



THE FOOTBALL PLAYERS
HEALTH STUDY
AT HARVARD UNIVERSITY

Protecting and Promoting the **Health of NFL Players:** Legal and Ethical Analysis and Recommendations

Part 1: **Players**

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Chapter 1

Players



The heart of this Report is about protecting and promoting player health. No one is more central to that goal than players themselves. Therefore, it is important to understand who they are and what they are doing concerning their own health and the health of their NFL brethren with regard to behaviors with both positive and negative effects. That said, as we emphasized in the Introduction, players are making choices against a constrained set of background conditions, pressures, and influences, and sometimes with limited expertise and information, all of which can affect their capacity to optimally protect their own health, especially given potentially competing interests. Thus, while they are competent adults with a bevy of responsibilities to protect themselves, they cannot do it alone. Players must be treated as partners in advancing their own health by offering them a variety of support systems to do so, recommendations for which will be accompanied by others geared toward other stakeholders.

As discussed in the Description of Legal and Ethical Obligations Section of the Introduction, to better inform our understanding of players and all of the stakeholders and issues discussed in this Report, we conducted approximately 30-minute interviews with 10 players active during the 2015 season and 3 players who recently left the NFL (the players' last seasons were 2010, 2012, and 2012 respectively).^a The players interviewed were part of a convenience sample identified through a variety of methods—some were interested in The Football Players Health Study more generally, some we engaged through the Law and Ethics Advisory Panel (LEAP) and Football Players Health Study Player Advisors, and some interviews were facilitated by a former player that now works for the National Football League Players Association (NFLPA). The players interviewed had played a mean of 7.5 seasons, with a range of 2 to 15 seasons, and for a mean of between 3 and 4 different clubs (3.4 clubs), with a range of 1 to 10 clubs. In addition, we interviewed players from multiple positions: one quarterback; two fullbacks; one tight end; three offensive linemen; two linebackers; one defensive end; two safeties; and, a special teams player (but not a kicker, punter or long snapper). We aimed for a racially diverse set of players to be interviewed: seven were white and six were African American. Finally, the players also represented a range of skill levels, with both backups and starters, including four players who had been named to at least one Pro Bowl team.

In addition to these more formal interviews, we engaged in informal discussions and interviews with many other current and former players to understand their perspectives. The interviews and discussions were not intended to be representative of the entire NFL player population or to draw scientifically valid inferences, and should not be read as such, but were instead meant to be generally informative of the issues discussed in this Report.^b We provide anonymous quotes from these interviews throughout the Report, and urge the reader to keep that caveat in mind throughout. We also invited all 13 players that we interviewed to review a draft of this chapter prior to publication. While seven of the players agreed to review a draft, only three provided comments.

(A) Background

Each NFL club's roster has 53 players eligible to play each week, reduced to 46 active players on game days.¹ In addition, clubs are permitted to have a nine man practice squad,² injured players may be placed on the Injured Reserve or Physically Unable to Perform (PUP) lists, and suspended players may be placed on the Reserve/Suspended list.³ In total, NFL clubs are permitted to have rosters of up to 80 players during the season.⁴ Indeed, during an NFL season, clubs routinely approach the 80 player limit.⁵ According to official NFL and NFLPA playtime figures, in 2015, 2,251 players played in at least one regular season NFL game.⁶

The age range of NFL players is narrow. On any given NFL club, the vast majority of players are in their 20s, while approximately 20 percent are in their 30s.⁷ In the NFL's 94-year history, only 56 players have ever played after the age of 40.⁸

NFL players are generally either white or African American. According to the University of Central Florida's *2015 Racial and Gender Report Card*, of the 2,877 players employed by NFL clubs in 2014, 1,957 (68.0 percent) were African American, 813 were white (28.3 percent), 31 were Asian (1.1 percent), 19 were Latino (0.7 percent), 27 were other races (0.9 percent), and 30 were described as "international" (1.0 percent).^{9c} Individuals' relationships with their doctors and the medical community are always filtered through the lens of their cultural and other experiences. The strong African American demographic may be noteworthy in the context of player health, given that there is some evidence to suggest that race may be correlated with distrust of the medical profession and medical establishment, although this may be mediated by a variety of factors, including geography and socioeconomic status.¹⁰

NFL players come from almost every state in the country.¹¹ As might be expected and according to an analysis done by *Sporting News*, the states that have produced the most players are among the largest and with the highest populations: (1) California (225 players in 2013); (2) Florida (186); (3) Texas (184); (4) Georgia (95); (5) Ohio (74);

^a The protocol for these interviews was reviewed and approved by a Harvard University Institutional Review Board.

^b We have also undertaken a "Listening Tour" of former players, current players, and their family members to better understand their perspectives and the issues affecting them, but the results of that research are not yet available.

^c The approximate 600 player difference between the NFL/NFLPA playtime figure and that of the University of Central Florida can be explained by the number of players on preseason rosters, which can be as large as 90 players. See Marc Sessler, *NFL Increases Off Season Roster Limit to 90 players*, NFL.com (April 23, 2012, 7:19 PM), <http://www.nfl.com/news/story/09000d5d82889dda/article/nfl-increases-offseason-roster-limit-to-90-players>, archived at <http://perma.cc/VM5A-SNL8>. The 90-man preseason roster is reduced to 53 during the regular season, not including the Injured Reserve, Physically Unable to Perform and Reserve/Suspended lists. Thus, each preseason, there are hundreds of players who do not make the club and will not play in the regular season.

(6) New Jersey (63); (7) Louisiana (62); (8) Pennsylvania (58); (9) South Carolina (54); and, (10) Virginia (50).¹²

While all players attended college, it is unclear how many are college graduates.^d Many (if not most) players stop attending college once their senior season is complete, spending the spring preparing for the NFL Draft rather than attending classes. However, many take online classes or return in the offseason to try and complete their degree. A 2009 NFL-funded study of *former* NFL players by the University of Michigan (“Michigan Study”) provides some data.¹³ The Michigan Study, conducted through telephone interviews of 1,063 former NFL players,¹⁴ found that 56.8 percent of former players between the ages of 30 and 49 obtained their college degree before or during their NFL careers.¹⁵ Another 12.4 percent obtained their degree after their career, for a total of 69.2 percent of former players who obtained a college degree.¹⁶ By comparison, only 30.0 percent of American men between the ages of 30 and 49 have a college degree.¹⁷

The Michigan Study also found that 76.3 percent of former players between the ages of 30 and 49 were married before or during their NFL careers.¹⁸

There are two potential limitations to the Michigan Study. First, the Michigan Study population only included players that had vested rights under the NFL’s Retirement Plan, meaning the players generally had been on an NFL roster for at least three games in at least three seasons. There is likely a significant but unknown percentage of NFL players that never become vested under the Retirement Plan. Second, responders to the survey were 36.8 percent African American and 61.4 percent white—almost a complete reversal of the NFL’s population of current players. While the racial demographics of former players is likely closer to the population of the Michigan Study, *i.e.*, there were more white players than in the current NFL, the Michigan Study did not provide such data on the former player population and did not adjust or account for the racial demographics of the former player population. In a telephone call with Dr. David Weir, the lead author of the Michigan Study, he explained that: (1) due to limited resources, the population of players to be studied and contacted was restricted to the data and contact information available to and provided by the NFL; and, (2) the NFL did not provide racial demographics of former players and thus the study could not adjust for that factor. Weir also believes that the racial demographics of former players is substantially similar

to the racial demographics of the Michigan Study’s participants. Finally, Weir explained that, during the internal review process with the NFL, the study was leaked to the media, preventing the study from being amended and submitted to a peer-reviewed publication.

According to official NFL and NFLPA playtime figures, in 2015, 2,251 players played in at least one regular season NFL game.

The NFL and NFLPA disagree on the mean career length of NFL players. The NFLPA has long stated that the mean career is about 3.2 years.¹⁹ The NFL insists players’ mean career length is about 6 years.²⁰ The difference arises from which population of players is being examined. The NFLPA seems to include in their calculation every player who ever signed a contract with an NFL club, regardless of whether they ever make it into the club or play in an NFL regular season game, while also including players who are still active (and whose careers will thus exceed their current length).²¹ On the other hand, the NFL’s calculation comes from players who made the opening day roster and played between 1993 and 2002, a slightly different era from today’s NFL.²² The website sharpfootballanalysis.com ultimately found that players who were drafted between 2002 and 2007 have a mean NFL career length of 5.0 years.^{23,e}

The different career lengths also lead to different estimates of mean career earnings. Based on a mean career length of approximately 3 years, the NFLPA has estimated that the mean career earnings of an NFL player are \$4 million after taxes.²⁴ Using a mean salary of \$1.9 million and a mean career length of 3.5 years, others have estimated NFL players earn about \$6.7 million in their careers, a figure largely on par with that of the NFLPA’s.²⁵ However, one

^d A player is not eligible for the NFL Draft “until three NFL regular seasons have begun and ended following either his graduation from high school or graduation of the class with which he entered high school, whichever is earlier.” 2011 CBA, Art. 6 § 2(b). Thus, all NFL players attend college of some kind.

^e A 2016 *Wall Street Journal* article estimated that the average career of an NFL player between 2008 and 2014 was 2.66 years. Rob Arthur, *The Shrinking Shelf Life of NFL Players*, Wall St. J., Feb. 29, 2016, <http://www.wsj.com/articles/the-shrinking-shelf-life-of-nfl-players-1456694959>, archived at <https://perma.cc/F68T-WVAH>. However, we have several questions about the methodology used to generate this statistic, including: (1) The analysis does not describe its inclusion criteria, *i.e.*, if the analysis included everyone who ever signed an NFL contract, even if they never played in a regular season game, the estimated average career length would be shorter; (2) It is unclear how players were counted who were still playing at the time of the analysis, but who also played between 2008 and 2014, *i.e.*, if a player began play in 2014 the analysis might have calculated his career length as only 1 season, when he might in fact have played 5 or 10 more seasons. This too would have caused the average estimated career to be shorter than is actually the case.

can clearly see that if one uses a longer mean career length, the mean career earnings can increase by several million dollars. Finally, it is important to point out that the mean in this case does not reflect the median career earnings of NFL players, *i.e.*, the career earnings of your typical NFL player.

Next, it is important to understand the different aspects of player health that we are looking to improve, including both physical and mental health.

1) PLAYERS AND PHYSICAL HEALTH

In 1980, the NFL created the NFL Injury Surveillance System (NFLISS) to document, track, and analyze NFL injuries and provide data for medical research.²⁶ When an injury occurs, the club's athletic trainer is responsible for opening an NFLISS injury form and recording the medical diagnosis (including location, severity, and mechanism of injury) and details about the circumstances (date, game or practice, field surface) in which it occurred.²⁷ Prior to 2015, a reportable injury was defined as only those associated with any time lost from practice or games, football-related or not, or specific conditions regardless of time lost, including but not limited to concussions, fractures, dental injuries requiring treatment, health-related illness requiring intravenous fluid administration, and injuries or illness requiring special equipment (*e.g.*, a knee brace). Beginning with the 2015 season, all injuries, regardless of whether or not they result in time lost from practice or games, are included in the NFLISS.²⁸ The athletic trainer is required to update the injury form with details about all medical treatments and procedures the player receives, including surgery.²⁹ Since 2011, the NFLISS has been managed by the international biopharmaceutical services firm Quintiles.³⁰ Quintiles provides injury data and reports to the NFL and NFLPA throughout the year.³¹

The NFLISS provides the best available data concerning player injuries and thus we use it here. Although the NFL's

past injury reporting and data analysis have been publicly criticized as incomplete, biased, or otherwise problematic, those criticisms have been made about studies separate from the NFLISS³² and we are not aware of any criticism of the NFLISS.^f

The tables below compile NFLISS data on player injuries. We pulled aggregate statistics from various reports containing NFLISS data and performed simple calculations to arrive at mean figures. The NFL also provided the most recent NFLISS data. In considering these data, it is important to know that the NFL's injury reporting systems have undergone substantial change in recent years. An electronic version of the NFLISS was launched as a pilot with five clubs in 2011;³³ the electronic NFLISS expanded to all 32 clubs in 2012;³⁴ then, in 2013, the NFL launched an electronic medical records ("EMR") system on a pilot basis with eight NFL clubs, which was expanded to all clubs in 2014.³⁵ The EMR system integrates with the NFLISS and provides the most accurate injury reporting data in NFL history. Consequently, the different reporting structures over time almost certainly contributed to fluctuations in the injury rates identified below. Therefore, it is not possible to be certain whether injury *rates* have increased in recent years, or if, instead, the increases are due to improved injury *reporting*. Similarly, increased attention to player injuries in recent years, concussions in particular, might also lead to higher reported injury totals.^g

^f Other studies of NFL injury rates have been conducted using the clubs' publicly released injury reports. See, *e.g.*, David W. Lawrence, Paul Comper, and Michael G. Hutchison, *Influence of Extrinsic Risk Factors on National Football League Injury Rates*, Orthopaedic J. Sports Med. (2016); David W. Lawrence, Paul Comper, and Michael G. Hutchison, *Descriptive Epidemiology of Musculoskeletal Injuries and Concussions in the National Football League, 2012–2014*, Orthopaedic J. Sports Med. (2015). While these studies provide interesting analyses, NFL injury reports are not the best data source, for reasons discussed in Chapter 17: The Media.

