

COMMONWEALTH OF KENTUCKY  
MONTGOMERY CIRCUIT COURT

DIVISION \_\_\_\_

CASE NO. 21-CI-\_\_\_\_\_

*Electronically filed*

JON KELLY JOHNSON, D.M.D., as Next Friend for  
DAVIS KELLY JOHNSON

PLAINTIFF

v.

**VERIFIED COMPLAINT**

KENTUCKY HIGH SCHOOL ATHLETIC ASSOCIATION

DEFENDANT

**Serve:**

Kentucky High School Athletic Association  
Julian Tackett, Chief Executive Officer  
2280 Executive Drive  
Lexington, KY 40505

\*\*\*\*\*    \*\*\*\*\*    \*\*\*\*\*

Comes the Plaintiff, Jon Kelly Johnson, D.M.D. (“the Plaintiff” or “Dr. Johnson”), by counsel, and for his Verified Complaint against the Kentucky High School Athletic Association / Athletic Museum Foundation, Inc. (“KHSAA”), states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. The Plaintiff sues as next friend of his son, Davis Kelly Johnson (“Davis”), who is sixteen years old, enrolled at Montgomery County High School (“MCHS”), and a member of the MCHS baseball team.
2. The KHSAA has been designated by, and is the agent of, the Kentucky Board of Education as the sole organization to manage interscholastic athletics in schools that are members in good standing of the KHSAA. (KHSAA Bylaws, Article III, Section (1)(a)).
3. Jurisdiction and venue are proper in this Court pursuant to KRS 452.430 and other law because Davis is threatened with the loss of the ability to participate in KHSAA sports in

this County, because MCHS is a member of the KHSAA, and because this Court has original jurisdiction over this matter.

4. Because the rule that is described below was promulgated by the KHSAA, an agent of the Kentucky Board of Education, notice is hereby given to the Kentucky Attorney General pursuant to CR 24.03 and KRS 418.075.

### FACTUAL ALLEGATIONS

5. Within recent months the KHSAA's Committee on Sports Medicine apparently adopted a "COVID-19 Medical Evaluation and Return-to-Activity Guidance for Middle and High School Student-Athletes," which appears to have been promulgated by the Kentucky Medical Association Medical Aspects of Sports Committee. (See **Exhibit A**).

6. Pursuant to that "Guidance," a student-athlete who is diagnosed with COVID-19 (or who has a presumed diagnosis) but who is asymptomatic must, beginning on the date of receipt of the positive test result ("Day 1"), isolate pursuant to the ten-day "standard isolation period" established by the Center of Disease Control ("CDC"), from Day 2 through Day 11. Then, "Days 12 to Day 15 represent an interim period between the ISOLATION period and the permitted beginning of the Return to Play Protocol."

7. Only after the isolation period and the interim period have been satisfied (and assuming there are no continued symptoms and no doctor's order for a more extended period) may the student-athlete begin the "return to play protocol on Day 16."

8. "The return to play protocol is at minimum six days" and must adhere to day-specific steps.

9. Only on Day 22, and only upon completion of the "KHSAA COVID-19 Return to Play Form," may a student-athlete return to KHSAA practices and/or competitions.

10. The Return to Play Form requires that the athlete undergo and receive a negative cardiac screen for myocarditis/myocardial ischemia.

11. The KHSAA also “recommends” that ECGs, echocardiograms, and hsTroponin be considered for all diagnosed student athletes (even those who were asymptomatic).

12. The KHSAA does not require student athletes to undergo and receive negative cardiac screens prior to participating in KHSAA athletics.

13. The KHSAA’s Return to Play Protocol is inconsistent with the isolation periods recommended by the CDC.

14. The KHSAA’s Return to Play Protocol is inconsistent with the protocols that have been adopted and observed by numerous other organized athletic associations, including Major League Baseball (MLB), National Football League (NFL), National Basketball Association (NBA), and the Southeastern Conference (SEC) and its school members like University of Kentucky (UK) and University of Alabama (UA).

15. Based on information and belief, the KHSAA’s Return to Play Protocol is inconsistent with the protocol adopted and observed by the KHSAA for fall high school and middle school sports, including football, basketball, and wrestling.

