_  
Angela Hamberg  
Superintendent of Schools  
Big Walnut Local School District

## **Exhibit A - Services**

1. OSU agrees to provide three (3) Ohio licensed athletic trainers to meet the needs of BWLSD athletics. All three (3) athletic trainers will be dedicated to the high school and middle school. Personnel staffing will be agreed upon mutually by both parties for the life of contract.
2. OSU athletic trainers will coordinate their schedule with, and report to, BWLSD Athletic Directors at each particular school to which they are assigned, to meet the needs of the BWLSD athletes. The duties of the athletic trainer will include but are not limited to
  - Initial injury evaluations and treatments
  - Physician referrals when necessary
  - Direct rehabilitation of athletic injuries
  - Make return to play decisions in conjunction with the team physician and/or the student's physician
  - Maintain records pertaining to athletic injuries including but not limited to all sports physicals and incident reports
  - Communicate with coaches regarding injuries and treatment throughout each season
3. OSU will assign a team physician to BWLSD to support coverage and will solicit the multi-disciplinary expertise of its entire physician team as necessary. Physicians will coordinate with athletic trainers and be available to visit the high school as needed for injury checks. Physicians shall also be available to meet with students after school hours and on Saturdays to review and evaluate injuries. Student athletes, at their own expense, will have the ability to see specialists within one business day of a referral. The assignment of a team of physicians by OSU shall in no way limit a student's ability to seek treatment from his or her own physician.
4. Except in cases constituting an emergency, all referrals by OSU athletic trainers for subsequent medical treatment by a physician shall be communicated directly to a student athlete's parent or legal guardian.
5. OSU will provide two coaches' clinics per year, one clinic for BWLSD. The date and times of the clinics will be coordinated with the High School Athletic Directors. This service is provided in addition to the hours of coverage provided by OSU. Additional clinics may be requested as needed to help educate coaches as National and State Federation requirements and state and federal laws change. BWLSD coaches are also invited to attend coaches' clinics sponsored by OSU at other locations at no charge.
6. OSU will provide CPR/AED training and/or recertification for all coaching staff members at no charge.

7. OSU will include BWLSD employed medical and sports performance professionals in continuing education offerings presented by OSU Sports Medicine and those employees will be offered OSUWMC employee rates for those courses.
8. OSU will provide OHSAA Wrestling Weight Certification for all BWLSD wrestlers at no charge.
9. OSU is also prepared to provide three general community-based health education seminars annually, at no charge. Topics may include healthy living, stress management, endurance med and others.
10. Saturday morning injury checks will occur from August – December at OSU Outpatient Care Lewis Center location at the agreed mutually agreed upon time.
11. OSU will provide ImPACT baseline testing on all BWLSD student athletes for collision sports as requested by BWLSD athletic directors at no charge. Testing will be made available for other teams as requested or needed.
12. When BWLSD is hosting contests, events, OHSAA or Central District tournaments, OSU will provide, at no additional charge, additional athletic trainers to assist with coverage when the BWLSD primary athletic trainers are unavailable or if an event requires additional staff to ensure adequate coverage. BWLSD shall request additional coverage in advance of such event.
13. OSU agrees to meet quarterly, or as otherwise requested, with the BWLSD High School Athletic Administration to monitor the ongoing services and to discuss any concerns or changes as may be appropriate.
14. OSU acknowledges and agrees that as an entity providing services to BWLSD, any records maintained by OSU while providing services under this Agreement regarding BWLSD student athletes are education records subject to FERPA and R.C. 3319.321. FERPA and R.C. 3319.321 shall govern any records maintained by OSU while providing services under this Agreement regarding BWLSD student-athletes, regardless of whether health care services are provided to student athletes on school grounds or off-site. As education records, these records are subject to FERPA and R.C. 3319.321 and not HIPAA. OSU acknowledges and agrees that the confidentiality of a student athlete's medical information is of the utmost importance and that any student athlete medical information received by OSU shall be kept strictly confidential OSU shall permit a coach to receive information maintained by OSU while providing services under this Agreement necessary to address injuries or make a determination as to a student-athlete's involvement in practice and/or competition to protect the health and safety of the student-athlete upon receipt of a signed OHSAA Authorization Form by the student-athlete and his/her parent or legal guardian, as applicable. Further, information may be released to school personnel consistent with FERPA and R.C. 3319.321.

15. Student athletes who, at their own expense, see specialists within 24 hours of referral at OSU locations are considered patients of OSU providers who are “health care providers” under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and records of such visits OSU records and are subject to HIPAA, not FERPA .

16. OSU athletic training services will be provided under the direction, supervision and review of, the student’s physician and/or the team physician, as applicable. OSU acknowledges and agrees that should a student athlete choose to receive treatment from his or her own physician, the student athlete’s physician shall be able to access information and medical records from OSU’s physicians and athletic trainers related to the treatment or care of the student athlete with appropriate signed consent form.

17. OSU will provide professional liability insurance coverage with a minimum amount of \$1,000,000/occurrence and \$3,000,000/aggregate. The coverage will apply to services and actions conducted by the OSU athletic trainer, OSU team physician and/or any other OSU physician or other health care professional providing services under this Agreement and may be provided by a program of self-insurance.

