



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

# Chapter 6

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## Personal Doctors



In addition to being seen by club doctors or obtaining a second opinion in response to a club doctor, players might have a personal doctor they see as a primary care physician or for other specific ailments. Personal doctors have no relationship with the NFL or NFL clubs and thus their only concern should be for the player's health. Consequently, to the extent players choose to utilize the services of their own doctor (maybe even for a second opinion), these doctors too are an important stakeholder in ensuring and promoting player health.

Additionally, in discussing personal doctors, we recognize of course that different doctors have different specialties. Thus, when discussing personal doctors in this chapter, we expect and intend players will seek out the appropriate specialist for their ailment. We intend this chapter to cover all of the various specialists (e.g., internists, orthopedists, neurologists) with whom players may consult.

Finally, while in other chapters we provided the stakeholder an opportunity to review a draft of the relevant chapter(s) prior to publication, because there is no well-defined representative for personal doctors, no one reviewed this chapter on behalf of personal doctors prior to publication.

## (A) Background

Players' use of personal doctors is not generally discussed by the CBA. Personal doctors are not provided any rights under the 2011 CBA other than the right to, "upon presentation to the Club physician of an authorization signed by the player, inspect the player's medical and trainers' records in consultation with the Club physician or have copies of such medical and trainers' records forwarded to such player's personal physician."<sup>1</sup>

## (B) Current Legal Obligations<sup>a</sup>

While controversy exists about the role of club doctors, the responsibilities of a player's personal doctor are clear. A player's personal doctor's first and only loyalty is to the player and the doctor is thus bound to provide care within an acceptable standard of care, as discussed in Chapter 2: Club Doctors, Section (C)(1)(a).

## (C) Current Ethical Codes

As discussed in Chapter 2: Club Doctors, Section (C)(1)(b), doctors treating players, such as personal doctors, are obligated by the AMA Code and the FIMS Code of Ethics to provide care that is in the player-patient's best interests.

## (D) Current Practices

Personal doctors might be the least utilized of the doctors discussed in this Report. Players principally rely on club doctors and second opinion doctors for their care. In our discussions with players, including the interviews discussed herein, several indicated that the frequent moves from city to city, the convenience of receiving healthcare at the club facility, and their busy schedules made finding and

seeing a personal doctor problematic.<sup>b</sup> In addition, some players also do like and prefer the care they receive from club doctors. In some circumstances, a second opinion doctor might also be or become the player's personal doctor. Current players discussed players' non-use of personal doctors:<sup>c</sup>

- **Current Player 4:** "I do not have a primary care physician, no. I think most players are the same way."
- **Current Player 5:** "I only use doctors that are in the system . . . I know other players will have other doctors that they used in college or whatever. But as far as routine check-ups, not much. I don't know if I've ever heard of that."
- **Current Player 8:** "I wouldn't think the majority of guys have a primary care physician."
- **Current Player 10:** "I don't think there's a whole lot of players that have their own personal doctors in whatever city they're in."
- **Former Player 3:** "I had never gone to the doctor. If I ever had to, I would just use our team's physician."

In any event, there are circumstances in which players see their own personal doctors outside of the healthcare structure dictated by the CBA, particularly in the offseason.<sup>d</sup> If a player sees a personal doctor, the cost of that visit would likely be covered by the player's health insurance policy provided through the club, as described in Appendix C: Summary of Collectively Bargained Health-Related Programs and Benefits.

If a player's personal doctor discovers an injury, the player is required to report it to the club. The 2011 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.<sup>2</sup> Nevertheless, we know that players routinely withhold injuries and medical conditions from the club medical staff for a variety of reasons, including protecting their spot on the roster and to not be viewed by the club in a negative

a The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

b For comparison's sake, however, it is important to note that young men generally utilize primary care physicians less frequently than the general population. According to the United States Centers for Disease Control and Prevention, only 51.7 percent of males aged 18–44 visited a primary care physician in 2010. National Center for Health Statistics, *Health, United States, 2013: With Special Feature on Prescription Drugs*, 285 (2014), <http://www.cdc.gov/nchs/data/has/has13.pdf>, archived at <https://perma.cc/5YX6-H7CL?type=pdf>.

c 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.

d Current Player 3: "After the season, I think if guys have injuries, they can go [see their own doctors]. I know I've been in a situation where I've done it, and it's worked out great for me. I will say a lot of guys, when the season is over with, they get back to where they are from and they go back to the doctor they've been with a long time just to check some things out[.]"

light (see Chapter 1: Players, Recommendation 1:1-H, Chapter 3: Athletic Trainers, Section D: Current Practices).<sup>e</sup> Considering the perceived downsides of disclosing every injury, a \$1,770 fine seems trivial and is unlikely to influence players' injury reporting behavior.

Players are also obligated to disclose their medical conditions in certain situations by their contract. The Standard NFL Player Contract obligates players to undergo a physical examination by the club doctor as a condition of the contract during which a player must “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.”<sup>3</sup> If the player does not advise the club doctor about a condition diagnosed by his personal doctor during the course of a club physical, the player might be in violation of his contract. Violating this provision carries much more serious consequences than failing to report an injury as described above. If a player fails to disclose all medical conditions during a club physical, the club may terminate the contract.<sup>4</sup> For an example of a club's attempts to void a player's contract under such circumstances, see Chapter 1: Players, Section D, Enforcement of Legal and Ethical Obligations.

e Peer reviewer and doctor for college sports teams Cindy Chang informed us that she has seen NFL players return to their college medical staff for treatment so that the care would not be known by the club. Cindy Chang, Peer Review Response (Dec. 28, 2015).