16. Davis’s expectation and intention is to apply for athletic scholarships for college.

17. Davis’s ability to show college recruiters his statistics for the Spring 2021 baseball season will obviously be important to his ability to obtain such scholarships.

18. All spring KHSAA sports, including baseball, were cancelled in 2020.

19. Davis has therefore already lost one year of his four years of eligibility for KHSAA athletics.

20. The KHSAA's Return to Play Protocol will result in real injury to Davis (and to all student athletes participating in KHSAA athletics), in the form of the serious risk of the loss of his ability to participate in a KHSAA sport and the resulting risk to his eligibility for college athletic scholarships.

### **COUNT I – DECLARATORY RELIEF**

21. Each of the foregoing allegations is incorporated as if fully set forth herein.

22. An actual controversy exists between the parties as to the constitutionality and enforceability of the KHSAA's Return to Play Protocol.

23. Pursuant to KRS 418.040, the Plaintiff requests that the Court declare the KHSAA's Return to Play Protocol to be unconstitutional, vague and void.

24. This dispute is not moot or premature, but is capable of repetition, evading review, and is a matter of great public interest.

### **COUNT II –DUE PROCESS VIOLATION**

25. Each of the foregoing allegations is incorporated as if fully set forth herein.

26. The KHSAA's Return to Play Protocol is not supported by substantial evidence and does not bear a reasonable or rational relationship to any legitimate state interest, and is therefore arbitrary and capricious and in violation of the Plaintiff's constitutional rights.

27. On information and belief, enforcement of the Return to Play Protocol will result in the cancellation of numerous games, and possibly entire seasons, for KHSAA spring sports, including baseball.

28. The enforcement of the Return to Play Protocol will cause Davis to suffer an injury in fact because he will lose the opportunity to participate in KHSAA athletics for some unknown period of time (but possibly for an entire season), putting at risk his eligibility for

college athletic scholarships, and this injury is likely to be avoided or redressed by a favorable judgment in this action.

29. The spring sports were cancelled or terminated early for the 2020 spring season, and thus this may impact the entirety of the 2021 season.

### **COUNT III – VIOLATION OF SECTION 2 OF THE KENTUCKY CONSTITUTION**

30. Each of the foregoing allegations is incorporated as if fully set forth herein.

31. For the reasons set forth above, the KHSAA's Return to Play Protocol is arbitrary, capricious, vague and unreasonable, in violation of Section 2 of the Kentucky Constitution.

### **COUNT IV – TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

32. Each of the foregoing allegations is incorporated as if fully set forth herein.

33. The KHSAA's Return to Play Protocol will violate Davis's rights (including but not limited to his due process right and right to be free from arbitrary and capricious government action), and he will suffer immediate and irreparable injury, loss, or damage pending a final judgment in this action.

34. Pursuant to CR 65.01 and CR 65.04, Davis is entitled to a temporary and permanent injunction against the enforcement of the KHSAA's Return to Play Protocol.

WHEREFORE, the Plaintiff respectfully requests that the Court enter a judgment in his favor in all respects, including Declaratory relief that the KHSAA is and has acted arbitrarily and capriciously in violation of Plaintiff's rights and for an order preventing the enforcement of any protocol that is inconsistent with the then-present CDC guidelines; for recovery of all attorneys' fees and costs incurred; a trial by jury; and all other relief to which they appear to be entitled.

Respectfully submitted,

MILLER, GRIFFIN & MARKS, PSC  
271 West Short Street, Suite 600  
Lexington, Kentucky 40507-1292  
Telephone: (859) 255-6676  
Fax #: (859) 259-1562

BY: \_\_\_/s/ Carroll M. Redford, III \_\_\_  
CARROLL M. REDFORD, III  
e-mail: [cmr@kentuckylaw.com](mailto:cmr@kentuckylaw.com)  
ATTORNEYS FOR PLAINTIFF

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Presiding Judge: HON. DAVID A. BARBER (621401)

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VERIFICATION

I have read the foregoing Complaint and associated Motion and the allegations and claims set forth therein are true and correct to the best of my information and knowledge.

  
\_\_\_\_\_  
Jon Kelly Johnson, D.M.D

STATE OF KENTUCKY

COUNTY OF Montgomery

Subscribed, sworn to and acknowledged before me by Jon Kelly Johnson, D.M.D., on the 19<sup>th</sup> day of February, 2021.