18. OSU shall obtain Bureau of Criminal Investigation (BCI) and/or Federal Bureau of Investigation (FBI) criminal background checks for any employees that will be working in the Big Walnut Local School District with students consistent with R.C. 3319.392(C)(1). Upon request, OSU shall provide BWLSD with confirmation that it has complied with this requirement. None of OSU’s employees providing services under this Agreement shall be considered employees of BWLSD with respect to any federal, state or local laws. Accordingly, OSU shall be responsible for, pay for and, as applicable, reimburse the BWLSD for any wages, benefits, charges, fees, penalties and/or taxes, including but not limited to Social Security taxes, Workers’ Compensation taxes, unemployment taxes, PERS, SERS, and/or any other governmental charges, penalties and/or taxes required to be paid on behalf of employees of OSU.

19. Pre-Participation Physical Exams events will be made available to BWLSD student athletes by OSU on designated days and locations as mutually agreed by both parties.

20. OSU will expand the terms of this agreement to include all of the items of this agreement to accommodate BWLSD projected growth over the lifetime of the contract.

21. OSU agrees to working with BWLSD administration on future addenda to this agreement to include additional services, including but not limited to school nursing services, behavioral health and faculty and staff health and wellness services.

22. OSU agrees to consult with BWLSD on future sports medicine and sports performance areas of construction and partner with the district on procuring equipment and furnishings for those areas in a mutually agreed upon fashion.

## **Exhibit B - Marketing and Communication of Partnership**

BWLSD in good faith will provide appropriate and applicable exposure to communicate OSU's care for its student athletes. All messages and media content are subject to review and approval by OSU Sports Medicine marketing and/or OSU brand and trademark and licensing teams. BWLSD should be able to identify opportunities to communicate with parents of student athletes.

- a. BWLSD shall grant OSU reserved placement of space (e.g. scoreboard, fencing, wall scorer table, display ad, etc.) for sign(s), banner(s) or digital display(s) at each athletic competition venue, practice venue and athletic department website, at no cost to OSU. This includes training facilities, weight rooms, stadiums, athletic courts, fields and gymnasiums. OSU will provide artwork and cover production costs of materials. In the event that these spaces are managed by external or third-party vendors (e.g., booster organizations or third-party marketing firms), BWLSD will pay the cost of advertising space on behalf of OSU. If OSU declines advertising opportunity, BWLSD will commit to not allowing a competing medical or healthcare provider to procure this space.
- b. Allow OSU to post a minimum of three (3) sign(s) or banner(s) within the public area of high school and middle school facilities such as at the facility entry, auditorium, common area, and/or on school marquees, at no cost to OSU. OSU will cover production of artwork and materials. BWLSD must pre-approve location of placement of such signage or banners.
- c. Allow OSU branding on the school medical golf carts used in transportation throughout each athletic campus.
- d. Recognize OSU on BWLSD athletic home page of the website as well as staffing or sports medicine information details at a reasonable position within site, including a link to OSUSM information page and a link to OSU staffing page. This will be provided at no cost to OSU.
- e. BWLSD agrees to allow OSU to include BWLSD on OSUSM website as an affiliate partner.
- f. Allow OSU first right of refusal for additional marketing and sponsorship opportunities beyond the physical and virtual spaces noted above.
- g. BWLSD shall use the prior approved OSU logo on all official printed and published athletic department schedules, at no cost to OSU.
- h. OSU shall receive one (1) PA announcement at each varsity high school football and basketball game. OSU shall provide the script of announcement in advance to be approved by BWLSD. OSU shall be recognized as the exclusive sports medicine provider for BWLSD.

i. BWLSD will recognize that OSU places value in providing direct education to student athletes, parents, coaches, staff, administrators and related organizations. OSU Staff shall be included to present and/or participate in sport parents meetings or educational sessions from BWLSD. BWLSD will allow OSU to provide printed materials to student athletes and their families. OSU shall have opportunity to communicate with athletic families through email communication, at times and with content to be mutually agreed upon by BWLSD and OSU. Other opportunities for direct education as determined and approved by both parties should be considered when applicable. Such involvement of OSU in the aforementioned events or programming may also include submissions for newsletters, blogs or other social media platforms.

j. Notwithstanding the provisions contained above, OSU agrees that should BWLSD receive formal written notice that any of the marketing opportunities provided herein violate any existing BWLSD agreement, OSU shall waive the contested marketing opportunity and it shall not be part of this Agreement. Should a contested marketing opportunity be waived, OSU and BWLSD will work together to identify an additional marketing opportunity that is of equal value to OSU to replace the formally contested marketing opportunity.

**Exhibit C - Compensation**

<b>Service</b>	<b>Overview</b>	<b>Cost to District</b>
Athletic Trainers	Up to three full-time ATs to service high school and middle school	<b>\$0</b>
Team Physician	At least one dedicated team physician will provide Friday football and large event coverage and weekly on-site injury checks	<b>\$0</b>
Sports Medicine Certification and CPR/AED Training for Coaches	Two events per year at Big Walnut High School	<b>\$0</b>
Community Education Events	Minimum three annual parent, coach, and/or athlete forums; variety of topics	<b>\$0</b>
Weight Certification, Concussion Testing and Physicals	As needed for all student athletes	<b>\$0</b>
Buck-I-Smart Functional Testing	Opportunity for student athletes to receive functional testing to develop injury risk profile(s) as part of Ohio State research, with parental consent.	<b>\$0</b>
Priority Access to Medical Services	Priority access at Lewis Center and other locations, including expanded hours.	<b>\$0</b>
Sports Performance Coaching	Dedicated sports performance coach provided to district to work in collaboration with district employed strength and fitness coaches	\$40/hour or 400 hours for \$14,000