



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

Chapter 8

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NFL Clubs



The NFL is an unincorporated association of 32 member clubs.⁹⁷ It serves as a centralized body for obligations and undertakings shared by the member clubs. Nevertheless, each member club is a separate and distinct legal entity,⁹⁸ with its own legal obligations separate and distinct from club owners and employees. This chapter focuses on NFL clubs as individual entities, rather than the clubs' employees, many of whom are discussed in other chapters. Additionally, the role of NFL club owners is discussed in Chapter 7: The NFL and NFLPA.

NFL clubs are the players' employers and hire many of the stakeholders discussed in this report. In this respect, NFL clubs play a powerful role in dictating the culture concerning player health.

(A) Background

NFL clubs are important stakeholders in player health. They are powerful organizations that employ many people with direct day-to-day interaction concerning player health issues. Club owners typically hire a general manager who then hires the coaching and football operations staff. The general manager and other executives are also likely involved with the hiring of the medical staff. Like all organizations, there is thus likely to develop a specific culture surrounding important issues, which will vary from club to club. In football, the club's attitude towards player health can have a significant impact.

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(B) Current Legal Obligations^a

The 2011 CBA contains multiple provisions governing clubs' health obligations to its players:^b

1. **Medical Care Generally:** "Each Club shall use its best efforts to ensure that its players are provided with medical care consistent with professional standards for the industry."¹
2. **Physically Unable to Perform (PUP) List:** Any player who is placed on the PUP List as a result of a football-related injury "will be paid his full Paragraph 5 Salary while on such list."² In practice, this provision differentiates the PUP List from the Non-Football Injury ("NFI") List. A player is placed on the NFI List when he suffers an injury outside of football and clubs are not required to pay players their Paragraph 5 Salary while they are on the NFI List.
3. **Club Physicians:** Clubs must retain a board-certified orthopedic surgeon and at least one physician board-certified in

internal medicine, family medicine, or emergency medicine. All physicians also must have a Certificate of Added Qualification in Sports Medicine.³ In addition, clubs are required to retain consultants in the neurological, cardiovascular, nutritional, and, neuropsychological fields.⁴

4. **Physicians at Games:** "All home teams shall retain at least one [Rapid Sequence Intubation] RSI physician who is board certified in emergency medicine, anesthesia, pulmonary medicine, or thoracic surgery, and who has documented competence in RSI intubations in the past twelve months. This physician shall be the neutral physician dedicated to game-day medical intervention for on-field or locker room catastrophic emergencies."⁵
5. **Club Athletic Trainers:** "All athletic trainers employed or retained by Clubs to provide services to players, including any part time athletic trainers, must be certified by the National Athletic Trainers Association and must have a degree from an accredited four-year college or university. Each Club must have at least two full-time athletic trainers. All part-time athletic trainers must work under the direct supervision of a certified athletic trainer."⁶
6. **Second Medical Opinion:** Clubs are obligated to pay for a player's consultation with a physician for a second medical opinion provided the player first consults with the club physician and the club physician is provided a report of the second physician's examination and diagnosis.⁷
7. **Player's Right to a Surgeon of His Choice:** Players have the right to choose the surgeon who will perform a surgery and the club must pay for the surgery provided the player first consulted with the club physician.⁸
8. **Workers' Compensation:** Clubs are required to provide workers' compensation coverage or comparable benefits to its players.⁹
9. **Injury Protection:** If a player is physically unable to play in the season following a season in which he was injured but remains under contract with the club, clubs are required to pay an amount equal to 50 percent of the player's Paragraph 5 salary in the subsequent season, up to a range of \$1–1.2 million.¹⁰
 - a) Players can also earn "Extended Injury Protection" benefits up to a range of \$500–575,000 for the second season after the season in which the player was injured.¹¹

In addition to their obligations under the CBA, NFL clubs also have statutory obligations to provide health insurance to NFL players. Starting in 2015, the 2010 Patient Protection and Affordable Care Act (ACA) obligates employers who employ an average of at least 50 full-time employees

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

b The club obligations discussed herein are separate and apart from those of the NFL as a centralized entity.

on business days to provide some basic level of health insurance to its employees or pay a financial penalty.¹² NFL clubs certainly employ more than 50 people (NFL clubs have 53 players, not including players placed on Injured Reserve, and a host of other employees)¹³ and thus are obligated by the ACA to provide basic health insurance to their players.

Additionally, it is possible that NFL clubs are obligated to take certain measures concerning employee health and safety as a result of the Occupational Safety and Health Act¹⁴ or a similar state or federal regulatory scheme. However, research has not revealed the application of any such scheme to the NFL in practice, and we thus avoid a theoretical analysis here. The application of the Occupational Safety and Health Act is the subject of future work by the Law & Ethics Initiative of The Football Players Health Study.

However, one statutory employee-benefit mechanism with which NFL clubs do have regular interactions is workers' compensation laws. Before we discuss the current ethical codes and current practices of the clubs, we discuss in detail the application of workers' compensation laws to NFL clubs.

1) WORKERS' COMPENSATION

Workers' compensation benefits and statutes have been contentious issues in the NFL.

"Workers' compensation laws provide protections and benefits for employees who are injured in the course of their employment. In the typical case, the workers' compensation regime grants tort immunity to employers in exchange for the regime's protections and benefits to the employee."¹⁵ Since the first CBA in 1968, NFL clubs have been obligated to make the necessary arrangements to provide workers' compensation benefits to their players. If the state in which the club operates does not have workers' compensation or specifically excludes professional athletes from workers' compensation coverage, the CBAs have required those clubs to "guarantee equivalent benefits to its players."¹⁶

As a preliminary matter, it is important to point out that workers' compensation laws, systems and benefits vary widely among the states. Below, we try to provide a general description of workers' compensation rights and their relevance to NFL players.

Workers' compensation provides two important benefits to workers: monetary compensation; and, coverage for medical care. We discuss each of these benefits in turn.

Workers' compensation payments typically depend on the employee's level of injury or disability and the extent to which the injury or disability affects the employee's ability to continue working. Generally, workers receive "around one-half to two-thirds of the employee's average weekly wage."¹⁷ In addition, the amount of benefits is subject to maximums which are usually tied to the state's average weekly wage,¹⁸ and are generally between \$500 and \$1,000.¹⁹ The benefits continue so long as the employee is disabled or unable to work. Additionally, the amount a player receives in workers' compensation reduces the amount the club is obligated to pay the player for certain other CBA-provided benefits.²⁰

Medical care coverage is an important benefit available to players through workers' compensation. If a player is injured during the season, he is entitled to medical care from the club "during the season of injury only[.]"²¹ Consequently, if a player suffers an injury that causes him to have ongoing or recurring healthcare needs (such as surgeries) well beyond the season of injury (and for perhaps the rest of his life), the club will have no obligation to pay for such care. Workers' compensation fills that gap. Workers' compensation statutes generally require the employer (really the employer's insurance carrier) to pay for reasonable and necessary medical expenses that are the result of an injury suffered at the workplace in perpetuity. More importantly, the worker does not have to pay for any part of the care.