Commission expires: March 15, 2023

ID#: 619119

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

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Presiding Judge: HON. DAVID A. BARBER (621401)

COM : 000007 of 000007



**Commonwealth of Kentucky**  
**Tanya Terry, Montgomery Circuit Clerk**

**Case #:** 21-CI-90037

**Envelope #:** 3202622

**Received From:** CARROLL REDFORD

**Account Of:** CARROLL REDFORD

**Case Title:** JOHNSON, DMD, JON KELLY VS. KENTUCKY

**Confirmation Number:** 120878502

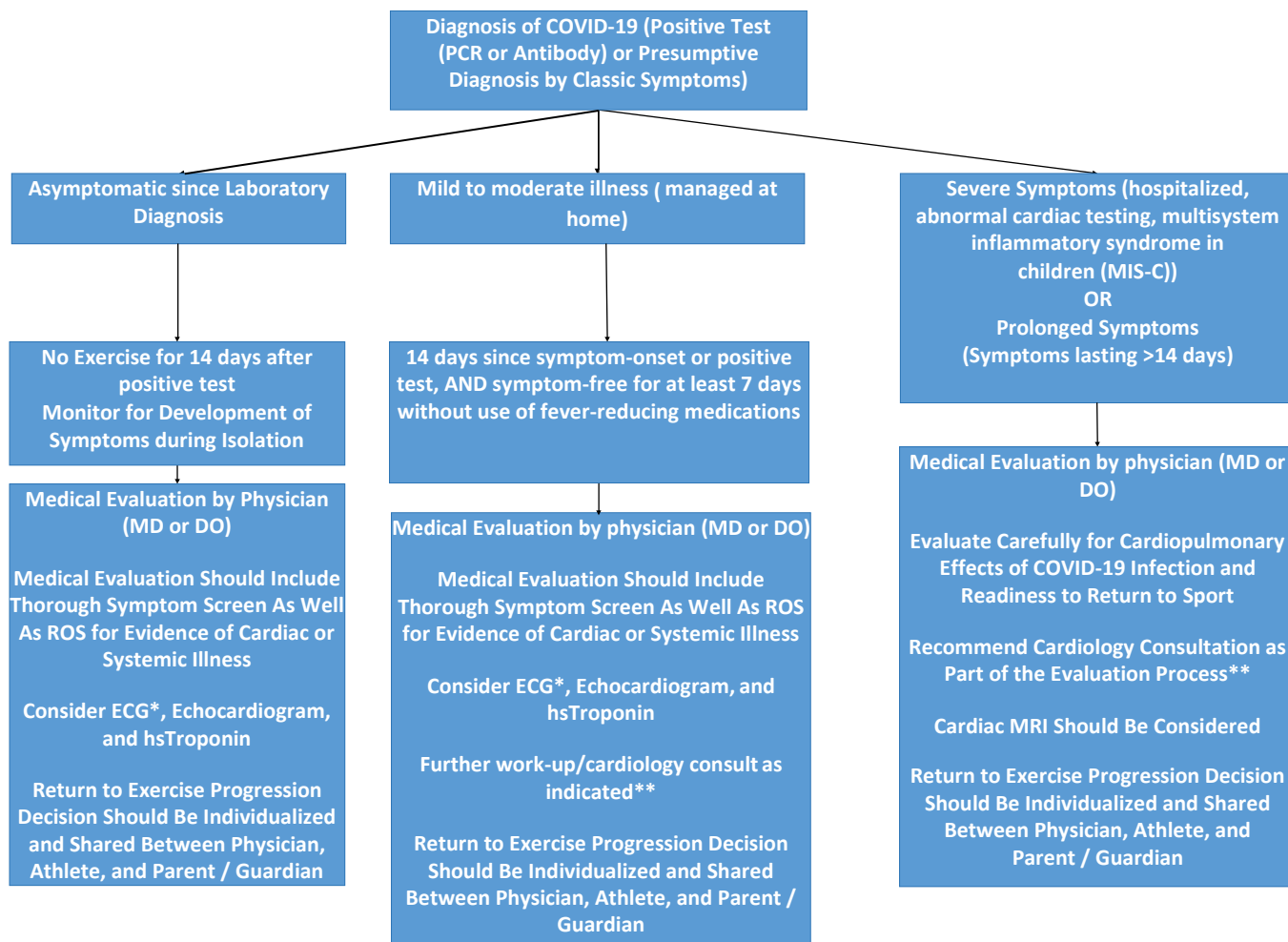
**HIGH SCHOOL ATHLETIC AS**  
 Filed On 2/19/2021 3:22:21PM