^g The costs of treating a player's injury are almost always covered by the club, as is discussed in Chapter 2: Club Doctors and Chapter 4: Second Opinion Doctors.



Table 1-A:**Number of Practice, Game and Total Injuries in NFL Preseason (2009–2015)**

Year	Number of Practice Injuries	Number of Game Injuries	Total Injuries
2009	551	360	911
2010	560	410	970
2011	641	399	1,040
2012	675	431	1,106
2013	688	416	1,104
2014	823	503	1,326
2015	780	498	1,278
Totals	3,138	2,016	7,735

Table 1-B:**Mean Number of Practice, Game and Total Injuries in NFL Preseason (2009–2015)**

Mean Number of Practice Injuries	Mean Number of Game Injuries	Mean Number of Total Injuries
623.0	403.2	1026.8

Table 1-C:**Number of Practice, Game and Total Injuries, and Mean Number of Injuries Per Game in NFL Regular Season (2009–2015)^h**

Year	Number of Practice Injuries	Number of Game Injuries	Total Regular Season Injuries	Injuries per Regular Season Game
2009	165	1,372	1,537	5.36
2010	176	1,346	1,522	5.25
2011	295	1,426	1,721	5.57
2012	262	1,380	1,642	5.39
2013	264	1,500	1,764	5.86
2014	401	1,823	2,224	7.12
2015	336	1,730	2,066	6.76
Totals	1,899	10,577	12,476	N/A

^h Each year, there are 256 regular season NFL games. Thus, the injuries per regular season game statistic is derived by dividing the "number of game injuries" by 256.

Table 1-D:

Mean Number of Practice, Game and Total Injuries, and Mean Number of Injuries Per Game in NFL Regular Season (2009–2015)ⁱ

	Mean Number of Practice Injuries	Mean Number of Game Injuries	Mean Number of Total Regular Season Injuries	Mean Number of Injuries per Regular Season Game
	271.3	1,511.0	1,782.3	5.90

Table 1-E:

Number of Practice, Game and Total Concussions, and Mean Number of Concussions Per Game in NFL Regular Season (2009–2015)

Year	Number of Practice Concussions (Pre- And Regular Season)	Number of Preseason Game Concussions	Number of Regular Season Game Concussions	Total Concussions	Concussions per Regular Season Game
2009	25	40	159	224	.62
2010	45	50	168	263	.66
2011	37	48	167	252	.65
2012	45	43	173	261	.68
2013	43	38	148	229	.58
2014	50	41	115	206	.45
2015	38	52	182	272	.71
Totals	283	312	1,112	1,707	N/A

Table 1-F:

Mean Number of Practice, Game and Total Concussions, and Mean Number of Concussions Per Game in NFL Regular Season (2009–2015)

Mean Number of Practice Concussions (Pre- And Regular Season)	Mean Number of Preseason Game Concussions	Mean Number of Regular Season Game Concussions	Mean Number of Total Concussions	Mean Number of Concussions per Regular Season Game
40.4	44.6	158.9	243.9	.62

ⁱ Each year, there are 256 regular season NFL games. Thus, the mean number of injuries per regular season is derived by dividing the “mean number of game injuries” by 256.

Table 1-G:

Number of Regular Season Game Concussions Per Player, and Mean Number of Regular Season Game Concussions Per Player Per Season (2009–2015)^j

Year	Number of Regular Season Game Concussions	Number of Regular Season Players	Rate of Concussions per Player-Season
2009	159	2,123	0.075
2010	168	2,187	0.077
2011	167	2,144	0.078
2012	173	2,183	0.079
2013	148	2,188	0.067
2014	115	2,202	0.052
2015	182	2,251	0.081
Totals/Rate	1,112	15,278	0.073

In considering the mean number of concussions per player-season, it is important to point out that the number of players who played in a regular season NFL game includes both players who played all 16 games in a season and those who

played only 1 game in a season. Thus, while there is a mean of 0.073 concussions per player per regular season, the mean is likely different for different populations, *i.e.*, depending on how many games a player played in that season.

Table 1-H:

Concussion Incidence by Player Position in the Regular Season (2013)

Position	2013
Offensive Line	19
Running Back	15
Tight End	16
Quarterback	6
Wide Receiver	17
Offense Total	73 (49.3%)
Defensive Secondary	25
Defensive Line	12
Linebacker	11
Defense Total	48 (32.4%)
Special Teams Total	27 (18.2%)

^j The number of regular season players was obtained from official NFL and NFLPA playtime figures. To be clear, these statistics only include players who played in a regular season game and thus does not include players who only played in the preseason.

Table 1-I:**Mean Number of Injuries Per Play, NFL Regular Season Games (2013)^k**

Total Number of Injuries	Total Number of Plays	Mean Number of Injuries per Play
1,500	43,090	0.035 injuries/play

While the above tables present some information concerning NFL player injuries, it is not complete. The 2015 season-end injury report from Quintiles contains data and information on other player injuries and related issues. However, we were not permitted to include that data and information in the Report. The NFLPA provided us with the 2015 season-end injury report from Quintiles but, pursuant to the terms of The Football Players Health Study—NFLPA agreement, identified the report as confidential and would not permit use of the data in this Report. The NFLPA considered the document confidential in light of alleged “player privacy concerns and regulations governing disclosure of protected health information.” The NFL, in denying our request for the 2015 Quintiles report, similarly claimed that the data “is confidential and might impact individual player privacy concerns.”³⁶ We do not agree with such concerns. The data we requested is de-identified aggregate data that does not implicate the personal medical records of any player. Additionally, the Health Insurance Portability and Accountability Act (HIPAA), which the NFLPA seems to be referencing, has no relevance here as neither we nor the NFLPA are covered entities under HIPAA.³⁷ Moreover, if HIPAA concerns were present in the manner the NFLPA suggests, the NFLPA would have potentially already violated HIPAA by providing us the report, regardless of whether we incorporated the data in our Report. Finally, the above tables incorporate data from the 2013 season-end Quintiles report. The 2013 season-end report was provided by the NFLPA, and it never indicated that we could not use those data in this Report for confidentiality reasons or otherwise. It is regrettable that both the NFL and NFLPA are not providing players with all data and information concerning player health that is in their possession. In Recommendation 7:1-C, we recommend that the NFL, and to the extent possible, the NFLPA, should: (a) continue to improve its robust collection of aggregate injury data; (b) continue to have qualified professionals analyze the injury data; and (c) make the data publicly available for re-analysis.

Moving on, as shown above in Table 1-I, the mean number of injuries per play in 2013 was 0.035, indicating that an injury occurred on 3.5 percent of all plays. Additionally, from the available information regarding the total number of injuries, total number of players per game, games per year, and years of data, we can calculate the overall rate of injury per player-game as 0.064 per player-game.¹ In other words, for every particular game there are 5.90 injuries (0.064 injuries per player-game x 92 players per game). That equates to one injury for every 15.6 players in that game.

We can also determine the mean rate of how often concussions occur in a game. Between 2009 and 2015 there were a total of 1,112 regular season concussions. Using the available information regarding the total number of concussions, total number of players per game, games per year, and years of data, we can calculate the overall rate of concussion per player-game as 0.0067 concussions per player-game.^m

We can also determine the rate of injuries per player per regular season. During the 2009 to 2015 seasons, there were a total of 15,278 player-seasons played.ⁿ During this same time period there were a total of 10,577 game injuries. This equates to an overall rate of 0.69 injuries per player-season (10,577/15,278). Some readers, particularly players, may be surprised that this rate is not higher. It is important to remember that this statistic is the mean of *all* players who played in the NFL during these seasons, including players who might have only played in one game. Additionally, the statistic does not include injuries that occurred during preseason practices or games or regular season practices. Finally, these statistics count all injuries the same, regardless of their severity or the amount of time

¹ This statistic is calculated by dividing the total number of regular season game injuries from 2009 to 2015 (10,577) by the total number of game exposures over the same time period (164,864). The 164,864 statistic is calculated by multiplying 7 seasons by 256 regular season games per season by 92 players per game. Clubs are limited to 46 active players during a game, 2011 NFL CBA, Art. 25, § 1, thus, 92 players have the opportunity to play each week.

^m This statistic is calculated by dividing the total number of regular season game concussions from 2009 to 2015 (1,112) by the total number of game exposures over the same time period (164,864). The 164,864 value is calculated by multiplying 7 seasons by 256 regular season games per season by 92 players per game.

ⁿ In other words, a mean of 2,182.6 players played in a regular season NFL game each season. The number of player-seasons was obtained from official NFL and NFLPA playtime figures.

^k The statistic for total number of players was obtained from calculations derived from official NFL and NFLPA playtime statistics.

lost due to the injury. Thus, while helpful, this statistic is an incomplete picture of the injuries suffered by NFL players during the course of a season.

One useful question concerns ascertaining the mean number of games a player plays before suffering an injury. We calculated above that the rate of injuries per regular season game per player was 0.064. Thus, we can calculate that players play a mean of 15.6 games before suffering one injury ($1/0.064$). We can also calculate the mean number of games a player plays before suffering a concussion. We calculated above that the rate of concussion per regular season game per player was 0.0067. Thus, we can calculate that players play a mean of 149.25 games before suffering one concussion ($1/0.0067$). With 16 regular season games, players theoretically play a mean of 9.3 seasons before suffering a concussion. For context, although there is a debate about career lengths generally, the mean career length for a drafted player is about 5 years.³⁸ Nevertheless, it is important to remember that this is a *mean* statistic and thus includes players who play very little in the game or players who play positions less likely to suffer concussions. Players with a lot of game time and players at certain positions are likely to suffer concussions at rates higher than those provided here.

Finally, we can calculate what percentage of player injuries are concussions. Between 2009 and 2015 there were a total of 10,577 regular season injuries (Table 1-C). During this same time period, there were 1,112 regular season concussions (Table 1-E). Thus, concussions represented 10.5 percent of all regular season injuries ($1,112/10,577$).

Finally, below is some additional information from the NFLISS:

- The most common types of injuries during regular season practices in 2013 were hamstring strains (46), groin adductor strains (10), high ankle sprains (6), and shoulder sprains (6).
- The five most common types of injuries during regular season games in 2013 were concussions (147), hamstring strains (approximately 128^o), medial collateral ligament (MCL) sprains (approximately 76), high ankle sprains (approximately 58), and groin adductor strains (approximately 47).
- The most common mechanisms of concussions during regular season games in 2013 were contact with other helmets (49.0 percent), contact with the playing surface (16.3 percent), contact with another player's knee (10.2 percent), and contact with another player's shoulder (7.5 percent).

^o Statistics for injuries other than concussions are only available in bar graph form. Consequently, we estimate the injury statistic based on the graph available.

Injured NFL players are placed on different lists depending on the expected duration of the injury and the timing of the injury.

If a player fails the preseason physical, *i.e.*, the club doctor determines the player is not physically ready to play football, and is unable to participate in training camp but is expected to be able to play later in the season, the player can be placed on the PUP List. A player on the PUP List cannot practice or play until after the sixth game of the regular season and does not count toward the club's 53-man Active/Inactive List during that time.³⁹

Players who are injured during the preseason or regular season and are unable to return that season are placed on Injured Reserve, which typically precludes them from practicing or playing further that season. Players on Injured Reserve do not count toward the club's 53-man Active/Inactive List. In 2012, the NFL and NFLPA amended the rules to permit clubs to allow one player in any season to return from Injured Reserve after a minimum of six weeks.⁴⁰

Finally, the less severely injured players are only given a different status on the day of the game. NFL clubs have a 53-man Active/Inactive List.⁴¹ This is the universe of players from which clubs have to choose each week. On the day of the game, the number of players that are permitted to play, *i.e.*, the Active List, is reduced to 46 players.⁴² Thus, seven players are declared Inactive and cannot play. Generally, at least some of the seven players declared Inactive have been so declared due to injury (the rest would be for skill reasons). A player is Inactive for that particular game, but can be Active for the next game. In this way, the Inactive List serves as a short-term, non-duration injured list.