Players must be diligent in protecting their rights. Even if a player suffers an injury and believes it has healed well, the player cannot know if the injury will resurface or cause problems later in life. Thus, the player must protect his rights by filing for workers' compensation benefits within the applicable statute of limitations, generally between one and three years. The workers' compensation claim is then adjudicated by a panel or board commissioned by the state. If the player is successful in his claim, he will be entitled to future medical care concerning the injury, even if no further care is needed at the time.

The trade-off for workers' compensation benefits from an employee's perspective is that the laws generally bar any civil lawsuit against the employer or other employees. Workers' compensation statutes provide compensation for workers injured at work (without having to prove the employer was at fault) and thus generally preclude lawsuits based on the co-workers' negligence.²² This preemption applies with regard to the negligence of any co-worker, regardless of hierarchy or reporting structure. So, for example, as is discussed in detail in Chapter 9: Coaches, players generally cannot sue coaches for negligence due to workers' compensation statutes.

The clubs contract with insurance companies to pay for workers' compensation benefits. It is believed that clubs pay approximately \$1.2 to \$1.5 million in workers' compensation insurance premiums each year. Once a player files for workers' compensation benefits, the insurance carrier will be responsible for handling the litigation as well as paying any benefits.

In recent years, California received a flood of NFL player workers' compensation claims because of some unique (but now amended) statutory provisions.

First, California's workers' compensation law extended broadly to cover employees of non-California employers who were injured while in California temporarily on behalf of their employers.²³ Section 3600.5 of California's Labor Code previously dictated that if an employee "who has been hired or is regularly employed in the state receives personal injury by accident arising out of and in the course of such employment outside of this state, he . . . shall be entitled to [workers'] compensation" benefits under California law.²⁴ "The California Workers' Compensation Board has taken a wide view of the phrase 'regularly employed' that has allowed NFL players to be covered under the broad umbrella of workers' compensation rights in the state."²⁵

Second, California permitted employees to recover for "cumulative" injuries. A cumulative injury is an injury that is "occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment."²⁶ Recent controversy concerning NFL player injuries has centered on head, neck, and neurological conditions. These types of injuries generally have been diagnosed and recognized as injuries that did not occur as the result of any specific play or incident but instead are the cumulative result of decades of playing football.²⁷ Thus, California's cumulative injury designation appeared to perfectly suit the recent claims by current and former NFL players.

Third, the statute of limitations on an employee's workers' compensation claim in California did not begin to run until the employer formally notified the employee of his or her rights under California's workers' compensation laws.²⁸ "NFL teams, either believing that they had adequately taken care of their players' medical conditions at the time, or hoping to avoid workers' compensation claims, or simply being unaware of the possibility of such claims, historically had not informed their players of their rights under California's regime."²⁹

Likely as a result of California's liberal workers' compensation laws, between 2006 and 2013, 3,400 former NFL players filed for workers' compensation in California alleging head or brain injuries.³⁰ The NFL estimated that the average California workers' compensation claim cost the club \$215,000 to resolve, though it is unclear whether this figure refers to payments to players, or also includes legal fees.³¹ Additionally, more than two-thirds of all California workers' compensation claims made by professional athletes and which cited cumulative trauma were made by players who never played for a California club.³²

The NFL, not surprisingly, pushed for changes to California's workers' compensation scheme. In 1997, the NFL unsuccessfully sponsored legislation that would have limited California's workers' compensation benefits to athletes who lived in the state and would have prevented athletes from collecting benefits for cumulative injuries.³³ The NFL seemingly pursued this legislation despite the fact that the 1993 CBA imposed a moratorium on lobbying related to workers' compensation that was not lifted until June 1, 1999.³⁴

Having failed to change the law, NFL clubs then began to contract around the law by inserting a provision into player contracts that require players to file their workers' compensation claims in the club's home state and under the law of the club's home state.³⁵ The NFL has prevailed in its efforts to enforce these provisions.³⁶

These successes did not stop the NFL from pursuing amendments to California's workers' compensation laws.

In early 2012, only months after the execution of the most recent CBA, the NFL renewed its efforts to have California's workers' compensation statutes amended.³⁷ After extensive lobbying from the NFL and to a lesser extent the NFLPA on the opposite side of the issue,³⁸ on October 8, 2013, California Governor Jerry Brown signed into law amendments to California's workers' compensation statutes that affected all claims filed on or after January 1, 2014.

This legislation amended California's workers' compensation statute in two significant ways.

First, athletes who did not play for California teams can no longer file claims under California's workers' compensation laws if the athlete's employer "has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California."³⁹ Since the CBA requires clubs to obtain workers' compensation insurance coverage or its equivalent, the amended legislation effectively precludes out-of-state players from filing for benefits in California.

Second, even players who played for California-based teams must meet certain criteria to file for workers' compensation in California. The player must have: (a) played for a California-based team for at least two seasons or 20% of his or her career; and (b) "worked for fewer than seven seasons for any team or teams other than a California-based team."⁴⁰ This second provision, had it been in place when they played, would have effectively precluded some of California's most high-profile athletes from filing for workers' compensation.^c

The legislation easily passed despite questions as to whether the bill provided any clear benefit to the state. By curtailing potentially thousands of annual workers' compensation claims, the state saves the administrative costs related to adjudicating workers' compensation claims. Nevertheless, some critics argued that the NFL was able to get the bill passed by erroneously suggesting the state in some way was responsible for paying the players' workers' compensation benefits.⁴¹ As the bill's author Assemblyman Henry Perea admitted, clubs – and not the state – pay for the benefits.^{42,d}

Moreover, the NFLPA has argued that in fact the players pay for the benefits.⁴³ The NFL-NFLPA CBA sets a "Player Cost Amount," effectively an upper limit on the total salary and benefits NFL clubs can expend on players. The CBA also permits a Salary Cap, limiting the total amount clubs can spend on players and effectively curtailing player salaries. The Salary Cap is determined by deducting player benefits from the Player Cost Amount.⁴⁴ Thus, the more clubs pay in benefits, the less they pay in salary. Workers' compensation payments (including to former players) and premiums are among the benefits deducted from the Player Cost Amount to set the Salary Cap.⁴⁵ Players, through the CBA, have thus accepted less salary in exchange for increased benefits, including workers' compensation benefits.

Workers' compensation statutes generally require the employer (really the employer's insurance carrier) to pay for reasonable and necessary medical expenses that are the result of an injury suffered at the workplace in perpetuity.

