



# Have Some Standards: How the Sports Agent Profession Should Be Effectively Regulated

By Darren A. Heitner and Andrew B. Delaney

## Introduction

Imagine making a phone call to a friend who is currently in college. You and your friend, an athlete, discuss his chances of playing professionally in his sport. Perhaps you end up talking a little too much. If your friend is in Alabama, you might face a felony charge and a hefty fine. If your friend is in Pennsylvania, a fine is the worst possible punishment. If your friend is in Virginia, it is likely that you will receive no penalty for your actions. How is this disparity in the law possible?

A majority of states have a law regulating sports agents, but in many of those states, that particular law is rarely enforced.<sup>1</sup> Of the states that have sports agent laws on the books, over half have taken little or no action to enforce the laws.<sup>2</sup> In a utopian world, this might mean that sports agents adhere to the laws intended to protect student-athletes and universities, and that there is no need for enforcement. In reality, a lack of resources, motivation to enforce the laws, or both, are behind this *laissez-faire* approach.<sup>3</sup>

Based on media portrayals, one might get the idea that sports agents are cutthroat, unscrupulous, take-advantage-of-their-own-mother-to-make-a-buck kind of people. Yet many sports agents are extremely ethical, scrupulous, and diligent; they will put their clients' needs above their own. Good agents already follow unwritten rules of conduct in all of their dealings. Of course, one will probably never see or hear about these sports agents on the nightly news program.

Thus, two distinct yet related problems emerge: (1) How can the profession encourage sports agents to practice their trade with high ethical standards and refrain from unethical behavior; and (2) how can the profession set forth standards that are actual standards—guidelines that are uniform across the board? We propose two solutions: (1) A federal licensing system for all sports agents; and (2) self-regulation of the profession, including a national board. By way of background, we will discuss the current state of the law and take a closer look at why these steps are necessary.

## Current Legislation: UAAA and SPARTA

Over the past decade, lawmakers have taken two major steps toward athlete-agent regulation. The National Conference of Commissioners on Uniform State Laws drafted the Uniform Athletes Agent Act (UAAA) in response to the National Collegiate Athletic Association

(NCAA) lobbying roughly a decade ago.<sup>4</sup> Thirty-nine states have adopted the UAAA in some form; Illinois is slated to become the 40th state to adopt it in January 2011.<sup>5</sup> Primarily, it addresses relations between student-athletes and sports agents.<sup>6</sup> The UAAA includes a registration requirement, and fees vary widely among the states.<sup>7</sup> Some states are particularly zealous in enforcing the provisions, while others seemingly ignore violations.<sup>8</sup> Arguably, the "Uniform" Act has only exacerbated the lack of uniformity it intended to correct.

New York adopted the UAAA in 2003.<sup>9</sup> Thus far, enforcement of it has been neither more nor less zealous than in other states; New York has taken a middle-of-the-road approach to enforcement.<sup>10</sup>

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Congress passed the Sports Agent Responsibility and Trust Act (SPARTA) in 2004 to supplement existing state laws.<sup>11</sup> Nothing in SPARTA preempts state law; in fact, the last section of SPARTA encourages the states to adopt the UAAA. SPARTA attempts to address the specific problem of opportunistic sports agents preying on traveling student-athletes.<sup>12</sup> It may very well address this problem, by providing some basic protections to student-athletes, regardless of the wide variations in state law. These protections, however, "extend" only to student-athletes.<sup>13</sup> More specifically—and indeed, more troubling—SPARTA provides express statutory causes of action for the Federal Trade Commission (FTC), states, and educational institutions harmed by an agent's violation of its provisions.<sup>14</sup> Remarkably, the student-athlete—the purported beneficiary of the law—is given no cause of action.<sup>15</sup> Some have noted that SPARTA appears to provide more protection for the NCAA's and universities'/colleges' interests than student-athletes' interests.<sup>16</sup>

People may find it ironic—as we do—that both UAAA and SPARTA purport to protect student-athletes, yet both fail to provide student-athletes with any cause of

action against deceitful and unethical agents. Nor does either piece of legislation address agents' conduct with segments of the population beyond student-athletes. Union rules in some professional sports provide some regulation of agents' conduct, but uniformity is a distant goal.<sup>17</sup> The UAAA and SPARTA are well intentioned, but woefully inadequate and under-inclusive. These problems require a truly comprehensive and uniform solution.

## A Discussion on the Merits

Recently, commentators have advocated various approaches to athlete-agent regulation. Some have argued that all sports agents should be required by federal law to be licensed attorneys.<sup>18</sup> Others have claimed that a few changes to existing law and institutional action will solve the problem of agents ignoring the law.<sup>19</sup> As noted above, we propose a federal licensing system, including regulations, which applies to all sports agents, as well as self-regulation of the industry. The federal regulation should specifically preempt inconsistent state law.

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In every jurisdiction in the United States, one must possess a license to practice law. For that matter, one must possess a license to drive a vehicle. Yet in eight U.S. jurisdictions, a person could theoretically become a "sports agent" without meeting any sort of minimum standard—without even registering as a sports agent. In order to protect athletes and the public—just as we seek to protect legal clients and other drivers on the road—every sports agent should be required to be licensed. The only way to accomplish this effectively is to require every sports agent to obtain a *federal license*. The licensing process could more or less follow the state bar admission model.<sup>20</sup>

While a legal education is a desirable attribute of a sports agent, it should not be a requirement. A prospective sports agent, however, must show a minimum level of competency in his or her field. To this end, a test—similar to a bar exam—should be developed. One would have to pass the test and undergo a character and fitness investigation to become a licensed sports agent. The professional leagues could keep their current licensing requirements. The foremost purposes of a federal license would be to eliminate the inconsistencies among states and to ensure that all sports agents meet a minimum threshold before they are allowed to act as agents.

