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Cardozo AELJ Author Interview Series: Seth Warshaw, Class of 2023

BY ONLINE EDITOR / ON OCTOBER 10, 2023



Cardozo AELJ **Author** Interview Series

Seth Warshaw, '23

Online Editor, *Cardozo Arts & Entertainment Law Journal*, Vol. 41

Interviewed by Amanda Leitman, Staff Editor, Vol. 41

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And a Second Opinion for All... And Anything Else? The Jack Eichel Saga and Issues of Medical Autonomy

CARDOZO AELJ
Arts & Entertainment Law Journal

The Cardozo AELJ Author Interview Series seeks to give our readers further insight into the Articles and Notes published in the Cardozo Arts & Entertainment Law Journal. In this interview, Seth Warshaw discusses his Note, [And a Second Opinion for All... And Anything Else? The Jack Eichel Saga and Issues of Medical Autonomy](#), which was published in Volume 41, Issue 1.

Seth Warshaw, Cardozo Law Class of 2023, was the Online Editor for Volume 41 of the Cardozo Arts & Entertainment Law Journal. Seth received his undergraduate degree from Boston University, where he majored in History with a minor in Business Administration. In law school, Seth spent a semester interning in the New York State Department of Financial Services, and his legal interests revolve around corporate, regulatory, and sports law.

Our interview with Seth was conducted by Amanda Leitman. Amanda is a Third Year Law Student at the Benjamin N. Cardozo School of Law and a Staff Editor for Vol.41 of the Cardozo Arts & Entertainment Law Journal. Amanda is interested in corporate law, labor law, and employment law.

AL: When/how did you first learn of the Jack Eichel Saga?

SW: I heard of the Jack Eichel Saga in the days following his 2020-2021 post-season press conference. This was the press conference with the Buffalo media where he stated that he was "a bit upset about the way [] things have been handled since I've been hurt. There's been a bit of a disconnect between myself and the [Buffalo Sabres] organization."¹ The dispute between

the Sabres and Jack Eichel blew up immediately and was one of the biggest stories of the entire NHL off-season.

AL: Describe the Jack Eichel Saga in your own words.

SW: I think that the Jack Eichel Saga was a combination of two compelling storylines.

First, there was just the pure sports-drama storyline. When the Sabres selected Eichel in the draft he was seen as their savior. For context, Eichel had just become only the second freshman ever to win the Hobey Baker Award for best male college hockey player in the country.² The only other player to do that, Paul Kariya, is a Hall of Famer.³ In the following years, the Sabres made Eichel their captain,⁴ and gave him an eight-year contract extension.⁵ However, three years after Eichel signed the contract extension he was giving the press conference announcing the disconnect between the Sabres and him.⁶ Shortly after, he requests a trade.⁷ This is the type of storyline that fans love to follow.

Second, there is the storyline related to the dispute between the Sabres' team physician and Eichel's second opinion physician. A gross simplification of the dispute is as follows: the Sabres' team physician recommended one surgery for a herniated disc in his neck, which Eichel refused to get because he wanted a surgery recommended by another physician. For the reasons discussed in my Note, the Sabres' team physician only needed to give the second opinion physician's recommendation "due consideration" before prescribing a course of treatment for Eichel. The Sabres' team physician stuck by their original recommendation, which Eichel refused to consent to. A more complete breakdown of the disagreement between the two physicians can be found in Part II of my Note.

While one would assume that many similar disputes have happened behind the scenes in the past, this was the first time in my memory that there was a dispute between an NHL team and player that was this public and covered in real time. This part of the Saga raised the specific question of whether what the Sabres' physician was doing was permitted by the collective bargaining agreement between the National Hockey League and National Hockey League Players' Association ("NHL CBA").⁸ Second, it raised the bigger question of whether it is reasonable for a player to have to relinquish some of their medical autonomy to be a professional athlete.

AL: Are there disincentives for players to file grievances, such as the one that Eichel could have filed?

SW: I have no basis to conclude that the NHL CBA creates any disincentives for a player to file a grievance. However, just like with litigation, I think parties generally prefer to settle things behind closed doors. I think the Jack Eichel Saga is evidence of this because reporting indicates that a grievance wasn't considered until late in the Jack Eichel Saga.⁹

AL: Do you think Eichel should have gotten a “third party physician expert” to evaluate his case as he was allowed to under the NHL CBA?

SW: First, I am never going to discourage individuals from getting additional opinions from highly qualified physicians. That being said, in my opinion, it would not have made any difference in Eichel’s ability to establish that “due consideration” was not given to the second opinion’s physicians recommendation.