The NFL's workers' compensation issues did not end with California. In May 2014, Louisiana legislators introduced a bill, with the support of the New Orleans Saints, to address the method for calculating a player's workers' compensation benefits.⁴⁶ Workers' compensation benefits are determined based on the workers' salary. Louisiana Administrative Law Judges adjudicating workers' compensation claims had generally determined that an athlete's benefits should be determined by the athlete's salary at the time the athlete was injured.⁴⁷ The athletes argued that their benefits should instead be determined by considering their entire compensation for the year in which they are injured.⁴⁸

The difference in calculation methods used by the state of Louisiana is quite large. NFL player salaries are paid out during the 17-week regular season; they earn considerably less during minicamps and training camps. In 2015, all veterans—regardless of skill and regular season salary—received only \$1,800 per week during training camp,⁴⁹ whereas the minimum weekly salary for a four-year veteran during the regular season was \$43,823.53.⁵⁰ Thus, it is clear a player injured during training camp rather than the regular season will receive significantly less workers' compensation benefits.^e

The NFLPA and its players mobilized against the 2014 bill, led by Saints' star quarterback Drew Brees.⁵¹ After a few weeks of debate, the Louisiana proposed bill was tabled for further discussion among the parties on the best way to calculate the benefits.⁵²

c For instance, Wayne Gretzky, widely considered the greatest hockey player of all-time, could not file for worker's compensation under this rule even though he spent 7.5 of years of his 21 year career with the Los Angeles Kings. Terrell Owens, one of the most-accomplished 49ers wide receiver of all-time would also be precluded, having followed his first six years in San Francisco with seven years with other NFL clubs. Lastly, Barry Bonds, arguably one of the greatest baseball players ever (and certainly one of the most controversial), is ineligible for workers' compensation benefits despite having hit 586 home runs for the San Francisco Giants because he also played seven years with the Pittsburgh Pirates.

d Ironically, some have also argued that the changes to California's workers' compensation statutes will increase costs to the state. Modesto Diaz, a California workers' compensation attorney specializing in representing athletes, contended that injured former athletes who are no longer eligible to receive workers' compensation payments from their teams will now have to resort to Social Security disability benefits, Medicaid, and other forms of government aid, Ken Bensinger & Marc Lifsher, *California Limits Workers' Comp Sports Injury Claims*, L.A. Times, Oct. 3, 2013, <http://articles.latimes.com/2013/oct/08/business/la-fi-workers-comp-nfl-20131009>, archived at <http://perma.cc/2JTS-83KK>, effectively shifting player health costs from the clubs to the state.

e In reviewing this Report, the NFL explained that "[a]t least some states pay workers' comp benefits based on the contract salary, regardless of when the player gets hurt." NFL Comments and Corrections (June 24, 2016).

Other states' workers' compensation laws have athlete-specific language. For example, Pennsylvania's workers' compensation statute reduces the athlete's workers' compensation benefits by any amounts received by the athlete from the club during the time the athlete was injured, including salary, club-funded insurance, and any other benefit paid as a result of the CBA.⁵³ These types of statutes coupled with benefit maximums effectively prevent many athletes from receiving any workers' compensation benefits. Moreover, according to the NFLPA, every year NFL clubs sponsor state level legislation that seeks to curtail players' workers' compensation benefits in some way.

To assist NFL players with workers' compensation claims, the NFLPA makes available to players and their contract advisors a document describing the benefits claim process, benefits amount and statutes of limitations. Additionally, the NFLPA has recommended workers' compensation attorneys in each city in which an NFL club plays (collectively, the "Panel"). The Panel consists of approximately 60 attorneys. Because players play in many states, they are often eligible for workers' compensation benefits in many states. The advantage of the Panel is coordination and communication (with the NFLPA's assistance) that permits a player to determine which state will provide the player with the best benefits. Finally, contract advisors are prohibited from referring a player to a workers' compensation attorney who is not a member of the Panel.⁵⁴

(C) Current Ethical Codes

Research has not revealed any ethical code that governs NFL clubs as such.

(D) Current Practices

The best way to understand NFL clubs' current practices concerning player health is to examine the current practices of the relevant NFL club employees or contractors: see Chapter 2: Club Doctors; Chapter 3: Athletic Trainers; Chapter 9: Coaches; Chapter 10: Club Employees; and Chapter 11: Equipment Managers. These employees carry out the day to day tasks of the club, interact with the players, and dictate the club's culture accordingly.

(E) Enforcement of Legal and Ethical Obligations^f

The 2011 CBA provides a few options for players dissatisfied with the medical care provided by an NFL club. Nevertheless, these options, discussed below, provide questionable remedies to the players for a club's health-related obligations.

First, a player could submit a complaint to the Accountability and Care Committee (ACC), which consists of the NFL Commissioner (or his designee), the NFLPA Executive Director (or his designee), and six additional members "experienced in fields relevant to health care for professional athletes," three appointed by the Commissioner and three by the NFLPA Executive Director.⁵⁵ "[T]he complaint shall be referred to the League and the player's Club, which together shall determine an appropriate response or corrective action if found to be reasonable. The Committee shall be informed of any response or corrective action."⁵⁶ There is thus no neutral third-party adjudicatory process for addressing the player's claim or compensating the player for any wrong suffered. The remedial process is left entirely in the hands of the NFL and the club, both of which may face a significant conflict of interest and have reasons not to find that a club's medical staff acted inappropriately and to compensate the injured player accordingly.

Second, a player could commence a Non-Injury Grievance.⁸ The 2011 CBA directs certain disputes to designated arbitration mechanisms⁵⁷ and directs the remainder of any disputes involving the CBA, a player contract, NFL rules or generally the terms and conditions of employment to the Non-Injury Grievance arbitration process.⁵⁸ Importantly, Non-Injury Grievances provide players with the benefit of a neutral arbitration and the possibility of a "money award."⁵⁹ Many of the clubs' above-described legal obligations could be the subject of a Non-Injury Grievance. However, Non-Injury Grievances must be filed within 50 days "from the date of the occurrence or non-occurrence upon which the grievance is based."⁶⁰ Additionally, it is possible

^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.

^g 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 which are considered Non-Injury Grievances because they do not fit within the limited confines of an Injury Grievance.

that under the 2011 CBA, the NFL could argue that complaints concerning medical care are designated elsewhere in the CBA and thus should not be heard by the Non-Injury Grievance arbitrator.⁶¹

In the 2011 CBA, the parties added Article 39: Players' Rights to Medical Care and Treatment (Appendix F), supplementing and amending some provisions from prior CBAs. Article 39 reaffirms some of the clubs' obligations concerning player health and the rights of players concerning their health that were expressed in past CBAs. Article 39 also added and clarified several substantive provisions.^h Nevertheless, since the execution of the 2011 CBA, there have been no Non-Injury Grievances concerning Article 39 decided on the merits,⁶² suggesting either clubs are in compliance with Article 39 or the Article has not been sufficiently enforced.