<b>#</b>	<b><u>Item Description</u></b>	<b><u>Amount</u></b>
1	Access To Justice Fee	\$20.00
2	Civil Filing Fee	\$150.00
3	Money Collected For Others(Court Tech. Fee)	\$20.00
4	Library Fee	\$1.00
5	Court Facilities Fee	\$25.00
6	Money Collected For Others(Attorney Tax Fee)	\$5.00
7	Charges For Services(Jury Demand / 12)	\$70.00
	<b>TOTAL:</b>	<b>\$291.00</b>

51B90330-31C5-4DF4-9C09-B38727C34BD2 : 000008 of 000013



## KMA Committee on Sports Medicine COVID-19 Medical Evaluation and Return-to-Activity Guidance for Middle and High School Student-Athletes



1) Drezner J.A., et al. (2020). Cardiopulmonary Considerations for High School Student-Athletes During the COVID-19 Pandemic: NFHS-AMSSM Guidance Statement." *Sports Health Available Free Online at <https://journals.sagepub.com/doi/full/10.1177/1941738120941490>. (Updated August 2020)*

2) Cardiac Considerations for Student-Athletes during the COVID-19 Pandemic Available Free Online at [https://www.amssm.org/Content/pdf\\_files/COVID19/NCAA-COVID-19-Algorithm-12-AUG-2020.pdf](https://www.amssm.org/Content/pdf_files/COVID19/NCAA-COVID-19-Algorithm-12-AUG-2020.pdf)

\* ECG changes suggestive of myocarditis include: diffuse ST elevation, ST depression, T wave inversion, pathologic Q waves, and PR depression

\*\*Testing considerations: ECG, hs-Tn, Echo, Cardiac MRI, Holter, Stress test, Chest X-ray, Spirometry, PFTs, D- dimer, and Chest CT as Indicated

APPROVED BY KMA COMMITTEE ON MEDICAL ASPECTS OF SPORTS, 8/19/20

<b>KMA Committee on Sports Medicine: Return to Activity (RTA) Protocol After COVID-19 Infection</b>
<p>Any return to play should be preceded by a gradual and progressive return to physical exertion. Athletes should complete the progression below without the development of cardiopulmonary symptoms (chest pain, chest tightness, palpitations, shortness of breath, excessive fatigue, lightheadedness, pre-syncope, or syncope). Monitor the student-athlete closely for the development of any symptoms during this active progression. If any symptoms develop, the athlete should stop exertion immediately and be referred back to the evaluating physician for consideration of additional evaluation, including cardiology consultation, before resuming activity.</p>
<ul style="list-style-type: none"> <li>• <b>Step 1: (2-Days Minimum)</b> Light activity (walking, jogging, stationary bike) for 15 minutes or less at intensity no greater than 70% of maximum heart rate. NO resistance training</li> <li>• <b>Step 2: (1-day minimum)</b> Add simple movement activities (For example, running drills) for 30 minutes or less at intensity no greater than 80% of maximum heart rate</li> <li>• <b>Step 3: (1-day minimum)</b> Progress to more complex training for 45 minutes or less at intensity no greater than 80% maximum heart rate. May add light resistance training.</li> <li>• <b>Step 4: (2-days minimum)</b> Normal training activity for 60 minutes or less at intensity no greater than 80% maximum heart rate</li> <li>• <b>Step 5: Return to full activity</b></li> </ul>
<p><i>*RTA Protocol adapted from Elliott N, et al. Infographic. British Journal of Sports Medicine, 2020.</i></p>

**Disclaimer:** This document is provided for physicians who may evaluate and treat student-athletes diagnosed with COVID-19 infection. The information contained herein is based on the compilation and summary of expert recommendations of national and international sports medicine organizations.