Players are paid their base salaries while on any of these injury lists; however, younger players often have "split" contracts whereby if they are placed on either the PUP List or Injured Reserve, they are paid a lesser amount, typically about half of their base salary. In addition, injured players might be entitled to additional compensation pursuant to the Injury Protection benefit.^p

Finally, despite the physical tolls of an NFL career, in a 2014–2015 survey of 763 former players by *Newsday*, 89 percent of respondents said they would still play in the NFL

^p Where a player is injured in one season, fails the preseason physical the next season because of that injury, and is terminated by the club as a result, the player is entitled to 50 percent of his salary for that season up to a maximum of \$1.1 million in the 2015 season. If the player is still physically unable to play two seasons after the injury, he is entitled to 30 percent of his salary up to a maximum for \$525,000 in 2015. A player is only entitled to Injury Protection once in his career. See 2011 CBA, Art. 45.

if they had the chance to make the decision again.⁴³ There are, however, limitations to the *Newsday* survey: (1) the survey was sent via email and text message by the NFLPA to more than 7,000 former NFL players, thus eliminating former players who were less technologically savvy and also possibly skewing the sample toward those former players closer to the NFLPA; (2) the response rate for the survey was low (approximately 11 percent); and, (3) the study does not discuss the demographics of those that responded, making it difficult to ascertain whether those who responded are a representative sample of all former players. Nevertheless, we provide the reader with the best existing data.

A waiver executed by players permitting disclosure of their medical information “expressly includes all records and [protected health information] relating to any mental health treatment, therapy, and/or counseling, but expressly excludes psychotherapy notes.”

2) PLAYERS AND MENTAL HEALTH

As we have emphasized in the Introduction to this Report, our focus is not just players’ physical health, but also their health more generally, and those factors that play a role in determining their health. This, of course, includes their mental health. According to the National Institute of Mental Health, 43.7 million American adults, or 18.6 percent, suffer from some form of mental illness.⁴⁴

One goal of the Population Studies component of The Football Players Health Study at Harvard University is to develop better epidemiologic data specific to football players. But in the meantime, extrapolating from the above data strongly suggests that there are hundreds of current NFL players, and likely thousands of former NFL players, suffering from some form of mental illness.⁴⁵ Indeed, the Michigan Study^q found that 25.6 percent of former

NFL players interviewed had “either been diagnosed with depression or experienced an episode of major depression in their lifetime.”^{46,r} However, another study (partially funded by the NFLPA) of 1,617 former players found that 14.7 percent experienced depressive symptoms.⁴⁷ Finally, a third study concerning depression among former NFL players conducted by the University of North Carolina found that of the 2,434 former players who responded to a questionnaire with complete data, 269 (11.1 percent) reported having been diagnosed previously with clinical depression.^s Of note, the last two studies mentioned found rates of depression substantially lower than that found by the Michigan Study and also lower than the rate of depression in the general population.^t Nevertheless, concerns about players and mental health exist. In this vein, star NFL wide receiver Brandon Marshall has been vocal in recent years about his own struggles with mental illness and has strongly advocated for acceptance and understanding in the NFL community.⁴⁸

The issue of mental health is also important in light of the fact that “medical literature and clinical practice has associated [emphasis in original] psychological symptoms such as anxiety, depression, liability, irritability and aggression in patients with a history of concussions.”⁴⁹ Similarly, some research has also found an association between traumatic brain injury and suicide rates.⁵⁰ Nevertheless, as the District Court in the Concussion Litigation (discussed in detail in Chapter 7: The NFL and NFLPA, Section D: Current Legal Obligations of the NFL) recognized, the question of a causal connection is contested in the medical literature, and, for at least partially this reason, the Court determined that these conditions did not need to be covered by the settlement in that case.⁵¹ This is clearly an area of important continued research.

^q In the background section of this chapter, we provide some limitations to the Michigan Study.

^r Research did not reveal quality comparable data, but other studies have found that approximately 16 percent of American adults have a major depressive episode in their life. Laura Andrade, al., *The Epidemiology Of Major Depressive Episodes*, 12(1) Int’l J Methods Psychiatric Res. 3, 13–21 (2003) (16.9% rate of major depressive episodes); Ronald Kessler, et al., *The Epidemiology Of Major Depressive Disorder: Results From The National Comorbidity Survey Replication (NCS-R)*, 289 J. Am. Med. Ass’n 3095–105 (2003) (16.2% rate of major depressive disorder).

^s Kevin Guskiewicz, et al. *Recurrent Concussion and Risk of Depression in Retired Professional Football Players*, 39 Medicine & Science in Sports & Exercise 903, 905 (2007). Also of note, the study found that retired players reporting a history of three or more previous concussions were three times more likely to be diagnosed with depression. *Id.*

^t In addition, a 2016 study found that former NFL players who played between 1959 and 1988 died of suicide at a rate significantly less than would be expected compared with the general population. In examining the causes of death for 3,439 former NFL players, the study authors expected to find that 25.6 players had died of suicide. However, only 12 had. Everett J. Lehman, Misty J. Hein & Christine M. Gersic, *Suicide Mortality Among Retired National Football League Players Who Played 5 or More Seasons*, Am. J. Sports Med. (2016).

Players do have resources for mental healthcare. The standard training camp PowerPoint presentation includes slides about the importance of mental health and advises players to use resources available to them, including club doctors.⁵² In addition, in 2012, the NFL, in partnership with other organizations, created the Life Line program, a 24/7 hotline for players and their families in need of assistance during crises.⁵³ Finally, players are able to receive mental healthcare through their player insurance plans.

Nevertheless, Current Player 2 indicated his belief “[t]here is not enough invested in the mental health and well-being and the emotional well-being of our players.” The player also explained that he “think[s] the mental and emotional health of the players is just as important, if not more important, as the physical well-being of our players.”

Aside from the resources that do exist, players are likely concerned about clubs knowing whether they have sought mental healthcare. On this issue, the NFL’s insurance plan provides that the submission of claims by players or their family members for mental health, substance abuse, and other counseling services provided for under the insurance program “will not be made known to [the] Club, the NFL or the NFLPA.” However, a waiver executed by players permitting the disclosure of their medical information to the NFL, the club, and others “expressly *includes* all records and [protected health information] relating to any mental health treatment, therapy, and/or counseling, but expressly excludes psychotherapy notes.”^u Thus, players are unable to receive confidential mental healthcare.

One source of assistance concerning player mental health is the club chaplain. Current Player 2 explained that he thought the club chaplain was “great” for the players. Every club generally has a chaplain who will visit practice once or twice during the week and be present before games. The chaplains often hold small studies or sermons but avoid overly religious messaging, instead focusing on themes relevant to football and the players or other themes as directed by the coaching staff. Importantly, one former player indicated that chaplains are often able to provide important words of encouragement and positive feedback in an environment that is often lacking both.

^u Emphasis in original. A copy of this waiver is included as Appendix L. The circumstances under which these waivers are executed is an area worthy of additional attention. For example, questions might be raised as to whether the players are providing meaningful informed consent in their execution.

(B) Current Legal Obligations and Ethical Codes

We examine players’ legal and ethical obligations from two perspectives: (1) players’ obligations concerning their *own* health, as it is broadly defined for this Report; and, (2) players’ obligations concerning the health of *other* players.

1) PLAYERS AND THEIR OWN HEALTH

As we will discuss, players, like all people or patients, have certain obligations concerning their own health, although they often need a range of support, education, access, and unconflicted relationships in order to fully satisfy these obligations and goals.

a) Current Legal Obligations

From a legal perspective, NFL players undoubtedly have both certain *rights* concerning their health^v as well as *obligations*.

The Standard NFL Player Contract^w imposes certain health-related obligations on players. Specifically, players are:

1. forbidden from engaging “in any activity other than football which may involve a significant risk of personal injury”;^x
2. obligated to maintain themselves in “excellent physical condition”;⁵⁴ and,
3. obligated to “undergo a complete physical examination by the Club physician upon Club request, during which physical examination Player agrees to make full and complete disclosure of any physical or mental condition known to him which might impair his performance . . . and to respond fully and in good faith when questioned by the Club physician about such condition.”⁵⁵

^v Indeed, published with this Report is a Patient Bill of Rights for NFL Players.

^w Appendix A to the 2011 CBA is the Standard NFL Player Contract. The Standard Player Contract is 9 pages in length and contains the most basic and important provisions concerning the terms and conditions of NFL player employment. Most player contracts include multi-page addendums addressing more specific compensation or contractual issues.

^x 2011 CBA, App. A, § 3. NFL player contracts often include addendums that prohibit “hazardous activities which involve a significant risk of personal injury and are non-football in nature, including, without limitation, water or snow skiing, surfing, hang gliding, bungee jumping, scuba diving, sky diving, rock or mountain climbing, race car driving as driver or passenger, riding a motorcycle, motor bike, all-terrain or similar vehicle as driver or passenger, travel on or flight in any test or experimental aircraft, or serving as a pilot or crew member on any flight.” Copies of NFL player contracts are on file with the authors. Professional athletes have had their contracts terminated after being injured in motorcycle accidents or playing pickup basketball. See Herzog, Bob. *Basketball Injury Might Cost Boone Big Part of Contract*, Newsday, Jan. 28, 2004, available at 2004 WLNR 1117940.

Players also seemingly have an ongoing obligation to report injuries to their club, outside of the physical exam. The 2011 collective bargaining agreement (CBA) permits clubs to fine players up to \$1,770 if the player does not “promptly report” an injury to the club doctor or athletic trainer.⁵⁶

In reviewing a draft of this Report, the NFL stated that a player has an “obligation to fully and honestly disclose his physical condition to the Club,” citing the above provisions,⁵⁷ while also arguing that a player who fails to be forthcoming about his medical needs is violating his contract and the CBA.⁵⁸ We think the NFL may over read the relevant provisions. It appears from the above-described provisions that NFL players have obligations to: (a) promptly report injuries; and, (b) be completely honest about their condition when undergoing a physical. However, if a player is not undergoing a physical and has not recently suffered an injury, he does not have to tell the club about his medical needs. Thus, it does not appear that the player has any obligation to keep the club medical staff apprised of his recovery from an injury previously reported to the club if the club does not request a physical. Additionally, during the offseason, it does not appear that the player has an obligation to report consultations with medical professionals outside the club or to disclose a variety of medical conditions that are not physical “injuries,” such as mental health treatment, heart conditions, or general muscle soreness.

The 2011 CBA also contains numerous health benefits and programs for players. Fortunately for players, the vast majority of the programs contain no statute of limitations for filing or eligibility. The only benefit that requires filing by a certain date is the Injury Protection benefit, which requires filing by October 15 of the League Year^y in which the benefit is being claimed.⁵⁹ The benefits available to players are discussed in more detail in Chapter 7: The NFL and NFLPA and in Appendix C: Summary of Collectively Bargained Health-Related Programs and Benefits.

Player grievances under the CBA are subject to statutes of limitations. A player must commence an Injury Grievance within 25 days if the player’s contract was terminated at a time that the player was physically unable to perform the services required of him.⁶⁰ Additionally, a player could commence a Non-Injury Grievance if the player is unsatisfied with some aspect of his medical care (or a wide variety of other things) within 50 days from the date or the occurrence or non-occurrence on which the

grievance is based.^z These grievance mechanisms will be discussed in more detail as relevant in specific chapters.

b) Current Ethical Codes

As a preliminary matter, we note that players only have obligations to promote their own health to the extent health maximization is of interest to them. In practice, we know that players often make decisions sacrificing their health in favor of some other benefit, typically career-, performance- or finance-related. In some cases, the need for those sacrifices could be avoided through structural change, and we make recommendations to that effect throughout this Report in order to advance the principle of Health Primacy. That said, our principle of Empowered Autonomy seeks to recognize a fully informed, competent player’s right to voluntarily weigh his health against other interests. While we recognize that players currently lack sufficient information to be fully empowered, assuming that players are concerned with maximizing their health, they do have some obligations to help support that goal.