Although no Article 39 Non-Injury Grievances have been adjudicated on the merits, there was a significant grievance concerning Article 39 between the New England Patriots and former Patriots' defensive lineman Jonathan Fanene. In that matter, the NFLPA alleged that Patriots club doctor Tom Gill violated Article 39, § 1(c)'s requirement that Gill's primary duty in providing player medical care shall be to the player and that he comply with all medical ethics rules concerning his treatment of Fanene.⁶³ Prior to the 2012 season, the Patriots and Fanene agreed to a three-year

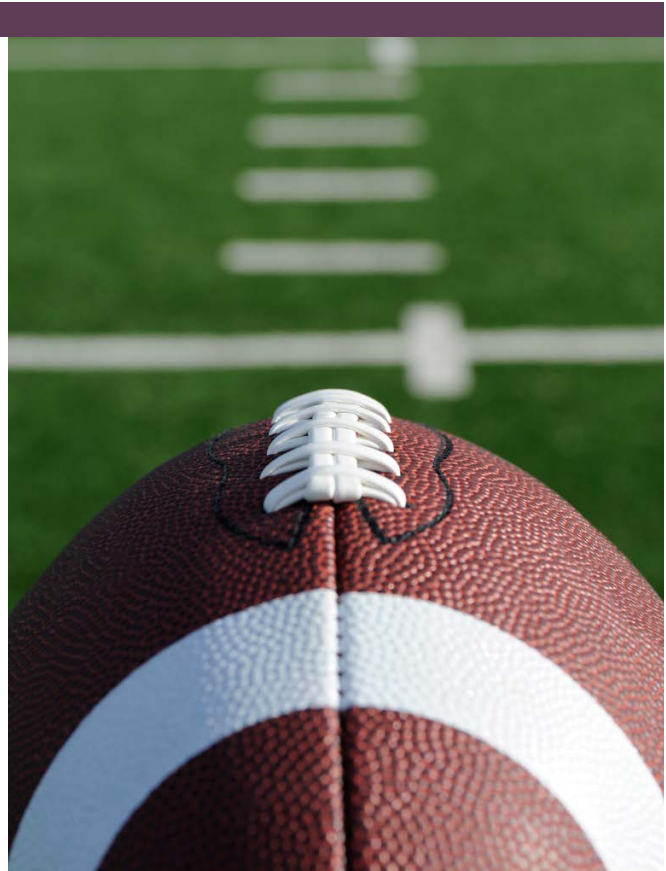
contract worth close to \$12 million, including a \$3.85 million signing bonus.⁶⁴ As part of a pre-employment questionnaire, Fanene, according to the Patriots, stated that he took no medications regularly even though he had been taking significant amounts of painkillers to mask chronic pain in his knee.⁶⁵ The Patriots terminated Fanene's contract during training camp, citing Fanene's alleged failure to disclose his medical condition,⁶⁶ and initiated a System Arbitrationⁱ to recoup \$2.5 million in signing bonus money already paid to Fanene (discussed further in Chapter 1: Players).⁶⁷ Specifically, the Patriots alleged Fanene violated his obligations to negotiate the contract in good faith.⁶⁸

The NFLPA alleged that during the 2012 training camp, Gill told Patriots owner Robert Kraft and club President Jonathan Kraft that he was "trying to put together a case" against Fanene so that the club could seek the return of the signing bonus paid. The NFLPA further alleged that, at the direction of Patriots head coach Bill Belichick, Gill intentionally delayed and ultimately refused performing surgery on Fanene so the Patriots could convince him to retire. Moreover, the NFLPA alleged that Gill fabricated and/or back-dated notes to help the Patriots' grievance against Fanene. All of these actions, according to the NFLPA, violated Article 39, § 1(c).

^h For a description of these health-related changes, see Appendix B.

ⁱ 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.

There have been no Non-Injury Grievances concerning Article 39 decided on the merits, suggesting either clubs are in compliance with Article 39 or the Article has not been sufficiently enforced.



Gill generally denied the allegations and insisted that his comments were taken out of context.⁶⁹ The dueling grievances were settled in September 2013 when the Patriots let Fanene keep \$2.5 million in signing bonus money already paid but did not have to pay the \$1.35 million still owed.⁷⁰ The settlement thus prevented any precedential legal authority.^j

Prior to the 2011 CBA, there were some arbitrations against clubs concerning medical care but all of the cases revealed by our research were denied as untimely.⁷¹ In addition, each of these cases discuss that the CBA's statutes of limitations have been and are to be construed strictly by the arbitrators.

The third option for a player seeking to enforce a club's health-related obligations is to request the NFLPA to commence an investigation before the Joint Committee on Player Safety and Welfare ("Joint Committee"). The Joint Committee consists of three representatives chosen by the NFL and three chosen by the NFLPA.⁷² "The NFLPA shall have the right to commence an investigation before the Joint Committee if the NFLPA believes that the medical care of a team is not adequately taking care of player safety. Within 60 days of the initiation of an investigation, two or more neutral physicians will be selected to investigate and report to the Joint Committee on the situation. The neutral physicians shall issue a written report within 60 days of their selection, and their recommendations as to what steps shall be taken to address and correct any issues shall be acted upon by the Joint Committee."⁷³ While a complaint to the Joint Committee results in a neutral review process, the scope of that review process' authority is vague. The Joint Committee is obligated to act upon the recommendations of the neutral physicians, but it is unclear what it means for the Joint Committee to act and there is nothing obligating the NFL or any club to abide by the neutral physicians' or Joint Committee's recommendations. Moreover, there is no indication that the neutral physicians or Joint Committee could award damages to an injured player.⁷⁴

In 2012, the NFLPA commenced the first and only Joint Committee investigation.⁷⁵ The nature and results of that investigation are confidential per an agreement between the NFL and NFLPA.⁷⁶

Lawsuits against clubs are another possible avenue of relief, but prove difficult to pursue. The CBA presents the biggest obstacle against any such claim. This is because the Labor Management Relations Act (LMRA)⁷⁷ bars or "preempts" state common law^k claims, such as negligence, where the claim is "substantially dependent upon analysis of the terms" of a CBA, *i.e.*, where the claim is "inextricably intertwined with consideration of the terms of the" CBA."⁷⁸ In order to assess a club's duty to an NFL player—an essential element of a negligence claim—the court would likely have to refer to and analyze the terms of the CBA, resulting in the claim's preemption.⁷⁹ In these cases, player complaints must be resolved through the enforcement provisions provided by the CBA itself (*i.e.*, a Non-Injury Grievance against the club), rather than through litigation.