The Kentucky Medical Association (KMA) is not engaged in rendering medical advice or professional services and expresses no opinion as to the feasibility, applicability, or impact to your particular practice. References and links to third parties do not constitute an endorsement or warranty by the KMA, and KMA hereby disclaims all express and implied warranties of any kind. The information is not intended or implied to be a substitute for professional medical advice, diagnosis, or treatment. Instead, appropriate professional judgment, consultation with specialists and other resources, independent verification, and individualization of patient care should guide physicians in patient diagnosis and treatment decisions. Therefore, the use of this information is voluntary, and reliance on it should only be undertaken after an independent review of its accuracy, completeness, efficacy, and timeliness.

APPROVED BY KMA COMMITTEE ON MEDICAL ASPECTS OF SPORTS, 8/19/20



### KHSAA COVID-19 Return to Play Form

If an athlete has tested positive or was presumed positive for COVID-19 based on symptoms, he/she should rest from physical activity for at least 14 days beginning the day following the onset of symptoms or positive test results. He/she must then be cleared for progression back to activity by an approved health care provider (MD/DO). Any return to activity should follow the recommended Return to Play (RTP) Progression described below and illustrated on the back of this form.

Athlete's Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Date of Positive Test: \_\_\_\_\_

#### THIS RETURN TO PLAY IS BASED ON TODAY'S EVALUATION

Date of Evaluation: \_\_\_\_\_

Criteria to return to be completed by MD or DO. (Please check below as applies)

- 14 days have passed since the onset of symptoms or a positive test (starting the day following the onset of symptoms or the receipt of the results of positive test)
- All symptoms (cough, shortness of breath, fever (≥100.4F), etc.) have resolved for at least 7 days without use of fever reducing medication AND
- The athlete was not hospitalized due to COVID-19 infection.
- PLUS Cardiac screen negative for myocarditis/myocardial ischemia (All answers below must be NO)
 

Chest pain/tightness with exercise	YES		NO	
Unexplained Syncope/near syncope	YES		NO	
Unexplained/excessive dyspnea/fatigue w/exertion	YES		NO	
New palpitations	YES		NO	
Heart murmur on exam	YES		NO	

**NOTE: If any cardiac screening question is positive or if athlete had greater than mild symptoms during the illness, consider further workup as indicated. Additional workup may include ECG, Echocardiogram, High Sensitivity Troponin, Cardiac MRI, Cardiology Consultation, CXR, Spirometry, PFTs, Chest CT, etc.**

- The athlete HAS satisfied the above criteria and IS cleared to start the return to activity procedures (RTP).
- The athlete HAS NOT satisfied the above criteria and IS NOT cleared to return to activity

#### Medical Office Information (Please Print/Stamp):

Evaluator's Name: \_\_\_\_\_ MD or DO

Evaluator's Address: \_\_\_\_\_

Office Phone: \_\_\_\_\_

Evaluator's Signature: \_\_\_\_\_

#### Return to Play (RTP) Procedures After COVID-19 Infection

Athletes must complete the progression below without development of chest pain, chest tightness, palpitations, lightheadedness, pre-syncope or syncope. If these symptoms develop, patient should be referred back to the evaluating provider who signed the form. This progression cannot begin prior to the 14<sup>th</sup> day following the onset of symptoms or the receipt of the results of a positive test.

- **Stage 1: (2 Days Minimum)** Light activity (walking, jogging, stationary bike) for 15 minutes or less at intensity no greater than 70% of maximum heart rate. NO resistance training.
- **Stage 2: (1 Day Minimum)** Add simple movement activities (For example, running drills) for 30 minutes or less at intensity no greater than 80% of maximum heart rate
- **Stage 3: (1 Day Minimum)** Progress to more complex training for 45 minutes or less at intensity no greater than 80% maximum heart rate. May add light resistance training.
- **Stage 4: (2 Days Minimum)** Normal training activity for 60 minutes or less at intensity no greater than 80% maximum heart rate
- **Stage 5: Return to full activity**

Cleared for Full Participation ): \_\_\_\_\_

*RTP Procedure adapted from Elliott N, et al. Infographic. British Journal of Sports Medicine, 2020.*

**ISOLATION PARAMETERS AND EXAMPLE (STUDENT-ATHLETE WITH A POSITIVE TEST)****SYMPTOMS**

- Per CDC, the primary symptoms of COVID-19 are- Fever (above 100.4) or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, the new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea, trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake and bluish lips or face.