While not specific to NFL players, one of the most useful articulations of a player’s obligations to care for his own health comes from prominent statements of patients’ responsibilities. Opinion 1.1.4 of the American Medical Association’s (AMA) Code of Medical Ethics, for example, recognizes a patient’s right to direct his or her own healthcare but declares that “[w]ith that exercise of self-governance and choice comes a number of responsibilities.”⁶¹ The responsibilities most relevant to NFL players require them to:^{aa}

- (a) [Be] truthful and forthcoming with their physicians and strive to express their concerns clearly.
- (b) Provide as complete a medical history as they can, including providing information about past illnesses, medications, hospitalizations, family history of illness, and other matters relating to present health.

^z 2011 CBA, Art. 43, § 2. The term “Non-Injury Grievance” is something of a misnomer. The CBA differentiates between an “Injury Grievance” and a “Non-Injury Grievance.” An “Injury Grievance” is exclusively “a claim or complaint that, at the time a player’s NFL Player Contract or Practice Squad Player Contract was terminated by a club, the player was physically unable to perform the services required of him by that contract because of an injury incurred in the performance of his services under that contract.” 2011 CBA, Art. 44, § 1. Generally, all other disputes (except System Arbitrations, *see* 2011 CBA, Art. 15) concerning the CBA or a player’s terms and conditions of employment are “Non-Injury Grievances.” 2011 CBA, Art. 43, § 1. Thus, there can be disputes concerning a player’s injury or medical care that are considered “Non-Injury Grievances” because they do not fit within the limited confines of an “Injury Grievance.” Additionally, although a Non-Injury Grievance is one method by which a player could seek changes to his medical care, there are two committees specifically designated for these issues, as discussed in more detail in Chapter 2: Club Doctors and Chapter 8: NFL Clubs.

^{aa} It is important to note that the AMA is an organization with a substantial interest in protecting doctors’ interests and thus its description of patient obligations might not match the expectations of some patients.

^y An NFL League Year begins and ends in early March. 2011 CBA, Art. 1.

- (c) Cooperate with agreed-on treatment plans. Since adhering to treatment is often essential to public and individual safety, patients should disclose whether they have or have not followed the agreed-on plan and indicate whether they would like to reconsider the plan.

* * *

- (f) Recognize that a healthy lifestyle can often prevent or mitigate illness and take responsibility to follow preventative measures and adopt health-enhancing behaviors.
- (g) Be aware of and refrain from behavior that unreasonably places the health of others at risk. They should ask about what they can do to prevent transmission of infectious disease.⁶²

The principal obligations affecting NFL players are responsibilities (a) and (b) of the AMA Code, requiring open communication with doctors and full disclosure of their medical conditions and history. Although such disclosures might improve a player's treatment, as will be discussed, players are often (understandably) wary of informing the club doctor of a physical ailment because the club might use that information as a basis to terminate the player's contract or otherwise negatively affect the player's employment.

Similar codes of patient responsibility also exist from the American Hospital Association,⁶³ the National Health Council,⁶⁴ and individual healthcare providers.⁶⁵ These codes generally emphasize the obligation of patients to fully disclose their medical conditions and history, actively participate in medical decision making, and cooperate with and follow the recommended treatment.

Whether a patient follows these generally accepted guidelines for their own medical care can also have legal significance. Where a patient has failed to disclose important medical history, follow a doctor's recommended treatment, or otherwise engaged in behavior contrary to the patient's own medical best interests, the patient may, at least in some states, be barred or limited from recovering in a medical malpractice action.⁶⁶

2) PLAYERS AND OTHER PLAYERS' HEALTH

a) Current Legal Obligations

NFL players also have health-related obligations toward one another that might arise from a variety of sources. However, the CBA is generally not one of them, since NFL players do not negotiate the CBA against one another. Thus, the CBA does not establish any legally enforceable obligations or rights among the players.

NFL playing rules seemingly create the principal mechanism for analyzing players' obligations to each other. The Official Playing Rules (Playing Rules) of the NFL are created and authorized pursuant to the NFL Constitution and Bylaws.⁶⁷ The NFL is empowered to enact and amend its own Constitution and Bylaws, including the Playing Rules, provided the Constitution and Bylaws does not conflict with the CBA and that any such amendment does not "significantly affect the terms and conditions of employment of NFL players."^{68,ab} Paragraph 14 of the Standard NFL Player Contract, which is included as Appendix A of the 2011 CBA, also effectively obligates players to follow NFL policies.⁶⁹

Assuming that players are concerned with maximizing their health, they do have some obligations to help support that goal.

NFL Playing Rules come with penalties for violations, whether it be a five-yard penalty incurred by the penalized player's team or, in more extreme cases, ejection of the penalized player from the game, and possibly fines or suspension imposed after the fact by the NFL. Violations of the Playing Rules do not of themselves generate legal liability (just because a tackle amounts to the foul of unnecessary roughness does not make it a crime or a tort).^{ac} However, as indicated below, intentional inflictions of injury that occur wholly outside the bounds of the game might sometimes give rise to legal liability.

^{ab} For more information on NFL rules and rule changes, see Chapter 7: The NFL and NFLPA, Section A: Background on the NFL, and Appendix I: History of Health-Related NFL Playing Rule Changes.

^{ac} While no court has ever cited the Playing Rules as a basis for liability, in *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir. 1979), the United States Court of Appeals for the Tenth Circuit did discuss the Playing Rules as discussed in further detail below.

The Preface to the Playing Rules seeks to make clear that a violation of the Playing Rules will not necessarily, or even ordinarily, generate legal liability:

Where the word “illegal” appears in this rule book, it is an institutional term of art pertaining strictly to actions that violate NFL playing rules. It is not meant to connote illegality under any public law or the rules or regulations of any other organization.

The word “flagrant,” when used here to describe an action by a player, is meant to indicate that the degree of a violation of the rules—usually a personal foul or unnecessary roughness—is extremely objectionable, conspicuous, unnecessary, avoidable, or gratuitous. “Flagrant” in these rules does not necessarily imply malice on the part of the fouling player or an intention to injure an opponent.⁷⁰

Players also have common law^{ad} obligations toward one another. In contact sports, such as football, one player can recover for injuries suffered only if the other player intentionally, recklessly, or willfully and wantonly, injured the plaintiff-player.⁷¹ This rule has become known as the “contact sports exception.”⁷² The contact sports exception recognizes that “[p]articipants in team sports, where physical contact among participants is inherent and virtually inevitable, assume greater risks of injury than nonparticipants or participants in noncontact sports.”⁷³ Thus, players can only recover from other players where the defendant player has acted exceptionally badly.^{ae}

b) Current Ethical Codes

There are no known codes of ethics for players concerning the health of other players.

^{ad} Common law refers to “[t]he body of law derived from judicial decisions, rather than from statutes or constitutions.” Black’s Law Dictionary (9th ed. 2009).

^{ae} Beyond these better established theories of liability, some might argue that players could develop a fiduciary relationship with one another, thus giving rise to liability. Generally speaking, a fiduciary is “a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor.” Black’s Law Dictionary “Duty” (9th ed. 2009). Whether a fiduciary relationship exists is a fact-based inquiry into the nature of the relationship. *Ritani, LLC v. Aghjayan*, 880 F.Supp.2d 425, 455 (S.D.N.Y. 2012) (applying New York law); *Carcano v. JBSS, LLC*, 200 N.C.App. 162, 177 (N.C.App. 2009); *L.C. v. R.P.*, 563 N.W.2d 799, 802 (N.D. 1997); *Allen Realty Corp. v. Holbert*, 227 Va. 441, 447 (Va. 1984); *Murphy v. Country House, Inc.*, 307 Minn. 344, 350 (Minn. 1976). Some players, particularly younger players, might develop a relationship with a captain, veteran or other team leader whereby the younger player relies on the older player for advice and guidance. Over time, it is conceivable that a relationship of trust and confidence could develop to the point of becoming an actionable fiduciary relationship. Nevertheless, there are no known litigations in which one athlete alleged another athlete owed and/or violated a fiduciary obligation.

(C) Current Practices

Significant concerns exist about players’ actions regarding their own health. Historically, there is considerable evidence that NFL players underreport their medical conditions and symptoms,⁷⁴ which is predictable, albeit undesirable. In an effort to not miss playing time, players might try to intentionally fail the Concussion Protocol’s^{af} baseline examination,⁷⁵ avoid going through the Concussion Protocol,⁷⁶ or avoid telling the club that he suffered a substantial blow to the head.^{77,ag} Although there are no reliable statistics as to the incidence of this behavior, it does happen, and some doctors believe that players are at fault for failing to cooperate with the Concussion Protocol.⁷⁸ For these reasons, one contract advisor interviewed agreed that players can sometimes be their “own worst enemy” after sustaining a blow to the head. The players we interviewed did not believe that players were doing a good job of taking care of themselves (for a variety of reasons, ranging from youthful optimism to pressures to succeed) and all of those who were asked agreed that players often need to be protected from themselves.^{ah} Nevertheless, we again emphasize that the existing data on player health are incomplete and often unclear, leaving players without sufficient information to make truly informed decisions about their own health.

The pressures to perform and remain on the field at all costs can be extraordinary. According to Hall of Fame New York Giants linebacker Harry Carson (1976–88):

*Football players are very insecure people. Players are interchangeable parts. Someone played your position before you, and when you leave, someone else is going to be in your place. You are only there for a short period of time, so you want to make as much as you can in the short time given you. You do not want to give anyone else a shot at your job. Football players understand that if they give someone the opportunity to do the job better, their days are numbered.*⁷⁹

^{af} The Concussion Protocol, attached as Appendix A, dictates the way in which clubs must diagnose and manage players who have potentially suffered concussions.

^{ag} A 2015 study found that 64.4 percent of clinicians (doctors or athletic trainers) in college sports reported having experienced pressure from athletes to prematurely clear them to return to participation after a concussion. Emily Kroshus, et al., *Pressure on Sports Medicine Clinicians to Prematurely Return Collegiate Athletes to Play After Concussion*, 50 J. Athletic Training 944 (2015).

^{ah} Former Player 3: “You’d rather get knocked out cold than pull yourself out of the game. And there’s no way they’re coming out. So you do need someone that can make that decision for them at times.”

There is no shortage of stories from NFL players, former and current, about the depths to which they went to continue playing—fighting through and hiding injuries to stay on the field. Players have a variety of motivations for doing so: to try and help the club win; to prove their toughness to teammates, coaches, and fans, for example; and out of for fear of losing their spot in the lineup or on the roster if they do not.^{ai}

The San Francisco 49ers provided a useful recent example. In 2012, 49ers quarterback Alex Smith was having a successful season when he suffered a concussion that forced him to miss a game. Smith's backup, Colin Kaepernick played well in place of Smith.⁸⁰ Even though Smith was healthy enough to play two weeks later, the 49ers kept Kaepernick as the starter⁸¹ and Smith never started for the 49ers again. In response, Smith stated "I feel like the only thing I did to lose my job was get a concussion."⁸²

Former Player 1 gave a useful in-depth description of the pressures to keep playing:

[T]he pressure to play when you're injured or to get back before you're healthy is just incredible . . . I saw guys play through all kinds of things . . . just knowing you had to be out there just to try to make a team and then after that trying to get your spot, trying to keep your starting spot . . . I can't express to you the pressure you feel to play, not just games that you're a little hurt, but I mean major, major injuries. If you can walk, if you can go, if you can move your arms a little bit, you felt like you have to be out there.^{aj}

Current Player 1 echoed these sentiments:

[T]here's definitely a pressure to be out there for every practice and to never miss a game or anything like that because of injuries. Just because you know there's always a threat of another

guy playing your position. And you never want somebody else to outshine you or you don't want the coaches to feel like you're unreliable and not a player that can play through injuries.^{ak}

Indeed players feel pressure to play through injuries not only from their coaches⁸³ but also from teammates, opponents,⁸⁴ fans, media, and others.