## (E) Enforcement of Legal and Ethical Obligations<sup>f</sup>

As is discussed in more depth in Chapter 2: Club Doctors, Section (C)(1)(a) and in greater depth in many other places,<sup>5</sup> personal doctors have the same obligations to players as any other doctor to any other patient. In brief, a doctor is obligated to provide care to his or her patients within an acceptable standard of care in the medical community or potentially be subject to a medical malpractice claim.<sup>6</sup> Generally, the elements of a medical malpractice claim are: (1) a standard of care owed by the doctor to the plaintiff; (2) a breach of that standard of care by the doctor; and (3) the breach was the proximate cause of the plaintiff's injury.<sup>7</sup>

Many states require a doctor with the same board certification or similar expertise as the doctor against whom the claim is brought to opine as to the appropriate standard of care.<sup>8</sup> Thus, in the event a player's personal doctor were sued for medical malpractice, the claim likely could not proceed without a similarly qualified doctor—whether it be an orthopedist, neurologist, or a doctor specializing in sports medicine—opining that the doctor deviated from the standard of care.

The CBA does not provide players with any grievance or arbitration mechanism by which players could pursue claims against their own doctors. Players may choose to see doctors on their own but the CBA does not in any way dictate that doctor's obligations to the player.

f Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report. In addition, for rights articulated under either the CBA or other NFL policy, the NFLPA and the NFL can also seek to enforce them on players' behalves.



## ( F ) Recommendations Concerning Personal Doctors

There is reason to believe that personal doctors are underutilized by current players. While personal doctors might not supply care as regularly as club doctors, they can be an important and trusted source of medical advice and guidance provided solely in the player's interest. While our recommendations below are principally targeted at other stakeholders, they concern the use of personal doctors and thus we include them here. Additionally, the use of personal doctors and our related recommendations would likely be less necessary if our recommendations concerning club doctors were implemented (*see* Chapter 2: Club Doctors, Section H: Recommendations).

### Goal 1: To help players become proactive guardians of their own health.

*Principles Advanced: Respect; Health Primacy; and, Empowered Autonomy.*

#### **Recommendation 6:1-A: The NFLPA and clubs should take steps to facilitate players' usage of personal doctors.**

As discussed above, personal doctors can provide an important source of medical care and advice focused solely on the player. In particular, as is discussed below, personal doctors can provide an important perspective to players considering their long-term health and retirement.<sup>g</sup> However, players we interviewed indicated that logistical challenges made seeing personal doctors difficult. The NFLPA and clubs should seek to bridge that gap perhaps by generating lists of doctors for players to consider.<sup>h</sup> It might be even better to engage a third-party care navigation service to assist the players to avoid any appearance of conflict of interest. Another approach would be for club staff to remind players about the importance of having a personal doctor, or to confirm annually that all players who wish to have such a relationship have in fact identified a personal doctor with which they are happy. These services are particularly important for those players who have recently moved to a new city and such players should thus be given particular consideration. Players should also be given special attention when they leave the NFL to ensure smooth transition to a new medical care team.

#### **Recommendation 6:1-B: Players should receive a physical from their own doctor as soon as possible after each season.**

At the conclusion of each season, players receive a physical from the club doctor, which will list any conditions the player has at that time. While the club doctor may provide outgoing and ongoing medical advice to the player, the player should check those diagnoses and prognoses against those of an independent doctor. Additionally, given the physical and mental tolls of an NFL season, it would be wise for players to annually review their overall health with their own doctor to inform their decision-making about that offseason as well as the future of their career, including whether to retire. This physical can also be used to establish baseline measures of health for players upon retirement and to screen players for the range of medical issues for which young men should seek regular medical consultation. Moreover, having a healthcare provider familiar with their health, injury history, habits, etc., will help ensure players can make a more seamless transition into post-play health and healthcare.

A personal physical can also provide important legal and financial protections to players. In the event a club terminates a player's contract during the offseason, the club is generally under no obligation to pay the player any additional money unless

<sup>g</sup> Former Player 2 thought players should have physicals done "probably three or maybe even four [times] per year."

<sup>h</sup> Similarly, the NFLPA does generate a list of second opinion doctors.

## Recommendations Concerning Personal Doctors – continued

the player was injured.<sup>9</sup> The club's season-end physical might describe the player as healthy. However, unless the player obtains a physical that disagrees with the club's findings around the same time as the club's season-end physical, it will be difficult for the player to dispute the club's assertion that he was healthy at the time his contract was terminated. The player's personal doctor, via a season-end physical, might provide a medical opinion that supports the player's position.

## Endnotes

- 1 CBA, Art. 40, § 2(a).
- 2 CBA, Art. 42, § 1(a)(iii).
- 3 CBA, App. A, § 8.
- 4 *Id.*
- 5 See, e.g., Barry R. Furrow et al., *Health Law* Ch. 6 (2d ed. 2000) (discussing doctors' obligations to patients); Mark A. Hall et al., *Medical Liability and Treatment Relationships* (2d ed. 2008) (same).
- 6 See *Thierfelder v. Wolfert*, 52 A.3d 1251, 1264 (Pa. 2012) (discussing elements of a medical malpractice claim); *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008) (same); *Sullivan v. Edward Hosp.*, 806 N.E.2d 645, 653 (Ill. 2004) (same).
- 7 *Id.*
- 8 See Benjamin Grossberg, *Uniformity, Federalism, and Tort Reform: The Erie Implications of Medical Malpractice Certificate of Merit Statutes*, 159 U. Pa. L. Rev. 217 (2010) (identifying 25 states with statutes that require certificates of merit by another doctor for a medical malpractice claim).
- 9 See 2011 CBA, Art. 44 (discussing the Injury Grievance process).