In cases where the club doctor is an employee of the club—as opposed to an independent contractor—a player's lawsuit against the club is likely to be barred by the relevant state's workers' compensation statute. As discussed earlier, workers' compensation statutes provide compensation for workers injured at work and thus generally preclude lawsuits based on the co-workers' negligence.⁸⁰ This has been the result in multiple cases brought by NFL players against clubs and club doctors.⁸¹

Several players have sued their clubs concerning medical issues, with mixed results. In recent years, courts generally have determined that players' claims for negligent or otherwise improper medical care are preempted.⁸² However, some cases concerning medical issues survive preemption. For example, between 2005 and 2008, six Cleveland Browns players became infected with staphylococcus ("staph"), raising concerns about the cleanliness of the Browns' facilities.⁸³ Among the infected, wide receiver Joe Jurevicius and center LeCharles Bentley filed lawsuits against the Browns.

j Gill was removed as the Patriots' Club doctor in April 2014. Liz Kowalczyk, *Troubles In Their Field*, Bos. Globe, Apr. 12, 2014, available at 2014 WLNR 9885884. The Patriots stated the change was because Gill was no longer chief of sports medicine at Massachusetts General Hospital and that the Club's doctor had "always" been the chief of sports medicine at the Hospital. *Id.* The Patriots made the change even though some reports indicated he was well-liked and trusted by the players. Bob Hohler, *Gill Denies He Sided With Team Over Player*, Bos. Globe, Dec. 13, 2014, available at 2014 WLNR 35249641.

k 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). The concept of "preemption" is "[t]he principle (derived from the Supremacy Clause [of the Constitution]) that a federal law can supersede or supplant any inconsistent state law or regulation." *Id.*

In 2009, Jurevicius sued the Browns and Browns' doctors in Ohio state court, alleging causes of action for negligence, negligent misrepresentation, fraud, constructive fraud, breach of fiduciary duty, common law intentional tort, and statutory intentional tort against the Browns.⁸⁴ Jurevicius generally alleged that the Browns failed to take proper precautions to prevent staph infections and lied to players about what steps the Club had taken to prevent infections.⁸⁵ The Browns attempted to remove the case to federal court (and then argued that it was preempted), arguing that Jurevicius' claims were barred by the CBA.⁸⁶ In a March 31, 2010 decision, the United States District Court for the Northern District of Ohio determined that Jurevicius' negligence, negligent misrepresentation, fraud, common law intentional tort and statutory intentional tort claims were not preempted, while the constructive fraud and breach of fiduciary duty claims were. The Court generally found that the CBA did not address a club's obligations concerning facilities and thus did not need to be interpreted to resolve Jurevicius' claims.⁸⁷ The lawsuit was settled a few months after the Court's decision.⁸⁸

In 2010, Bentley sued the Browns, alleging facts and claims similar to Jurevicius'.⁸⁹ Likely because the Browns had already lost the argument that claims arising out of these facts were preempted, the Browns did not attempt to remove the case to federal court and have it dismissed on the preemption ground. Instead, the Browns filed a motion to compel Bentley's claims to the arbitration procedures outlined in the CBA.⁹⁰ In July 2011, relying on the *Jurevicius* decision, the Court of Appeals of Ohio affirmed the denial of the Browns' motion.⁹¹ Bentley and the Browns settled the case a month later.⁹²

In a very similar case, in 2015 kicker Lawrence Tynes sued the Tampa Bay Buccaneers after he contracted methicillin-resistant *Staphylococcus aureus* (MRSA) from the club's training facility. Relying in part on *Jurevicius*, the United States District Court for the Middle District of Florida ruled that Tynes' claims were not preempted.⁹³ The court found that Tynes' claims had "nothing to do with medical treatment" and that "there is nothing in the CBA regarding the condition of facilities."⁹⁴ The case was remanded to Florida state court and is ongoing as of the date of publication.

One additional case bears mentioning. In *Chuy v. Philadelphia Eagles Football Club*,⁹⁵ former Eagles lineman Don Chuy successfully recovered against the Eagles for intentional infliction of emotional distress after the Eagles' Club doctor told a reporter that Chuy suffered from a fatal disease after the 1969 season. In a 1979 opinion, the United States Court of Appeals for the Ninth Circuit affirmed the jury verdict in Chuy's favor, finding that the allegations, if true as the jury found, "constituted intolerable professional conduct."⁹⁶ Considering the age of the case, its relevance today is unclear, particularly because it is questionable whether such a claim would survive preemption.

While players do have options for seeking redress against clubs concerning player health (probably arbitration more so than litigation), practical considerations often prevent players from pursuing these options. Players are constantly concerned about losing their job or status with the club. Filing a Non-Injury Grievance against a club is a surefire way to anger the club and jeopardize the player's career.¹ Thus, players often forego pursuing viable claims.

¹ Current Player 8: "You don't have the gall to stand against your franchise and say 'They mistreated me.' . . . I, still today, going into my eighth year, am afraid to file a grievance, or do anything like that[.]"

(F) Recommendations Concerning NFL Clubs

NFL clubs collectively comprise the NFL. Thus, any recommendations concerning NFL clubs would ultimately be within the scope of recommendations made concerning the NFL. Moreover, NFL clubs act only through their employees or independent contractors, including coaches, other employees, and the medical staff. Thus, any recommendation we make for the improvement of clubs would be carried out through recommendations we make concerning club employees. For these reasons, we make no separate recommendations here and instead refer to the recommendations in the chapters concerning those stakeholders for recommendations concerning NFL clubs. Nevertheless, we do stress that it is important that club owners, as the leaders of each NFL club and its employees, take seriously and personally participate in player health issues, including overseeing the response to recommendations made in this Report.

Additionally, there is one recommendation contained in another chapter that is also directly relevant to NFL clubs:

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



Endnotes

- 1 American Needle, Inc. v. Nat'l Football League, 560 U.S. 183, 187 (2010).
- 2 See Brady v. Nat'l Football League, 640 F.3d 785 (8th Cir. 2011) (listing each of the 32 different entities as defendants in lawsuit).
- 3 CBA, Art. 39, § 3(e).
- 4 CBA, Art. 20, § 2. It is most likely the General Manager or person with control over personnel decisions who makes the decision whether to place a player on the PUP List.
- 5 The American Board of Family Medicine issues Certificates of Added Qualifications in several areas, including Sports Medicine. See *Certificates of Added Qualifications (CAQs)*, Am. Bd. Family Med., <https://www.theabfm.org/caq/index.aspx> (last visited Aug. 7, 2015), archived at <https://perma.cc/R6JS-D2Z5>.
- 6 CBA, Art. 39, § 1. It is the American Board of Family Medicine which issues Certificates of Added Qualification in Sports Medicine. See *Sports Medicine*, Am. Bd. Family Med., <https://www.theabfm.org/caq/sports.aspx> (last visited Aug. 7, 2015), archived at <https://perma.cc/R6JS-D2Z5>.
- 7 CBA, Art. 39, § 1(e).
- 8 CBA, Art. 39, § 2.
- 9 CBA, Art. 39, § 4.
- 10 CBA, Art. 39, § 5.
- 11 CBA, Art. 41, § 1.
- 12 CBA, Art. 45.
- 13 CBA, Art. 45, § 4.
- 14 See 26 U.S.C. § 4980H.
- 15 CBA, Art. 25, § 4.
- 16 See 29 U.S.C. § 651, et seq.
- 17 Gabriel Feldman, *Closing the Floodgates: The Battle Over Workers' Compensation Rights in California*, 8 Fla. Int'l Univ. L. Rev. 107, 109 (2012).
- 18 See, e.g., 2011 CBA, Art. 41, § 1.
- 19 Lex Larson, *Workers' Compensation Law*, § 1.01 (Matthew Bender 2014).
- 20 Lex Larson, *Workers' Compensation Law*, § 1.03 (Matthew Bender 2014).
- 21 Howard Berkes, *Injured Workers Suffer As 'Reforms' Limit Workers' Compensation Benefits*, Nat'l Pub. Radio (Mar. 4, 2015), <http://www.npr.org/2015/03/04/390441655/injured-workers-suffer-as-reforms-limit-workers-compensation-benefits>, archived at <http://perma.cc/X5WN-5TRG> (discussing states' reductions in maximum workers' compensation benefits).
- 22 See 2011 CBA, Art. 41, § 4.
- 23 CBA, App. A, ¶ 9.
- 24 See Matthew J. Mitten, *Team Physicians as Co-Employees: A Prescription that Deprives Professional Athletes of an Adequate Remedy for Sports Medicine Malpractice*, 50 St. Louis U. L.J. 211 (2005) (discussing generally medical malpractice in the sports context and the preclusion of claims by workers' compensation statutes); John Redlingshafer, *Tonight's Matchup – Workers' Compensation v. Medical Malpractice: What Should Lower-Paid, Inexperienced Athletes Receive When a Team Doctor Allegedly Aids in Ending Their Careers?*, 2 DePaul J. Sports L. & Contemp. Probs. 100 (2004) (same).
- 25 Gabriel Feldman, *Closing the Floodgates: The Battle Over Workers' Compensation Rights in California*, 8 Fla. Int'l Univ. L. Rev. 107, 111 (2012).
- 26 *Id.*
- 27 *Id.*, citing *Injured Workers' Ins. Fund of Md. v. Workers' Comp. Appeals Bd.*, 29 Cal. Workers' Comp. Rep. 182 (2001); *Carroll v. New Orleans Saints*, No. ADJ2295331 (ANA0397551) (Workers' Comp. Appeals Bd. Jan. 24, 2011).
- 28 Cal. Labor Code § 3208.1.
- 29 Gabriel Feldman, *Closing the Floodgates: The Battle Over Workers' Compensation Rights in California*, 8 Fla. Int'l Univ. L. Rev. 107, 110 (2012).
- 30 *Id.* at *110, n. 18, citing Cal. Labor Code § 3550 (2012) (requiring employers to post in a conspicuous place the name of their insurance carrier and the entity responsible for workers compensation claims); see, e.g., *Kaiser Found. Hosp. v. Workers' Comp. Appeals Bd.*, 702 P.2d 197, 201 (1985) (“[W]hen an employer fails to perform its statutory duty to notify an injured employee of his workers' compensation rights, the injured employee is unaware of those rights from the date of injury through the date of the employer's breach, then the statute of limitations will be tolled until the employee receives actual knowledge that he may be entitled to benefits under the workers' compensation system.”).
- 31 Gabriel Feldman, *Closing the Floodgates: The Battle Over Workers' Compensation Rights in California*, 8 Fla. Int'l Univ. L. Rev. 107, 110–111 (2012).
- 32 Ken Bensinger & Marc Lifsher, *California Limits Workers' Comp Sports Injury Claims*, L.A. Times, Oct. 3, 2013, <http://articles.latimes.com/2013/oct/08/business/la-fi-workers-comp-nfl-20131009>, archived at <http://perma.cc/2JTS-83KK>.
- 33 Armand Emamdjomeh & Ken Bensinger, *NFL Workers' Comp Victory Comes at a Price*, L.A. Times, Feb. 1, 2014, <http://www.latimes.com/business/la-fi-nfl-claims-20140201-dto-htmistory.html>, archived at <http://perma.cc/JNF5-42RR>.
- 34 Bensinger, *supra* note 32.
- 35 *Id.*, citing *NFL Tackles Benefits*, L.A. Times, Apr. 11, 1997, http://articles.latimes.com/1997-04-11/business/fi-47559_1_compensation-benefits, archived at <http://perma.cc/EB2S-B54W>.
- 36 CBA, Art. LIV.
- 37 Bensinger, *supra* note 32.
- 38 See *Matthews v. Nat'l Football League Mgmt. Council*, 688 F.3d 1107 (9th Cir. 2012); *Chicago Bears Football Club, Inc. v. Haynes*, 816 F. Supp. 2d 534 (N.D. Ill. 2011); *New Orleans Saints, LLC v. Cleveland*, No. 2:11-cv-02093 (E.D. La. Aug. 24, 2011) (Beck, Arb.); *Kansas City Chiefs Football Club, Inc. v. Allen*, No. 4:12-cv-00238 (W.D. Mo. Feb. 24, 2012) (Beck, Arb.), and *Atlanta Falcons Football Club LLC v. Nat'l Football League Players Ass'n*, No. 1:12-cv-00753 (N.D. Ga. Feb. 23, 2012) (Beck, Arb.).
- 39 See Michael Hiltzik, *California Gives a Huge Payoff to the NFL*, L.A. Times, Oct. 8, 2013, <http://articles.latimes.com/2013/oct/08/business/la-fi-mh-nfl-20131008>, archived at <http://perma.cc/6V33-FCPB> (discussing, among other things, timeline of amendments to California's workers' compensation laws).
- 40 The NFLPA issued a memorandum to agents and players about the issue. See Mike Florio, *California Overreacts to NFL Workers' Compensation Loophole*, ProFootballTalk (May 3, 2013, 10:11 AM), <http://profootballtalk.nbcsports.com/2013/05/03/california-overreacts-to-nfl-workers-compensation-loophole>, archived at <http://perma.cc/TJZ3-X2LC>. Also, star quarterbacks Tom Brady of the New England Patriots and Drew Brees of the New Orleans Saints wrote an editorial in the San Francisco Chronicle decrying the proposed legislation. Tom Brady & Drew Brees, *Injured Pro Athletes Deserve Workers' Comp*, S.F. Chronicle, June 23, 2013, <http://www.sfchronicle.com/opinion/openforum/article/injured-pro-athletes-deserve-workers-comp-4617644.php?t=7ce9302705cefdcb88>, archived at <http://perma.cc/R97F-J2TC>.
- 41 Cal. Labor Code § 3600.5(c).
- 42 Cal. Labor Code § 3600.5(d).