Players and contract advisors we talked to expressed their view that club medical staff sometimes encourage players to return to the field when they are less than 100 percent healthy so that the club can obtain evidence of the player's supposed health and also his diminished performance.⁸⁵ In their perspective, the club will then terminate the player's contract, claiming it was based on the player's diminished performance and refuse to pay the player any additional compensation.⁸⁶ While the player might file an Injury Grievance seeking compensation for the duration of the injury (during the season of injury only), the player will have undermined his claim by returning to the field of play and at least appearing to be uninjured.⁸⁷

Players we interviewed also generally did not believe that they were doing a good job of protecting their own health or that of their teammates:^{al}

Current Player 2: *"I think as players we can do a better job of how we communicate our injuries . . . I think that guys, and specifically as it relates to concussions, are not communicating their symptoms or not speaking up when they have taken hits to the head because they fear . . . losing playing time and . . . in the long-term the loss of potential earnings."*

Current Player 4: *"I don't know that players genuinely care about the health of other players."*

Current Player 5: *"Not very good . . . I think guys only really care about their health when they have a major health issue."*

^{ai} A common refrain from players, current and former, is that a player "can't make the club in the tub." Current Player 5 used this phrase as did John Yarno, Seattle Seahawks center from 1977 to 1982: "[T]here are two expressions we've always had in the NFL. One was, 'Get hurt, lose your job!' Because if you're not on the field, somebody else is, and at that level, he's probably a pretty good athlete. [. . .] The other expression is, 'You can't make the club in the tub.' If you're not on that field every day and on the practice field the coaches study at night, then you're not in their minds. I mean, it's extremely competitive. It's very difficult. When I was with the Hawks, we'd take maybe 125 guys into summer camp for 48 jobs. If somebody went down, it was like, 'Drag that carcass off the field or move the drill, and let's go!' So it was a very violent lifestyle. But I would do the whole thing again in a heartbeat. I have no remorse about that." Pierce E. Scranton, Jr., *Playing Hurt: Treating and Evaluating the Warriors of the NFL* 114 (2001).

^{aj} Former Player 2: "I just wanted to play. The problem was that playing was the ultimate goal and most guys like myself would try to do everything they can to play . . . sometimes you have to do things that necessarily aren't right . . . I guess that's just the nature of the business we were involved in." Former Player 3: "The player is going to do anything he can to get out there."

^{ak} Longtime NFL General Manager and executive Tom Donahoe explained the importance of player health in roster decisions: "Durability becomes a significant factor because there is so much money involved . . . If a guy misses five or six games a year, you'll think about whether you want to sign him. And I don't know about all coaches, but many would rather have a guy with less talent who is more dependable than a more talented guy who you don't know when he'll show up." Dave Sell, *Football's Pain-Taking Process*, Wash. Post, Dec. 8, 1996, available at 1996 WLNR 6482132.

^{al} We reiterate that our interviews were intended to be informational but not representative of all players' views and should be read with that limitation in mind.

Current Player 6: *“Young guys have no idea how to take care of their bodies.”^{am}*

Players we interviewed also generally did not believe that they were doing a good job of preparing for life after football and taking advantage of the programs and benefits available to them:

Current Player 2: *“[T]he focus that’s required in order to be successful at this level is off the charts. So I think it’s hard for some guys to put everything they have into their playing career while at the same time preparing themselves for life after football . . . [Players] are not often times taking advantage of the resources that are out there for us[.]”*

Current Player 3: *“I think there are a lot of programs out there that benefit guys getting ready for life after football . . . [b]ut at the end of the day, I think it’s the players that have to want to prepare. The NFL can’t make you go to all those programs.”*

Current Player 6: *“I think there are guys that consider life after football and careers after football, but I wouldn’t say that it’s the majority.”*

Current Player 10: *“I think players can do a better job of [taking advantage of programs].”^{an}*

From a financial perspective, our interviews and existing reports suggest that players are often unrealistic about their likely career trajectories, believing that their careers will exceed the average length and that they will continue to make hundreds of thousands if not millions of dollars a year for the foreseeable future.^{ao} Moreover, players, like many people, tend to value today over tomorrow, preferring to spend now rather than save for later.

^{am} Current Player 8 had a more optimistic view: “The amount of rehab, pre-hab, strength programs, even watching diets and pills and things like that. I think players have—at least the players who stick around—have approached their health as their main concern.”

^{an} Current Player 10 also believes that the biggest improvement still needed concerning player health is “taking care of players post-career.”

^{ao} Contract Advisor 4: “[S]top convincing the players that they all could become superstars and rich . . . [B]ut no player thinks it’s going to happen to them. They think they’re going to be the next Richard Sherman and make \$15 million and be on commercials. While the odds are they probably have just as good a chance of developing CTE and potentially dying as they do of becoming a \$15 million player in the NFL.”

Contract advisors and financial advisors we interviewed acknowledged that young players routinely fail to grasp the likely brevity of their career^{ap} and the need to handle their health and financial matters responsibly.^{aq} While some players make mistakes about these matters early in their career and are able to learn from them, few players are in the NFL long enough to capitalize on that learning process. The contract advisors we interviewed maintained that this situation persists today even though players are generally more aware of the risks and realities of a football career due to increased media attention and education efforts by contract advisors, financial advisors, the NFL, and the NFLPA.^{ar}

In our interviews, we found two somewhat divergent views emerged concerning players and their rights and benefits. First, some believe that players are not sufficiently made aware by either the NFL or NFLPA of their rights and benefits.^{as} Second, some believe that players *are* sufficiently made aware of their rights, benefits, and opportunities, but that some players fail to take advantage of them for a variety of reasons, including lack of motivation.^{at,88} Nevertheless, both views support the general belief that many players are not receiving the benefits to which they are entitled.

Players’ interactions with specific stakeholders are discussed in those stakeholders’ chapters.

^{ap} Contract Advisor 5: “Every player thinks he’s going to play 15 years No matter how many statistics you throw at them and tell them, they don’t believe it’s going to be them.”

^{aq} Contract Advisor 3: “[T]here’s always going to be players that don’t listen, don’t pay attention, don’t care And you know I can tell you from having been there a lot in trying to protect the player that in most circumstances no matter who you put in their life, they’re not going to listen At the end of the day, it’s their call.” Contract Advisor 4: “It’s me usually screaming at the player, you’re telling me you still have a headache or if you have a headache you better let me know and you should not be on the field or anywhere near it because you need to let [the club] know.”

^{ar} Contract Advisors also believed that players are increasingly aware of club doctor’s potential conflicts of interest and take appropriate action. Contract Advisor 5: “I think players are starting to advocate for themselves more and more these days.”

^{as} Current Player 5 described the NFL and NFLPA’s efforts to prepare players for life after football as “below average.”

^{at} Jonathan Kraft, President, New England Patriots, Deans’ Innovation in Sports Challenge Kickoff, Harvard Innovation Lab (Nov. 21, 2014), YouTube, https://www.youtube.com/watch?v=0_JOQb_lisw, archived at <https://perma.cc/76JL-L7TX> (“One of the things players now, at the league’s expense, can go on the offseason to business schools—like Harvard, like Wharton, like Stanford—and start to get a business career. There are internship programs, there are resources that are really fantastic along many different professional levels, internship programs. But the player wants to have to do it. And I know we try to get veteran players and recently retired guys to come in and talk to them, but a guy has to want to do it. And some of them are motivated—some people like Domonique [Foxworth] are motivated—and other people just aren’t. I think that’s life. It’s our job to make them understand what the resources are and why they are important But, I think . . . like anything in life, there are people with different levels of motivation.”). Contract Advisor 4: “[T]hey’re clearly not hearing the information being given to them.” Contract Advisor 2: “You need to want to know. This is your business. This is your career. So I think players have to take some of the responsibility.”

(D) Enforcement of Legal and Ethical Obligations^{au}

Almost all incidences of unnecessary player on player violence are resolved through the NFL's imposition of a fine or suspension for the player who violated the rules. The NFL's League Policies for Players contains a schedule of minimum fines for various rules violations. In 2015, on the low end of the spectrum, players who committed face masks, late hits, and chop blocks faced a minimum penalty of \$8,681 for a first offense and \$17,363 for a second offense.⁸⁹ On the other end of the spectrum, the largest minimum fines of \$23,152 for a first offense are reserved for spearing, impermissible use of the helmet, initiating contact with the crown of the helmet, hits on defenseless players, and blindside blocks.⁹⁰

The League Policies for Players emphasizes that the schedule of fines are minimums and that suspensions or fines are to be determined by the degree of violation.⁹¹ Indeed, the NFL has regularly increased its discipline against repeat offenders.^{au}

While the NFL's disciplinary process may partly satisfy its deterrence function, it does not provide the injured player any opportunity to recover from his injuries. Only in a

handful of situations have professional athletes sought recompense for their injuries by instituting legal action against another athlete.

As discussed earlier, one player can recover for injuries suffered only if the other player intentionally, recklessly, or willfully and wantonly, injured the other player. This standard is routinely applied in youth sports.⁹² Youth sports, because of their wide levels of participation, provide a forum for most tort-based sports litigation and legal rules that are then often applied in professional sports.

In *McKichan v. St. Louis Hockey Club, L.P.*,⁹³ a minor league hockey goalie sued an opposing player and his team after he was injured by the player's post-whistle check. A jury granted the goalie \$175,000 in damages but the Missouri Court of Appeals reversed and vacated the award, finding

*That the specific conduct at issue in this case, a severe body check, is a part of professional hockey. This body check, even several seconds after the whistle and in violation of several rules of the game, was not outside the realm of reasonable anticipation. For better or for worse, it is "part of the game" of professional hockey. As such, we hold as a matter of law that the specific conduct which occurred here is not actionable.*⁹⁴

The *McKichan* case stands for the proposition that a violation of the playing rules generally will not be dispositive as to whether a legal duty has been violated, *i.e.*, whether a tort has been committed.

Nevertheless, a different result occurred in *Hackbart v. Cincinnati Bengals, Inc.*,⁹⁵ a lawsuit brought Denver Broncos defensive back Dale Hackbart in the 1970s. The

^{au} For example, NFL safety Brandon Meriweather has been punished five times for illegal hits with increasing discipline: after his third illegal hit, Meriweather was fined \$42,000; his fourth hit earned him a one-game suspension; and his fifth hit a two-game suspension. John Keim, *Brandon Meriweather Suspended*, ESPN (Aug. 26, 2014, 10:23 AM), http://espn.go.com/nfl/story/_/id/11408933/brandon-meriweather-washington-redskins-suspended-2-games-preseason-hit, archived at <http://perma.cc/3XBY-XH2T>. Meriweather indicated that he spent the 2014 offseason working on changing his tackling form to avoid further punishment. *Id.*; John Keim, *No Surprise on Brandon Meriweather*, ESPN (Aug. 25, 2014, 7:08 PM), http://espn.go.com/blog/washington-redskins/post/_/id/10225/no-surprise-on-brandon-meriweather, archived at <http://perma.cc/V3PF-W87P>.

One player can recover for injuries suffered only if the other player intentionally, recklessly, or willfully and wantonly, injured the other player.



trial court found that a Cincinnati Bengals running back “acting out of anger and frustration, but without a specific intent to injure . . . stepped forward and struck a blow with his right forearm to the back of the kneeling plaintiff’s head and neck with sufficient force to cause both players to fall forward to the ground.”⁹⁶ The trial court nonetheless determined that such violent conduct was inherent to the game of football and entered judgment for the defendants.⁹⁷

The United States Court of Appeals for the Tenth Circuit reversed, declaring that “there are no principles of law which allow a court to rule out certain tortious conduct by reason of general roughness of the game or difficulty of administering it.”⁹⁸ The Tenth Circuit also discussed the Playing Rules in determining whether Hackbart consented to intentionally being injured during the course of a football game. The Court determined that the Playing Rules “are intended to establish reasonable boundaries so that one football player cannot intentionally inflict a serious injury on another.”⁹⁹ The Tenth Circuit remanded the case for a new trial in which the running back’s actions would be examined pursuant to a recklessness standard.¹⁰⁰ After remand, the case settled for an unknown sum.¹⁰¹

After the *Hackbart* case, there is only one other known case in which a player sued another player for conduct that took place during an NFL game.¹⁰² In *Green v. Pro Football, Inc.*, former NFL player Barrett Green sued the Washington, D.C. football club, its former defensive coordinator Gregg Williams, and former Washington, D.C. player Robert Royal. Green alleged that he was injured as a result of an illegal play by Royal that was part of a scheme whereby players were financially rewarded for injuring opposing players.¹⁰³ The court denied the defendants’ motion to dismiss in part and found that Green stated a viable claim for battery.¹⁰⁴ The case was subsequently settled on confidential terms.¹⁰⁵ Nevertheless, the *Green* case supports the proposition that players can be held liable for intentional acts that are beyond the reasonable bounds of the game.