AL: How did you come up with your proposed amendments to the NHL CBA? Did you get inspiration from any other existing CBA framework? What do you think is the ideal system for second opinions and medical treatment in a national league’s CBA?

SW: As I say in my Note’s conclusion, the NHL and NHLPA have made positive strides towards giving players more medical autonomy in their last two agreements. Importantly, I don’t think the NHL CBA needs to be blown up in order to get the rules to where I think they should be. For this reason, I didn’t consciously take any inspiration from other CBAs.

Accordingly, my recommendations for changes to the NHL CBA in large part came from the text of the current CBA. As I discuss in my Note, there are already procedures for evaluating whether a particular physician should be deemed an approved second opinion physician,¹⁰ and I thought it made sense to make the same rules applicable to disputes related to the adequacy of a particular physician’s recommendations. The crux of my recommendation was that if a second opinion physician is deemed to be qualified under those rules, a player should be permitted to follow their recommendations.

AL: After extensive research on the Eichel saga, what do you think the biggest takeaways or lessons are?

SW: I think the biggest takeaway from the Jack Eichel Saga is simply that people who follow the NHL, and I would assume many players, didn’t have a full understanding of how the NHL CBA restricts a player’s medical autonomy. I think it was a wakeup call for many people. Fortunately, NHL players seem committed to making issues of medical autonomy a priority in the next round of collective bargaining,¹¹ which I obviously support. I think and hope that fans will support these efforts.

That being said, I think it’s hard to say right now what the effects of the Jack Eichel Saga will be until the next round of collective bargaining.

1. ADVANCE \r0 * MERGEFORMAT [1]Shanna McCarriston, Sabres Star Jack Eichel ‘A Bit Upset’ Over How Team Handled Neck Injury, Hints at Uncertain Future in Buffalo, CBS Sports (May 10, 2021, 2:09 PM), <https://www.cbssports.com/nhl/news/sabres-star-jack-eichel-a-bit-upset-over-how-team-handled-neck-injury-hints-at-uncertain-future-in-buffalo/> [https://perma.cc/3ED4-VGVS].

2. Hobey Baker Award, Wikipedia, https://en.wikipedia.org/wiki/Hobey_Baker_Award (last visited Sept. 18, 2023) [<https://perma.cc/NZX9-7FAC>].
3. Id.
4. Bill Hoppe, Maturity Helped Earn Jack Eichel Sabres' Captaincy, Buffalo Hockey Beat, <https://www.buffalohockeybeat.com/maturity-helped-earn-jack-eichel-sabres-captaincy/> (Oct. 4, 2018).
5. Sabres Sign Eichel To 8 Year/\$80M Extension, WGRZ, <https://www.wgrz.com/video/news/local/sabres-sign-eichel-to-8-year80m-extension/71-2749891> (Oct. 4, 2017 5:24 PM) [<https://perma.cc/K7GK-LPMT>].
6. McCarriston, *supra* note 1.
7. Sabres' Jack Eichel changing Agents, Will Now Be Represented By Pat Brisson, Sportsnet, <https://www.sportsnet.ca/nhl/article/sabres-jack-eichel-changing-agents-will-now-represented-pat-brisson/#:~:text=Both%20Fish%20and%20Donatelli%20released,period%2C%22%20the%20statement%20read> (Aug. 27, 2021, 12:52 PM) [<https://perma.cc/38Z6-VEBC>].
8. For simplicity, my Note referred to the current rules binding Eichel, which are drawn from a collective bargaining agreement, memorandum of understanding and other agreements between the NHL and NHLPA, as the "NHL CBA." Collective Bargaining Agreement Between National Hockey League and National Hockey League Players' Association, NHLPA (Feb. 15, 2013), https://cdn.nhlpa.com/img/assets/file/NHL_NHLPA_2013_CBA.pdf [<https://perma.cc/3VUQ-VBRU>]. National Hockey League/National Hockey League Players' Association Memorandum of Understanding, NHLPA-NHL, 42 (July 10, 2020), https://cdn.nhlpa.com/img/assets/file/NHLPA_NHL_MOU.pdf [<https://perma.cc/YJ3M-GLF8>].
9. Jack Eichel Could File Grievance if Situation with Sabres Isn't Resolved, SPORTSNET (Oct. 23, 2021, 9:47 PM), <https://www.sportsnet.ca/nhl/article/jack-eichel-file-grievance-situation-sabres-isnt-resolved/> [<https://perma.cc/HFP3-YLUT>].
10. NHL-NHLPA MOU, *supra* note 47, at 36.
- 11.32 Thoughts: The Podcast, Auston, Texas, SPORTSNE (Apr. 8, 2022), <https://www.podcastrepublic.net/podcast/1332150124> [<https://perma.cc/E4ZG-VPZX>].