The disparities in state-specific fees and state-specific enforcement of existing law provide strong arguments for a federal licensing scheme. A federal licensing requirement will greatly clarify expectations, eliminate the inexplicable variations in state registration fees, and ensure that all sports agents meet certain minimum standards. The national licensing requirement would also make professional malpractice suits possible.<sup>21</sup>

Due to the mobile nature of today's society and the sports industry itself, uniformity—when achievable—should be vigorously pursued. In this area, there is certain need for uniformity. This is illustrated best by the disparity among the states' enforcement. Why should the same conduct be treated differently based on geographical location? How can a felony in Alabama be a friendly conversation in Virginia? Clear expectations are imperative. Enforcement that differs to the point of absurdity only frustrates the purpose. Uniform federal licensing and regulation eliminates uncertainty to a fair extent.

This is not a states' rights issue. Professional sports are the very essence of interstate commerce. Yet the only federal legislation—like current state regulation—on the issue is directed solely toward relations between agents and student-athletes. This under-inclusiveness renders SPARTA largely impotent. Comprehensive federal regulation is the most efficacious way of curing the defects in existing law.

Self-regulation is also desirable. Just as those who desire to improve the practice of law are drawn to bodies like the American Bar Association, the New York State Bar Association, and other state bar associations, agents who desire to improve the practice of sports agency will be drawn to self-regulatory bodies within the field. From 1978 to 1988, an organization called the Association of Representatives of Professional Sports Agents (ARPA) existed. If ARPA were restored in some form, that organization could work with a federal regulatory body to help promulgate clear expectations for the next generation of sports agents.

## Conclusion

"Agents Behaving Badly" sounds like an interesting concept for a reality-television program. Unfortunately, however, there exists a real problem in the sports-agent industry that cannot be addressed with piecemeal legislation. The optimal solution for the sports agents' dilemma is a comprehensive federal licensing and regulatory scheme accompanied by true self-regulation by the sports agent profession.

## Endnotes

1. Alan Scher Zagier, *Laws on Sports Agents Rarely Enforced*, MONTEREY CTY. HERALD (Ca.), Aug. 22, 2010, [http://www.montereyherald.com/sports/ci\\_15857607?nclick\\_check=1](http://www.montereyherald.com/sports/ci_15857607?nclick_check=1). 42 state have laws regulating sports agents. *Id.* (no longer available Oct. 3, 2010).
2. *Id.*
3. *See id.* (describing the problems states have had with allocating resources to enforcement) (link no longer available).
4. *See* John A. Gray, *Sports Agent Liability After SPARTA?*, 6 VA. SPORTS & ENT. L.J. 141, 143–44 (2006) (describing the UAAA's provisions); *see also* Zagier, *supra*, note 1 (attributing passage of the Act to the NCAA's lobbying efforts).
5. Associated Press, *Ill. Agent Law is Like Ones States Don't Enforce*, BLOOMBERG BUS. WEEK, Aug. 17, 2010, <http://www.businessweek.com/ap/financialnews/D9HLDBU81.htm> (last visited Oct. 3, 2010); *see also* Zagier, *supra* note 1 (Beyond those states that have adopted the UAAA, California, Ohio, and Michigan have their own laws dealing with agent oversight).
6. Darren A. Heitner, *Duties of Sports Agents to Athletes and Statutory Regulation Thereof*, 7 DARTMOUTH L.J. 246, 252 (2009) ("The only type of athlete protected by the statute is a student-athlete.").
7. *Id.* at 253 (discussing state registration fees ranging from \$20 to \$2,500).
8. *See id.*; *see also* Zagier, *supra*, note 1 (no longer available Oct. 3, 2010).
9. *See* 2003 N.Y. Laws 642 (bill as passed).
10. We base this conclusion on various searches of news databases. There has been neither particularly zealous nor particularly lax enforcement of the UAAA in New York.
11. Brian Charles Lea, *Sports are Big Business, so Stop Playing Games: Why Federal Regulation Should Require Every Sports Agent to Possess a J.D.*, 1 J. ENT. & SPORTS LAW 20, 43 (2009).
12. *Id.*
13. *Id.*
14. 15 U.S.C. §§ 7803–7806 (2008).
15. Heitner, *supra* note 6, at 251.
16. Lea, *supra* note 11, at 44 (quoting Symposium, *Regulating the Athlete-Agent Industry: Intended and Unintended Consequences*, 41 WILLAMETTE L. REV. 781, 813 (2006)).
17. Zagier, *supra*, note 1; Heitner, *supra* note 6, at 250–55.
18. *See e.g.*, Lea, *supra* note 11, at 49.
19. *See e.g.*, Gray, *supra* note 4, at 155 (suggesting amendments to SPARTA and concerted action by professional players' associations and educational institutions to solve the athlete-agent-regulation quandary).
20. There are numerous valid criticisms of the bar exam. As recent examinees, we are acutely aware of the flaws—real or imagined—of the bar examination process. Nonetheless, the bar admission process does serve the purpose of ensuring that new attorneys meet a certain minimum standard of competency as well as character and fitness to practice law.
21. Additionally, the requirement would provide a discernible standard by which to measure the agent's conduct in the particular situation.

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