It is also important to note that regardless of potential civil liability, several players have been charged criminally for dangerous actions taken on the field of play.¹⁰⁶

As discussed above, players also bear responsibility and have obligations for their own health. Clubs may seek to enforce players’ health disclosure obligations where the player’s failure to do so negatively affects the club. In 2012, the NFL, on behalf of the New England Patriots, commenced a System Arbitration^{av} against Jonathan Fanene. Prior to the 2012 season, the Patriots and Fanene agreed to a three-year contract worth close to \$12 million, including a \$3.85 million signing bonus.¹⁰⁷ As part of a pre-employment questionnaire, Fanene, according to the Patriots, stated that he took no medications regularly even though he had been taking significant amounts of painkillers to mask chronic pain in his knee.¹⁰⁸ The Patriots cut Fanene during training camp citing Fanene’s alleged failure to disclose his medical condition,¹⁰⁹ and initiated a System Arbitration to recoup \$2.5 million in signing bonus money already paid to Fanene.¹¹⁰ Specifically, the Patriots alleged Fanene violated his obligations to negotiate the contract in good faith.¹¹¹

The NFLPA sought to have the Patriots’ claims dismissed, arguing that signing bonus forfeiture was not an available remedy for the alleged wrongful act by Fanene.¹¹² After the NFLPA’s motion to dismiss was denied, the parties settled by allowing Fanene to keep the \$2.5 million already paid, but releasing the Patriots’ from their obligation to pay Fanene the remaining \$1.35 million of the signing bonus.¹¹³

In a related proceeding, the NFLPA filed a grievance against the Patriots concerning Patriots doctor Tom Gill’s care of Fanene, discussed in further detail in Chapter 8: NFL Clubs.

^{av} A System Arbitration is a legal process for the resolution of disputes between the NFL and the NFLPA and/or a player concerning a subset of CBA provisions that are central to the NFL’s operations and which invoke antitrust and labor law concerns, including but not limited to the NFL player contract, NFL Draft, rookie compensation, free agency, and the Salary Cap. 2011 CBA, Art. 15, § 1.

(E) Recommendations Concerning Players

This Report is intended to improve the lives and careers of players by protecting and promoting their health. While there are many stakeholders with a role to play in achieving this goal, it is important that players recognize and accept that they are on this list as well, not only with regard to their own health, but also with regard to the health of former, current and future players. Nevertheless, in many cases, players will need support from other stakeholders to fulfill the recommendations made here. In the chapters on the NFL and NFLPA, Contract Advisors, and Financial Advisors, we make recommendations to these stakeholders about how they can assist players.

While all of the recommendations in this Report concern players, certain recommendations directed toward players' conduct are made in other chapters:

- Chapter 6: Personal Doctors — Recommendation 6:1-B: Players should receive a physical from their own doctor as soon as possible after each season.
- Chapter 12: Contract Advisors — Recommendation 12:2-C: Players should be given information to ensure that they choose contract advisors based on their professional qualifications and experience and not the financial benefits the contract advisor has or is willing to provide to the player.
- Chapter 13: Financial Advisors — Recommendation 13:1-D: Players should be given information to ensure that they choose financial advisors based on their professional qualifications and experience and not the financial benefits the financial advisor has or is willing to provide to the player.
- Chapter 14: Family Members — Recommendation 14:2-A: Players should select and rely on professionals rather than family members for managing their business, financial, and legal affairs.

Additional player-specific recommendations are listed here.

Goal 1: To have players be proactive concerning their own health with appropriate support.

Principles Advanced: Health Primacy; Empowered Autonomy; and, Collaboration and Engagement.

Recommendation 1:1-A: With assistance from contract advisors, the NFL, the NFLPA, and others, players should familiarize themselves with their rights and obligations related to health and other benefits, and should avail themselves of applicable benefits.

Our formal interviews, literature review, and other feedback from stakeholders revealed that many players are not sufficiently aware of their rights, obligations, benefits, and opportunities pursuant to the CBA or other programs, or do not take full advantage of them, even if they are aware. There are numerous rights and benefits that are important to a player's health and he must be aware and take advantage of them to maximize his health. For example, a player is entitled to a second medical opinion, the surgeon of his choice, and may be entitled to tuition assistance, and a variety of injury and disability-related payments.

In Chapter 7: The NFL and NFLPA, Recommendation 7:3-A, we discuss ways in which the NFL and NFLPA have sought to advise players of certain benefits and opportunities. And while the NFL and NFLPA have an obligation to publicize

Recommendations Concerning Players – continued

these benefits and make them as easily accessible and comprehensible to the players as possible,^{aw} players ultimately have to be the ones to act on the benefits.

This recommendation applies to former players as well. To the extent a former player is unaware of his rights and the benefits available to him, he should consult with his financial advisor and former contract advisor, as well as contact the NFL and the NFLPA, both of whom have staff and resources that can assist the player in understanding and obtaining benefits.

Recommendation 1:1-B: Players should carefully consider the ways in which health sacrifices now may affect their future health.

While the health of the average former player is uncertain, there is no doubt that injuries suffered during an NFL career can cause players permanent damage that could make the remainder of their life more difficult. In their desire to win, help their club and teammates, or just remain employed, players routinely play with injuries or conditions even though continuing to play might subject them to further or permanent injury. In so doing, players (like most human beings) exhibit present bias, which is the tendency to make decisions that are beneficial in the short term but are harmful in the long term.^{114,ax} It is important for players (with the help of other stakeholders) to recognize the impact of this potential bias on their decision making. Some players may rationally decide that the decisions that they make now may be worth the consequences they suffer later, but it is important that those choices be as informed as possible. Players should pause—or have a support system that can help them pause—and understand the risks and benefits of playing through certain injuries or conditions, with particular emphasis on understanding the long-term implications of the decision.¹¹⁵

Relatedly, additional research must be done into ways to effectively communicate the risks and benefits of playing to NFL players. Such research can draw on effective campaigns in other areas of public health, including increased cancer awareness,¹¹⁶ smoking cessation, and preventing communicable diseases.¹¹⁷

Recommendation 1:1-C: Players should take advantage of opportunities to prepare for life after football.

One reason that some players may behave in ways that jeopardize their health is because of their strong desire to remain in the NFL given the lack of attractive alternatives available to them outside the sport. The NFL and NFLPA offer a wide variety of programs and benefits to help players prepare for life after football, including educational courses and seminars. These programs are discussed in more detail in Chapter 7: The NFL and NFLPA, Appendix D: Summary of Programs Offered by NFL's Player Engagement Department and Appendix E: Summary of Programs Offered by NFLPA. As one example, the NFL's Tuition Assistance Plan reimburses players for tuition costs if they complete their college degrees within four years of leaving the NFL. Unless the player is nearly certain to have a lengthy career in coaching, broadcasting, or something else (all of which are rare), he should take advantage of this opportunity to finish his education at no or little cost.^{ay} Doing so may somewhat lessen background pressures and influences to sacrifice health.

^{aw} Current Player 10: "Unfortunately, advice from agents and especially the NFLPA in a long meeting with lots of information falls on deaf ears most times. Players don't care about this information until it pertains to them."

^{ax} Former Player 2: "As stubborn as most of us are, I think the players truly don't understand the effects it has later in our lives."

^{ay} It should also be pointed out that if the player is considering the possibility of ever coaching in college, he will likely need a college degree. See Brett McMurphy, *UK: Steve Masiello Didn't Graduate*, ESPN (Mar. 26, 2014, 4:30 PM), http://espn.go.com/mens-college-basketball/story/_/id/10675532/south-florida-bulls-kill-coaching-deal-steve-masiello-lying-resume, archived at <http://perma.cc/V826-JMSZ> (discussing requirement of at least an undergraduate degree to be basketball coach at the University of South Florida).

Recommendations Concerning Players – continued

Recommendation 1:1-D: Players should seek out and learn from more experienced players, including former players, concerning health-related matters.

In any line of work, younger employees are well-advised to engage with more experienced colleagues and to ask for their advice and guidance. NFL players are no different. Indeed, the uniqueness of NFL employment makes it even more important that players engage experienced players for advice.

Many of the players we interviewed told us that it took a few years in the NFL for them to learn best how to maximize their health, prepare their bodies for football, and take advantage of and protect their health-related rights, such as seeking a second medical opinion or ensuring they retain a quality financial advisor. Veteran players can provide valuable insights into these issues.^{az} Moreover, while a more experienced player may not always be particularly interested in talking with the younger player, the younger player can learn a lot simply by observing.

Players have a variety of options in finding former players with whom to consult. As is discussed in detail in Chapter 10: Club Employees, each club employs a developmental employee who is charged with helping players, particularly rookies, transition to the NFL. Often this developmental employee is a former player. The club might also have former players who visit the club regularly or are involved in informal ways. Moreover, the NFLPA also employs five former players as Player Advocates, charged with serving as “the NFLPA’s first line of defense in explaining and protecting player rights and benefits.”¹¹⁸ Each Player Advocate is assigned to a set of clubs and is responsible for helping the players on those clubs.¹¹⁹ Finally, a player could ask his contract advisor about some of the contract advisor’s former clients and reach out to some of them.

No matter the method, players should seek out and seize opportunities to learn from the men that came before them.

Recommendation 1:1-E: Players should take on a responsibility to one another, to support one another’s health, and to change the culture for the better.

Players are in a unique and important position to help one another. There are a variety of aspects of an NFL career that only players can understand, including the incredible pressure to play and succeed and why they might sometimes make decisions that are not in the best interests of their short- or long-term health. With this understanding and the rapport that develops among teammates, players have the credibility to positively influence the decisions players make and to improve the overall culture of player health.

Given the difficult decisions players face when it comes to their careers and health, it would likely be very helpful for players to be able to rely on other players for support and advice. In addition, players can lead by example concerning their own health and the health of other players. Players are more likely able to objectively view situations and prevent players from making decisions that are not in their best interests, for example, returning to play too soon after a concussion or other major injury. At the very least, players can take it upon themselves not to pressure one another to play while injured, either explicitly or implicitly. The NFL appears to agree; as part of the standard training camp PowerPoint presentation, in discussing the importance of mental health, the NFL encourages players to “[a]dvocate for a teammate or coach if you are concerned” and declares that “[r]eaching out for assistance is not a sign of weakness but of strength!”¹²⁰

The United States Army can serve as a useful comparison. The Army assigns each soldier a “Battle Buddy.”¹²¹ Battle Buddies help each other through training and then look out for each other physically, emotionally, and mentally when deployed.¹²² Moreover, Battle Buddies remain buddies after deployment and help each other deal with the adjustment to

^{az} Current Player 10 explained that “there’s a lot more discussions in the locker room now, especially from older guys to the younger guys just in making sure that everybody’s got all the right information and making sure that everybody’s healthy when they go out on the field.”

Recommendations Concerning Players – continued

civilian life and with post-traumatic stress disorder.¹²³ A 2002 Army study of the Battle Buddy system found that soldiers overwhelmingly liked the system and found that it helped improve morale.¹²⁴

While playing professional football should not be compared to the risks and tolls of military service, there are certain overlapping ideologies and characteristics that make the Battle Buddies analogy apt on a lesser scale. In sum, players who are well supported by their peers are likely to better handle important health issues and promote an environment in which player health is a priority.

Recommendation 1:1-F: Players should not return to play until they are fit to do so.

As discussed above, players play through all types of injuries to help the team win, protect their position on the team, prove their toughness, etc. Indeed, when a player is “fit” to return is a difficult subjective question and can involve balancing a number of factors, including but not limited to the player’s short- and long-term health, the player’s career goals and status with the club, and the importance of the club’s upcoming games. At least some of the players and contract advisors we talked to believe that club medical staff sometimes encourage players to return to play despite being less than 100% healthy because this will allow the club to more easily terminate the player’s contract or succeed in fighting a potential Injury Grievance.^{ba} While clubs might not engage in such conduct with their more important players, these situations are a very real concern for many players simply seeking to retain their status on the roster.^{bb} Some players indicated that they did not realize that the club would do such a thing until they saw it done or were so advised by older players.^{bc} While we cannot confirm that clubs engage in such behavior, at least some players *believe* they do, which affects the trust relationship between the player and club medical staff. In sum, players need to understand the full panoply of risks when they make health-related decisions, not only to their own health, but also to their economic interests.

Recommendation 1:1-G: Players should not sign any document presented to them by the NFL, an NFL club, or an employee of an NFL club without discussing the document with their contract advisor, the NFLPA, their financial advisor, and/or other counsel, as appropriate.

As is discussed in more detail in Chapter 2: Club Doctors, players sign collectively bargained forms authorizing club doctors to disclose the players’ medical records and information to club officials, coaches, and many others. A copy of this waiver is included as Appendix L. Additionally, at the NFL Combine, players similarly execute waivers and forms authorizing the disclosure of their medical records and information. The circumstances under which these waivers are executed is an area worthy of additional attention. For example, questions might be raised as to whether the players are providing meaningful and voluntary informed consent in their execution. Indeed, these forms have the potential to effectively strip players of important privacy protections and empower clubs to make adverse employment decisions about players based on the player’s medical information.