- 43 See Hiltzik *supra* note 39; Florio *supra* note 40.
- 44 Brady *supra* note 40.
- 45 Florio *supra* note 40.
- 46 CBA, Art. 12, § 6(c)(v).
- 47 See 2011 CBA, Art. 12, § 2(a)(iv) (listing workers' compensation benefits among "Benefits" to be deducted).
- 48 Michael David Smith, *Brees, NFLPA Speak Against Saints-supported Workers' Comp Bill*, ProFootballTalk (May 16, 2014, 7:17 PM), <http://profootballtalk.nbcsports.com/2014/05/16/drew-brees-nflpa-speak-against-saints-supported-workers-comp-bill/>, archived at <http://perma.cc/G57L-Z784>; Mike Florio, *Louisiana Workers' Compensation Fight Could Be Easily Solved*, ProFootballTalk (May 17, 2014, 12:44 PM), <http://profootballtalk.nbcsports.com/2014/05/17/louisiana-workers-compensation-fight-could-be-easily-solved/>, archived at <http://perma.cc/2BGU-Z9PP>.
- 49 Florio *supra* note 48.
- 50 *Id.*
- 51 CBA, Art. 23, § 4.
- 52 See 2011 CBA, Art. 26, § 1 (listing a four-year veteran's minimum salary for the 2015 season as \$745,000). \$745,000 divided by 17 weeks equals \$43,823.53.
- 53 *House Bill 1069 is Wrong for Louisiana*, NFL Players Ass'n (May 13, 2014), <https://www.nflpa.com/news/all-news/house-bill-1069-is-wrong-for-louisiana>, archived at <https://perma.cc/5JM3-EB8Q>.
- 54 Mike Florio, *Sponsor Pulls Controversial Louisiana Workers' Compensation Bill*, ProFootballTalk (May 27, 2014, 4:36 PM), <http://profootballtalk.nbcsports.com/2014/05/27/sponsor-pulls-controversial-louisiana-workers-compensation-bill/>, archived at <http://perma.cc/E7DT-BGE9>.
- 55 P.S. § 565.
- 56 NFLPA Regulations, § 3(B)(28).
- 57 CBA, Art. 39, § 3(a).
- 58 CBA, Art. 39, § 3(d).
- 59 For example, Injury Grievances, which occur when, at the time a player's contract was terminated, the player claims he was physically unable to perform the services required of him because of a football-related injury, are heard by a specified Arbitration Panel. 2011 CBA, Art. 44. Additionally, issues concerning certain Sections of the CBA related to labor and antitrust issues, such as free agency and the Salary Cap, are within the exclusive scope of the System Arbitrator, 2011 CBA, Art. 15, currently University of Pennsylvania Law School Professor Stephen B. Burbank.
- 60 See 2011 CBA, Art. 43, § 1.
- 61 See 2011 CBA, Art. 43, § 6 (discussing constitution of Arbitration Panel); 2011 CBA, Art. 43 § 8 (discussing Arbitrator's authority, including to grant a "money award").
- 62 CBA, Art. 43, § 2.
- 63 The Non-Injury Grievance arbitrator has the authority to determine whether a complaint against a doctor fit within his or her jurisdiction under Article 43. See 2011 CBA, Art. 43, § 1 (discussing scope of Non-Injury Grievance arbitrator's jurisdiction).
- 64 This information was provided by the NFLPA.
- 65 Letter from Thomas J. DePaso, NFLPA General Counsel, to W. Buckley Briggs, Vice President of Labor Arbitration and Litigation, NFL Management Council re: NFLPA v. New England Patriots (June 19, 2013).
- 66 Mike Reiss and Mike Rodak, *Source: Fanene agrees to terms*, ESPNBoston.com (Mar. 14, 2012, 3:45 PM), http://espn.go.com/blog/boston/new-england-patriots/post/_id/4719093/reports-fanene-agrees-to-terms, archived at <http://perma.cc/J777-DFFB>.
- 67 Opinion, Nat'l Football League v. Nat'l Football League Players' Ass'n In re: Jonathan Fanene, 2–3 (CBA Appeals Panel, Feb. 25, 2013).
- 68 Josh Alper, *Report: Pats Cut Fanene with Failure to Disclose Physical Condition Designation*, ProFootballTalk (Aug. 22, 2012, 8:47 AM), <http://profootballtalk.nbcsports.com/2012/08/22/report-pats-cut-fanene-with-failure-to-disclose-physical-condition-designation/>, archived at <http://perma.cc/G727-E7AV>.
- 69 Opinion, Nat'l Football League v. Nat'l Football League Players' Ass'n In re: Jonathan Fanene, *supra* note 67.
- 70 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.")
- 71 Bob Hohler, *Gill Denies He Sided With Team Over Player*, Bos. Globe, Dec. 13, 2014, available at 2014 WLNR 35249641.
- 72 Mike Reiss, *Quick-hit Thoughts Around NFL, Patriots*, ESPNBoston.com (Sept. 21, 2013, 11:15 PM), http://espn.go.com/blog/boston/new-england-patriots/post/_id/4749358/quick-hit-thoughts-around-nfl-new-england-patriots, archived at <http://perma.cc/FR5E-SY2B>.
- 73 In *Bunch v. New York Giants*, former New York Giants fullback Jarrod Bunch commenced a Non-Injury Grievance against his former Club alleging that the Giants violated the CBA by failing to advise Bunch that he had sustained a torn MCL during a 1993 training camp scrimmage. The arbitrator dismissed Bunch's claim as outside the 45-day statute of limitations. (Creo, Arb. Dec. 10, 1997), available as Exhibit 19 to the Declaration of Dennis L. Curran in Support of Defendant National Football League's Motion to Dismiss Second Amended Complaint (Section 301 Preemption), Dent v. Nat'l Football League, 14-cv-2324 (N.D. Cal. Sep. 24, 2014), ECF No. 73.
- In *Jeffers v. Carolina Panthers*, former Carolina Panthers wide receiver Patrick Jeffers brought suit against the Panthers and Panthers' doctor Donald D'Alessandro in North Carolina state court for medical malpractice alleging that D'Alessandro performed "high-risk surgical procedures upon Jeffers' knees without Jeffers' knowledge or consent." The North Carolina Superior Court denied the Panthers' motion to dismiss but granted the Club's motion to compel the action to arbitration. Jeffers thereafter filed a Non-Injury Grievance pursuant to the CBA. Before a hearing on the merits, the parties submitted two issues to the arbitrator: (1) whether Jeffers' claims against the Panthers were subject to arbitration; and, (2) whether Jeffers' claims were barred by the CBA's statute of limitations. The arbitrator found that Jeffers' claims against the Club were required to be brought under the CBA because the claims would require "consideration of the express and implied terms of the CBA." The arbitrator then dismissed Jeffers' claims as time-barred by the CBA's 45-day statute of limitations. (Das, Arb. Mar. 25, 2008), available as Exhibit 15 to the Declaration of Dennis L. Curran in Support of Defendant National Football League's Motion to Dismiss Second Amended Complaint (Section 301 Preemption), Dent v. Nat'l Football League, 14-cv-2324 (N.D. Cal. Sep. 24, 2014), ECF No. 73.
- In *Wilson v. Denver Broncos*, former Denver Broncos linebacker Al Wilson commenced a Non-Injury Grievance against his former Club alleging that the Broncos violated Art. XLIV, § 1 of the 2006 CBA (discussed above in *Bunch*) by failing to advise Wilson of the adverse effects of a neck injury sustained during the 2006 season. Wilson sought his 2007 salary after having been terminated prior to the 2007 season. The arbitrator dismissed Wilson's claim as outside the 45-day statute of limitations. (Townley, Arb. Oct. 29, 2008), available as Exhibit 16 to the Declaration of Dennis L. Curran in Support of Defendant National Football League's Motion to Dismiss Second Amended Complaint (Section 301 Preemption), Dent v. Nat'l Football League, 14-cv-2324 (N.D. Cal. Sep. 24, 2014), ECF No. 73.
- See also *Stevenson v. Houston Texans* (Das, Arb. Feb. 4, 2013) (player's Non-Injury Grievance that Club violated CBA by conducting contact drills in minicamp resulting in player's injury barred by CBA's 45-day statute of limitations), available as Exhibit 18 to the Declaration of Dennis L. Curran in Support of Defendant National Football League's Motion to Dismiss Second Amended Complaint (Section 301 Preemption), Dent v. Nat'l Football League, 14-cv-2324 (N.D. Cal. Sep. 24, 2014), ECF No. 73.
- 74 CBA, Art. 50, § 1(a).
- 75 CBA, Art. 50, § 1(d).