*NOTE: Any individual showing signs of trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake and bluish lips or face should seek emergency medical attention immediately!*

**DAY 1**

- For a student-athlete testing positive for COVID-19, Day 1 is the first day of showing symptoms if such student-athlete shows symptoms as listed above.
- For a student-athlete not showing any of the above symptoms but testing positive for the COVID-19, the date of receipt of the positive test results is Day 1.

**ISOLATION PERIOD (This period may not be shortened by any amount of testing (PCR or other), even if such test produces a negative result)**

- The CDC standard isolation period is ten (10) days starting the day after Day 1.
- Isolation for the student using the CDC parameters would be at minimum Day 2 through Day 11.
- Per CDC, for most persons with COVID-19 illness, isolation and precautions can generally be discontinued ten (10) days after symptom onset and resolution of fever for at least 48 hours (without the use of fever-reducing medications) and with improvement of other symptoms.
- This ten (10) day period would then be the minimum isolation period, and no negative test during the interim can shorten this period.
- Per CDC, a limited number of persons with severe illness may produce replication-competent virus beyond ten (10) days that may warrant extending duration of isolation and precautions for up to 20 days after symptom onset; consider a consultation with infection control experts.

**INTERIM PERIOD**

- Days 12 to Day 15 represent an interim period between the ISOLATION period and the permitted beginning of the Return to Play protocol.
- The interim period should be extended in the event that there has not been resolution of fever for at least 48 hours (without the use of fever-reducing medications) and there has not been improvement of other symptoms
- Practitioners may choose to use this period for additional analysis or diagnostic testing or supplemental rest for the student-athlete; however, the Return to Play protocol may not begin during this period.

**STEP-WISE RETURN TO PLAY (This period may not be shortened, but any and all segments may be extended by order of the attending physician)**

- If the isolation and interim periods have been satisfied, and absent any continued symptoms as listed above, and absent a doctor's order for a more extended period, the student-athlete could begin the stepwise return to play protocol on Day 16.
- The return to play protocol is at minimum six days per the KMA recommendation as detailed at <https://bit.ly/3j6k3Jw> and with the authorization of a physician (MD or DO)
  - Step 1: (2-Days Minimum, days 16 and 17 at minimum) Light activity (walking, jogging, stationary bike) for 15 minutes or less at intensity no greater than 70% of maximum heart rate. NO resistance training
  - Step 2: (1-day minimum, day 18 at minimum) Add simple movement activities (For example, running drills) for 30 minutes or less at intensity no greater than 80% of maximum heart rate
  - Step 3: (1-day minimum, day 19 at minimum) Progress to more complex training for 45 minutes or less at intensity no greater than 80% maximum heart rate. May add light resistance training.
  - Step 4: (2-days minimum, days 20 and 21 at minimum) Normal training activity for 60 minutes or less at intensity no greater than 80% maximum heart rate.
  - Step 5: Return to full activity (day 22, including Day 1 with physician authorization (MD or DO).

**References:**

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>

[https://education.ky.gov/comm/Documents/Safety%20Expectations\\_FINAL%20DOC.pdf](https://education.ky.gov/comm/Documents/Safety%20Expectations_FINAL%20DOC.pdf)

<https://khsaa.org/resources/Covid19/CovidResumptionofSports/kma-covid-rtp-algorithm.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>



**CIVIL SUMMONS**

*Plaintiff, JOHNSON, DMD, JON KELLY VS. KENTUCKY HIGH SCHOOL ATHLETIC AS, Defendant*

**TO: KENTUCKY HIGH SCHOOL ATHLETIC ASSOCIATION  
JULIAN TACKETT, CHIEF EXECUTIVE OFFICER  
2280 EXECUTIVE DRIVE  
LEXINGTON, KY 40505**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Montgomery Circuit Clerk  
Date: **2/19/2021**

**Proof of Service**

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_ Served By

\_\_\_\_\_ Title