As discussed in Chapter 2: Club Doctors, employers are entitled to certain parts of an employee’s medical records under the Health Insurance Portability and Accountability Act, and other state laws, including worker’s compensation laws.

^{ba} Peer reviewer and former NFL club executive Andrew Brandt indicated he was disappointed with some of the Injury Grievances in which he was involved, especially when players grieved about injuries for which players sought little to no treatment from club trainers or doctors. Andrew Brandt, Peer Review Response (Oct. 30, 2015).

^{bb} Former Player 1: “[T]his is probably the only NFL training camp they’d ever be in, but they get injured and they want to rush back and tried to get back on the field as soon as possible and the first thing that happens as soon as they get out there is the team would cut them. They get them on film running around and that’s it.” Current Player 10: “I think the one concern . . . [is with] young guys that are going to get released . . . [the medical staff] hurrying to get them back on the field. Them being naïve enough to think they’re getting back on the field for the right reasons and then getting released, so that the clubs don’t have to pay them[.]”

^{bc} Former Seattle Seahawks doctor Pierce Scranton told this anecdote in his 2001 book: “One team physician complained to me that his club had cut two players after the last exhibition game, one with a ruptured disc in his neck, the other with a posterior cruciate injury to the knee. He called the club to report these injuries when the players came to his office for release physicals. ‘Screw ‘em,’ the general manager said. ‘Let ‘em grieve us if they’re smart enough.’”

Recommendations Concerning Players – continued

Nevertheless, the waivers executed by the players are broad and potentially exceed the bounds of the aforementioned exceptions. For example, the waivers permit the player's medical records to be disclosed to and used by numerous parties *other than the player's employer*, including clubs that do not employ the player. Moreover, the waivers permit the player's medical information to be used for the NFL's publicly released injury report, discussed at length in Chapter 17: The Media, which bear no relevance to the player's ability to perform his job. Players should be careful and as knowledgeable as possible about those rights that they are waiving. Considering the stakes at hand, players would be wise to consult with the appropriate professional and expert advisors before executing any documents provided by the NFL or NFL clubs.

Recommendation 1:1-H: Players should be aware of the ramifications of withholding medical information from club medical staff.

Anecdotal evidence suggests that players routinely hide their medical conditions from the club.¹²⁵ Players principally do this to protect their status with the club and fear of being viewed as less tough by the coaches. Players know that their careers are tenuous and also know that if the club starts perceiving a player to be injury-prone, it is often not long before the club no longer employs that player. However, there are serious downsides to players not disclosing medical conditions to club medical staff. As a preliminary matter, not telling the medical staff about a condition he is suffering prevents the player from receiving necessary medical care and risks worsening the condition.¹²⁶

Additionally, players should be aware that not advising club medical staff about their conditions might harm their financial interests. As an initial matter, as discussed above, players are obligated by the CBA and their contracts to disclose their medical conditions at certain times. Moreover, if the condition is affecting the player's performance, it increases the likelihood that the club will terminate the player's contract, generally without any further obligation to pay the player.^{bd} Normally, when a player's contract is terminated because he is physically unable to perform, the club is required to continue paying the player for so long as the player is injured (during the season of injury only) via the Injury Grievance process.¹²⁷ But if the player has not advised the club that his diminished performance is the result of an injury, he has undermined his ability to bring an Injury Grievance.

Recommendation 1:1-I: Players should review their medical records regularly.

Beginning with the 2014 season, all 32 NFL clubs use electronic medical records. Players can view their records online at **any time** after registering with the website. Players should view their records regularly, including specifically at the beginning and conclusion of each season and when they are being treated for an injury or condition. Reviewing the records will ensure that the club's medical staff is properly documenting the player's condition and concerns while also helping the player to ensure he is following the proper treatment for the condition. Research has also shown that patients who have access to their medical records feel more in control of their healthcare and better understand their medical issues.¹²⁸

Additionally, in reviewing his medical records and knowing that the club will also review them, a player might become more aware of how his medical conditions or history could adversely affect his employment. For example, the medical records might include a note from the athletic trainer that a player's knee condition prevents him from cutting and running as he had in the past, leading the club to terminate his contract. In reviewing a draft of this Report, the NFL admitted as much, stating that clubs examine a player's medical records to "evaluate whether or not a player is healthy enough to practice and play."¹²⁹ Of course, this has implications for the player's employment status.

Finally, players should also consider enlisting their family members and contract advisors to assist with regular review of medical records.

^{bd} Clubs' rights of termination are discussed as part of Recommendation 1-D in Chapter 7: NFL and NFLPA.

Endnotes

- 1 CBA, Art. 25.
- 2 See 2011 CBA, Art. 33, § 1 (discussing practice squad limits and also permitting the clubs to change limits from season to season).
- 3 See 2012 Constitution and Bylaws of the National Football League, § 17.1(A) (discussing the various lists on which players may be placed depending on their status).
- 4 *Id.*
- 5 During week 9 of the 2014 NFL season, the New York Giants listed 76 players on their roster: 53 players on the Active Roster; 11 players on Injured Reserve; 10 players on the Practice Squad; 1 player on the Practice Squad/Injured List; and, 1 player on Injured Reserve—Designated to Return. By contrast, the Denver Broncos only listed 67 players on their roster during week 9: 53 on the Active Roster; 3 on Injured Reserve; 10 on the Practice Squad; and, 1 on Injured Reserve—Designated to Return. There are also historical reports of clubs requesting players to fake injuries so that they can be placed on Injured Reserve and remain with the club rather than have their contract terminated. Rob Huizenga, *You're Okay, It's Just a Bruise* 141 (1994) (former Los Angeles Raiders Club doctor stating "I quickly learned that most teams would fake injuries, hiding talented but green prospects on the injured reserve list."); *id.* at 199 (describing a coach telling a young player "You've had neck problems before. When I tell you when, just hit the guy and lay there. You'll get your full salary this year and get a chance to make the team next year."); Pierce E. Scranton, Jr., *Playing Hurt: Treating and Evaluating the Warriors of the NFL* 53–55 (2001) (former Seattle Seahawks Club doctor describing how the Club used to place players on Injured Reserve with fake injuries); Samer Kalaf, *Ty Detmer Says Koy Detmer Faked An Injury So Philly Could Put Him On IR*, *Deadspin* (November 12, 2014, 3:07 PM), <http://deadspin.com/ty-detmer-says-koy-detmer-faked-an-injury-so-philly-cou-1657968918>, archived at <http://perma.cc/8K2A-YCUD>.
- 6 This figure was obtained from the official NFL and NFLPA playtime figures.
- 7 These data were derived by reviewing several NFL clubs' rosters.
- 8 See *History: Players Who've Played in NFL at Age 40 or Older*, Pro Football Hall of Fame, http://www.profootballhof.com/history/stats/40_and_over_club.aspx#sthash.k0seVRUx.dpuf (last visited Aug. 7, 2015), archived at <http://perma.cc/S87S-KKKN> (listing all players to have ever played after age 40).
- 9 Richard Lapchick et al., *The 2015 Racial and Gender Report Card: National Football League*, The Inst. for Diversity and Ethics in Sport at the Univ. of Cent. Fl. (2015), available at <http://www.tidesport.org/nfl-rgrc.html>.
- 10 Marcella Alsan, Marianne Wanamaker, *Tuskegee and the Health of Black Men*, Nat'l Bureau of Econ. Research (2016); Katrina Armstrong et al., *Racial/Ethnic Differences in Physician Distrust in the United States*, 97 *Am. J. Pub. Health* (2007).
- 11 In 2013, the only states not to have produced NFL players were Vermont and North Dakota. *NFL 2013: Breakdown of Total Players From Each State*, *SportingNews.com*, September 18, 2013, <http://www.sportingnews.com/nfl/story/2013-09-18/nfl-players-state-by-state-breakdown-california-florida-louisiana-texas-south-ca>, archived at <http://perma.cc/C8MC-A9MQ>.
- 12 *Id.*
- 13 David R. Weir et al., *National Football League Player Care Foundation Study of Retired NFL Players*, Inst. for Social Research at Univ. of Mich. (2009), <http://ns.umich.edu/Releases/2009/Sep09/FinalReport.pdf>, archived at <http://perma.cc/6G5Q-LN2M>.
- 14 *Id.* The Michigan Study population only included players that had vested rights under the NFL's Retirement Plan, meaning the players generally had been on an NFL roster for at least three games in at least three seasons.
- 15 *Id.* at 14.
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Average NFL Career Length*, Sharp Football Analysis (Apr. 30, 2014), <http://www.sharpfootballanalysis.com/blog/?p=2133>, archived at <http://perma.cc/KR58-R8DA>.
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 See Adam Molon, *Why So Many Ex-NFL Players Struggle With Money*, *CNBC* (Jan. 31, 2014, 12:29 PM), www.cnbc.com/id/101377457#, archived at <http://perma.cc/F5YN-FJE2>.
- 25 See Nick Schwartz, *The Average Career Earnings Of Athletes Across America's Major Sports Will Shock You*, *USA Today*, Oct. 24, 2013, <http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls>, archived at <http://perma.cc/9DFP-WPQ2>.
- 26 *Injury Surveillance in the NFL: an Update from Quintiles Outcome*, *Applied Clinical Trials*, Aug. 30, 2012, <http://www.appliedclinicaltrials.com/injury-surveillance-nfl-update-quintiles-outcome> (last visited Aug. 7, 2015), archived at <http://perma.cc/5EEJ-TFA6>.
- 27 *Id.*
- 28 *Transcript—2016 Injury Data Results Conference Call*, NFL Communications, Jan. 29, 2016, <https://nflcommunications.com/Pages/Transcript---2016-Injury-Data-Results-Conference-Call.aspx>, archived at <https://perma.cc/RKC6-352G>.
- 29 *Applied Clinical Trials supra* note 26.
- 30 *Id.*
- 31 This information was provided by the NFLPA.
- 32 Alan Schwarz, Walt Bogdanich, and Jacqueline Williams, *N.F.L.'s Flawed Concussion Research and Ties to Tobacco Industry*, *N.Y. Times*, Mar. 26, 2016, <http://www.nytimes.com/2016/03/25/sports/football/nfl-concussion-research-tobacco.html>, archived at <https://perma.cc/NM4N-SW4Q>. See also *NFL response to New York Times' concussion research story*, *NFL.com* (Mar. 24, 2016, 4:11 PM), <http://www.nfl.com/news/story/0ap3000000647389/article/nfl-response-to-new-york-times-concussion-research-story>, archived at <https://perma.cc/Z3XE-8FQ6>.
- 33 *Applied Clinical Trials supra* note 26.
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- 37 See 45 C.F.R. § 160.103 (defining the entities required to comply with HIPAA).
- 38 See *Average NFL Career Length*, Sharp Football Analysis, Apr. 30, 2014, <http://www.sharpfootballanalysis.com/blog/?p=2133>, archived at <http://perma.cc/X8QV-77A3> (discussing disagreement between NFLPA and NFL and determining that the average drafted player plays about 5 years).
- 39 See 2012 NFL Constitution and Bylaws, § 12.3(E).
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- 41 NFL CBA, Art. 25, § 4.
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- 43 See Jim Baumbach, *Life After Football*, *Newsday* (Jan. 22, 2015),