- 76 In *Stringer v. Nat'l Football League*, the Court also expressed concerns about the effectiveness of the Joint Committee: "While the NFL is required to give "serious and thorough consideration" to recommendations of the Joint Committee, the CBA imposes no independent duty on the NFL to consider health risks arising from adverse playing conditions, or to make recommendations for rules, regulations or guidelines for the clubs to follow." 474 F. Supp. 2d 894, 896 (S.D. Ohio 2007).
- 77 This information was provided by the NFLPA.
- 78 *Id.*
- 79 U.S.C. § 185.
- 80 *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202, 213, 200 (1985).
- 81 *See, e.g., Givens v. Tennessee Football, Inc.*, 684 F. Supp. 2d 985 (M.D. Tenn. 2010) (player's tort claims against Club arising out of medical treatment preempted); *Williams v. Nat'l Football League*, 582 F.3d 863 (8th Cir. 2009) (players' tort claims arising out of drug test preempted).
- 82 *See* Matthew J. Mitten, *Team Physicians as Co-Employees: A Prescription that Deprives Professional Athletes of an Adequate Remedy for Sports Medicine Malpractice*, 50 St. Louis U. L.J. 211 (2005) (discussing generally medical malpractice in the sports context and the preclusion of claims by workers' compensation statutes); John Redlingshafer, *Tonight's Matchup – Workers' Compensation v. Medical Malpractice: What Should Lower-Paid, Inexperienced Athletes Receive When a Team Doctor Allegedly Aids in Ending Their Careers?*, 2 DePaul J. Sports L. & Contemp. Probs. 100 (2004) (same).
- 83 *See* Lotysz v. Montgomery, 309 A.D.2d 628 (N.Y. App. Div. 2003) (NFL player's medical malpractice claim against club doctor barred by state workers' compensation statute); *Daniels v. Seattle Seahawks*, 968 P.2d 883 (Wash. Ct. App. 1998) (same); *Hendy v. Losse*, 819 P.2d 1 (Cal. 1991) (same); *Rivers v. New York Jets*, 460 F.Supp. 1233 (E.D. Mo. 1978) (player's claim that club wrongfully concealed the true nature of player's condition barred by workers' compensation statute); *Brinkman v. Buffalo Bills Football Club Division of Highwood Service, Inc.*, 433 F.Supp. 699 (W.D.N.Y. 1977) (player's claim that Club failed to provide adequate medical care barred by workers' compensation law). *See also* *Bryant v. Fox*, 515 N.E.2d 775 (Ill. App. Ct. 1987) (NFL player's medical malpractice claim against Club doctor not barred by workers' compensation statute where evidence established that doctor was an independent contractor); *Martin v. Casagrande*, 559 N.Y.S.2d 68 (N.Y. App. Div. 1990) (NHL player's claim that Club doctor and general manager conspired to withhold information about player's medical condition barred by workers' compensation statute); *Bayless v. Philadelphia National League Club*, 472 F.Supp. 625 (E.D. Pa. 1979) (former MLB player's claim that Club negligently administered pain-killing drugs barred by workers' compensation statute).
- 84 *See, e.g., Givens v. Tennessee Football, Inc.*, 684 F. Supp. 2d 985 (M.D. Tenn. 2010); *Jeffers v. D'Alessandro*, 681 S.E.2d 405 (N.C. Ct. App. 2009); *Sherwin v. Indianapolis Colts, Inc.*, 752 F.Supp. 1172 (N.D.N.Y. 1990); *see also* *Brocaill v. Detroit Tigers, Inc.*, 268 S.W.3d 90 (Tex. App. 2008) (MLB player's claim that Club failed to provide a proper second opinion preempted). Older cases do not even incorporate a preemption analysis, as the CBA then-controlling was likely less substantive in player health and welfare provisions. *See, e.g., Krueger v. S.F. Forty Niners*, 234 Cal.Rptr. 579 (Cal.App. 1987) (ordering judgment in favor of player who played from 1958–73 and who alleged 49ers fraudulently concealed medical information).
- 85 *Jurevicius Becomes Sixth Browns Player in 4 Years to Contract Staph Infection*, ESPN (Apr. 11, 2008, 6:06 PM), <http://sports.espn.go.com/nfl/news/story?id=3341171>, archived at <http://perma.cc/5Q7K-6ZWK>.
- 86 *See* *Jurevicius v. Cleveland Browns Football Co. LLC*, 09-cv-1803, 2010 WL 8461220 (N.D. Ohio Mar. 31, 2010).
- 87 *Id.*
- 88 *Id.*
- 89 *Id.*
- 90 *Jurevicius Settles Lawsuit with the Browns*, ESPN (June 15, 2010, 6:37 PM), <http://sports.espn.go.com/nfl/news/story?id=5289486>, archived at <http://perma.cc/5FYK-KB94>.
- 91 *See* *Bentley v. Cleveland Browns Football Co.*, 958 N.E.2d 585 (Ohio Ct. App. 2011).
- 92 *Id.*
- 93 *Id.*
- 94 *Browns, LeCharles Bentley Settle*, ESPN (Aug 15, 2012, 8:50 PM), http://espn.go.com/nfl/story/_/id/8272933/cleveland-browns-settle-former-lineman-lecharles-bentley-2010-staff-infection-lawsuit, archived at <http://perma.cc/D87L-LZGY>.
- 95 *Tynes v. Buccaneers Limited Partnership*, 15-cv-1594, 2015 WL 5680135 (M.D. Fl. Sep. 24, 2015).
- 96 *Id.* at *5–6.
- 97 F.2d 1265 (3d Cir. 1979).
- 98 *Id.* at 1274.