- <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>.
- 44 *Any Mental Illness (AMI) Among Adults*, National Institute of Mental Health, <http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml> (last visited Aug. 7, 2015), archived at <http://perma.cc/J28R-TNXB>. The National Institutes of Mental Health derived the data from the National Survey on Drug Use and Health, which defines mental illness as: “a mental, behavioral, or emotional disorder (excluding developmental and substance use disorders); diagnosable currently or within the past year; and, of sufficient duration to meet diagnostic criteria within the 4th edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV).” *Id.*
 - 45 See also Jim Trotter, *Depression Prevalent in Ex-players*, ESPN (Feb. 25, 2015), http://espn.go.com/nfl/story/_/page/hotread150225/depression-suicide-raise-issue-mental-health-former-nfl-players, archived at <http://perma.cc/K8BU-PGW6> (discussing depression among former NFL players).
 - 46 David R. Weir et al., *National Football League Player Care Foundation Study of Retired NFL Players*, Inst. for Social Research at Univ. of Mich. (2009), archived at <http://perma.cc/6G5Q-LN2M>.
 - 47 Thomas L. Schwenk et al., *Depression and Pain in Retired Professional Football Players*, 39 Med. & Sci. in Sports & Exercise 599 (2007).
 - 48 See Marin Cogan, *The Pursuit of ‘Radical Acceptance’: How Brandon Marshall is Confronting the NFL’s Mental Health Crisis Head-on*, ESPN (Jun. 25, 2014), http://espn.go.com/nfl/story/_/page/hotread140707/chicago-bears-brandon-marshall-spreads-awareness-nfl-mental-health-crisis-espn-magazine, archived at <http://perma.cc/RA36-2UX7>.
 - 49 See *In re Nat’l Football League Players’ Concussion Injury Litigation*, 307 F.R.D. 351, 401 (E.D. Pa. 2015) (quoting the Declaration of Dr. Christopher Giza) (Emphasis in the Court’s opinion); see also Zachary Y. Kerr et al., *Nine-year risk of depression diagnosis increases with increasing self-reported concussions in retired professional football players*, 40 Am. J. Sports Med. 2206 (2012) (finding that professional football players self-reporting concussions are at greater risk for having depressive episodes later in life compared with those retired players self-reporting no concussions).
 - 50 Thomas W. Teasdale and Aase W. Engberg, *Suicide after traumatic brain injury: a population study*, 74 J. of Neurology, Neurosurgery & Psychiatry 436 (2001).
 - 51 See *In re Nat’l Football League Players’ Concussion Injury Litigation*, 307 F.R.D. 351, 400-01 (E.D. Pa. 2015) (explaining why mood and behavioral disorders do not need to be included in settlement).
 - 52 The NFL provided a copy of the 2016 Training Camp presentation.
 - 53 See *Player Programs and Benefits*, NFLLifeLine.com, <http://nfllifeline.org/resources/programs-and-benefits/> (last visited Aug. 7, 2015), archived at <http://perma.cc/HJ7J-PSAW>.
 - 54 CBA, App. A, § 8. The clearest example of a potential violation of this obligation is where a player is overweight. In 2010, journalists reported that former NFL defensive lineman Albert Haynesworth showed up to training camp with the Washington Redskins overweight and out of shape and was not allowed to participate in practice. Joseph White, *Haynesworth Fails Physical Test Again*, Pitt. Post-Gazette, Jul. 31, 2010, available at 2010 WLNR 15233374; Michael David Smith, *Shanahan on Haynesworth: I don’t get along with lazy players*, ProFootballTalk (October 31, 2013, 3:54 PM), <http://profootballtalk.nbcsports.com/2013/10/31/shanahan-on-haynesworth-i-dont-get-along-with-lazy-players/>, archived at <http://perma.cc/3X2M-HJTZ>.
 - 55 CBA, App. A, § 8.
 - 56 CBA, Art. 42, § 1(a)(iii).
 - 57 NFL Comments and Corrections (June 24, 2016).
 - 58 *Id.*
 - 59 CBA, Art. 45, § 8. Relatedly, a player must file for an Extended Injury Protection benefit by January 31 following his former Club’s last regular season game of the season following the season of injury. *Id.* Injury Protection and Extended Injury Protection Benefits are described in more detail in Chapter 8: NFL Clubs.
 - 60 CBA, Art. 44, § 2. In 2014, the NFL and NFLPA litigated 31 Injury Grievances. See *Transcript from NFLPA Super Bowl XLIX Press Conference*, NFLPA, Jan. 31, 2015, <http://nflpa.com/news/all-news/transcript-from-nflpa-super-bowl-xlix-press-conference>, archived at <http://perma.cc/5UJN-AGRQ>.
 - 61 *Opinion 1.1.4—Patient Responsibilities*, Am. Med. Ass’n, available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page> (last Aug. 1, 2016), archived at <https://perma.cc/4QS7-F5FT>.
 - 62 *Id.*
 - 63 See *The Patient Care Partnership*, Am. Hosp. Ass’n, <http://www.aha.org/advocacy-issues/communicatingpts/pt-care-partnership.shtml> (last visited Aug. 7, 2015), archived at <http://perma.cc/HM7M-Y5PW>.
 - 64 See *Principles of Patients Rights’ and Responsibilities*, Nat’l Health Council, <http://www.nationalhealthcouncil.org/resources/nhc-publications/principles-patients-rights-and-responsibilities> (last visited Aug. 7, 2015), archived at <http://perma.cc/4XRF-YBKJ>.
 - 65 See, e.g., *Patients’ Rights and Responsibilities*, Beth Israel Deaconess Med. Ctr., <http://www.bidmc.org/Patient-and-Visitor-Information/Preparing-for-Your-Visit/Patients-Rights-and-Responsibilities.aspx> (last visited Aug. 7, 2015), archived at <http://perma.cc/P8KD-ZBJB>.
 - 66 See *Krkus v. Stanley*, 833 N.E.2d 952 (Ill. App. Ct. 2005) (patient’s contributory negligence in failing to take recommended medication and continuing to smoke precluded recovery in medical malpractice case); *Shinholster v. Annapolis Hosp.*, 685 N.W.2d 275 (Mich. 2004) (patient’s failure to take prescribed medication relevant to patient’s contributory negligence in medical malpractice case); *Maunz v. Perales*, 76 P.3d 1027 (Kan. 2003) (patient’s comparative negligence properly diminished liability of doctor in medical malpractice case); *Hall v. Carter*, 825 A.2d 954 (D.C. 2003) (patient’s contributory negligence by smoking after surgery precluded recovery); *King v. Clark*, 709 N.E.2d 1043 (Ind. Ct. App. 1999) (patient’s contributory negligence in delaying treatment recommended by physician precluded recovery in medical malpractice case); *Carreker v. Harper*, 396 S.E.2d 587 (Ga. Ct. App. 1990) (patient’s failure to fully disclose all of her symptoms and medical history authorized jury charges on contributory and comparative negligence in case where jury found for defendant doctor). See also Matthew J. Mitten, *Emerging Legal Issues in Sports Medicine: A Synthesis, Summary, and Analysis*, 76 St. John’s L. Rev. 5, 31–33 (2002).
 - 67 See Constitution and Bylaws of the National Football League (2004 Rev.), Art. XI. Neither the Playing Rules or the Constitution and Bylaws describe a purpose for the Playing Rules.
 - 68 CBA, Art. 2, §§ 1, 4.
 - 69 CBA, App. A, ¶ 14: “Player’s attention is also called to the fact that the League functions with certain rules and procedures expressive of its operation as a joint venture among its member clubs and that these rules and practices may affect Player’s relationship to the League and its member clubs independently of the provisions of this contract.”
 - 70 Official Playing Rules of the National Football League, Preface.
 - 71 See *Feld v. Borkowski*, 790 N.W.2d 72 (Iowa 2010) (holding that contact sports exception applies to softball); *Jaworski v. Kiernan*, 696 A.2d 332 (Conn. 1997) (applying contact sports exception to soccer); *Pfister v. Shusta*, 657 N.E.2d 1013 (Ill. 1995) (holding that contact sports exception applies to can kicking). See also Matthew G. Cole, *No Blood No Foul: The Standard of Care in Texas Owed By Participants to One Another in Athletic Contests*, 59 Baylor L. Rev. 435, 444–456 (2007) (examining the requisite degree of wrongfulness to establish liability against a sport co-participant in each of the 50 states, almost all of which require a finding beyond simple negligence).
 - 72 *Id.*
 - 73 *Pfister*, *supra* note 71 at 1017; see also *Feld*, *supra* note 71 at 76 (discussing same).
 - 74 See Mark Fainaru-Wada & Steve Fainaru, *League of Denial: The NFL, Concussions, and the Battle for Truth* 26 (2013) (stating that former

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- 75 Michael David Smith, *To Avoid Concussion Rules, Some Players Sandbag their Baseline Tests*, ProFootballTalk (Apr. 22, 2011, 8:25 AM), <http://profootballtalk.nbcsports.com/2011/04/22/to-avoid-concussion-rules-some-players-sandbag-their-baseline-tests/>, archived at <http://perma.cc/94KW-SK7W>. Experts nonetheless insist that the baseline examination cannot be cheated. See also Bill Pennington, *Flubbing a Baseline Test on Purpose Is Often Futile*, N.Y. Times, May 5, 2013, <http://www.nytimes.com/2013/05/06/sports/sandbagging-first-concussion-test-probably-wont-help-later.html>, archived at <http://perma.cc/K8EF-G4F8>.
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 - 77 See Jason Wilde, *Aaron Rodgers says NFL's biggest concussion obstacle is players themselves*, ESPN (Jul. 14, 2016), http://espn.go.com/blog/green-bay-packers/post/_id/31053/aaron-rodgers-says-nfls-biggest-concussion-obstacle-is-players-themselves, archived at <https://perma.cc/V6R7-ARXR>; Joe Giglio, *NFL analyst Mark Schlereth: Why players don't report concussions*, NJ.com (Nov. 13, 2015, 9:52 AM), http://www.nj.com/sports/index.ssf/2015/11/nfl_analyst_mark_schlereth_why_players_dont_report.html, archived at <http://perma.cc/XU5Z-TFV3>; Michael David Smith, *LaAdrian Waddle: Don't blame Lions for me playing with a concussion*, ProFootballTalk (Oct. 25, 2014, 11:12 AM), <http://profootballtalk.nbcsports.com/2014/10/25/laadrian-waddle-dont-blame-lions-for-me-playing-with-a-concussion/>, archived at <http://perma.cc/RMX9-VPXE>.
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 - 79 Fainaru-Wada *supra* note 74 at 63–64 (2013); see also Fainaru-Wada at 208 (Carson: "When someone gets hurt, you just find another part . . . [t]he reality is nobody gives a shit about those guys.")
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 - 82 *Id.*
 - 83 See *id.* at 129 (discussing former New York Jets head coach Bill Parcells effectively ordering concussed tight end Kyle Brady to return to the field during 1999 playoff game); *id.* at 213 (discussing New England Patriots head coach — and Parcells' protégé — Bill Belichick ordering recently concussed linebacker Ted Johnson to participate in contact drills during practice).
 - 84 See *id.* at 79 (former NFL linebacker Gary Plummer discussing his belief, at the time, that when NFL players Al Toon and Merrill Hoge retired due to concussions that they were "pussies.")
 - 85 "The long-established and jointly agreed-upon standard for determining when an injured player is again able to return to play in the NFL, is when 'he could play substantially up to the level of which he had been capable prior to the injury and without undue risk of further aggravation of the injury.'" Memorandum from NFLPA Legal Dep't to Contract Advisors (Jan. 18, 2012). See also Chris Kluwe, *How NFL teams manipulate injured players, the system for financial gain*, Sports Illustrated (Sep. 15, 2015), <http://www.si.com/cauldron/2015/09/15/nfl-injuries-week-1-preseason-chris-kluwe>, archived at <http://perma.cc/2HBK-557K> (describing alleged process by which Clubs force injured players back on to the field to undermine their right to future pay).
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 - 87 *Id.*
 - 88 See also Kimberley A. Martin, *Life after football: How Brandon Marshall, other NFL players prepare for the next stage*, Newsday, Feb. 27, 2016, <http://www.newsday.com/sports/football/life-after-football-how-brandon-marshall-other-nfl-players-prepare-for-the-next-stage-1.11517727>, archived at <https://perma.cc/P3J2-9WDB> (discussing challenges of players preparing for a life after football, including taking advantage of programs available to them).
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 - 91 *Id.*
 - 92 See Glenn M. Wong, *Essentials of Sports Law*, § 4.1 (4th ed. 2010) (discussing liability of co-participants and citing relevant cases).
 - 93 S.W.2d 209 (Miss. App. 1998).
 - 94 *Id.* at 213.
 - 95 F.2d 516 (10th Cir. 1979).
 - 96 *Id.* at 519.
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 - 102 In 2003, former Oakland Raider Marcus Williams sued his former teammate Bill Romanowski after Williams suffered a broken eye socket from a punch by Romanowski during a 2003 practice. After a jury awarded Williams \$340,000, Romanowski settled the case for \$415,000. *Sports Briefing*, N.Y. Times, May 28, 2005, <http://www.nytimes.com/2005/05/28/sports/sports-briefing.html>, archived at <https://perma.cc/V4CL-49TE>.
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 - 104 *Id.*
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 - 106 See Wong, *supra* note 92, at § 16.1.2 (collecting cases).
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 - 111 See 2011 CBA, Art. 4, § 8 ("any Club, any player and any player agent or contract advisor engaged in negotiations for a Player Contract . . . is under an obligation to negotiate in good faith.")
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