

Chapter 10

Christopher R. Deubert
I. Glenn Cohen
Holly Fernandez Lynch

Petrie-Flom Center for Health Law Policy, Biotechnology,
and Bioethics at Harvard Law School

Club Employees



This chapter discusses the roles of NFL club general managers (often referred to as “GMs”), developmental staff, and scouts. Each of these employees has involvement with players at key moments in players’ careers. For example, as will be explained further below, general managers draft, sign, and release players; developmental staff help players after they have been drafted; and scouts gather as much information as possible on players. Consequently, these club employees have the potential to influence player health in important ways.

Before we begin our analysis, it is important to point out that throughout this chapter we emphasize that the practice of club employees is likely heterogeneous from club to club at least to some extent. Nevertheless, we were unable to interview club employees as part of this report to gain a better understanding of their work. In November 2014, we notified the NFL that we intended to seek

interviews with club personnel, including general managers, coaches, doctors, and athletic trainers. The NFL subsequently advised us that it was “unable to consent to the interviews” on the grounds that the “information sought could directly impact several lawsuits currently pending against the league.” Without the consent of the NFL, we did not believe that the interviews would be successful and thus did not pursue the interviews at that time; instead, we have provided these stakeholders the opportunity to review draft chapters of the Report. We again requested to interview club personnel in July 2016 but the NFL did not respond to that request. The NFL was otherwise cooperative—it reviewed our Report and facilitated its review by club doctors and athletic trainers. The NFL also provided information relevant to this Report, including but not limited to copies of the NFL’s Medical Sponsorship Policy (discussed in Chapter 2: Club Doctors) and other information about the relationships between clubs and doctors. Nevertheless, the NFL did not facilitate review of this chapter by any of the types of club employees discussed: general managers; developmental staff; and, scouts.

(A) Background

1) GENERAL MANAGERS

NFL general managers by and large are the persons responsible for every aspect of the club. General managers report directly to the club’s owner and are responsible for putting together a cohesive and well-functioning organization that wins on the field and is maximally profitable off of it. To that end, general managers handle some of the most important football-related tasks, such as hiring the coach and making player personnel decisions, but also a variety of non-football specific tasks, including overseeing and directing the financials, human resources, marketing, stadium development, and media and community relations.¹ Additionally, general managers come from a variety of career paths, including many who played in either college and/or the NFL. Generally, about two-thirds of general managers played college football and about a fifth played in the NFL.²

General managers are an integral part of the entire NFL club and thus are an integral part of the process for identifying and addressing player health and welfare matters. General managers are responsible for, or at least intimately involved in, hiring coaches, doctors, athletic trainers and other club staff involved in player health matters.

Perhaps most importantly to the players, general managers make roster decisions affecting the player’s employment

and contract decisions affecting the player’s compensation.^a During the season, clubs are limited to a 53-man roster and general managers are constantly looking to replace injured players with healthy players and underperforming players with better players. It is thus vital that players be seen positively in the eyes of the general manager.

2) DEVELOPMENTAL STAFF

Each NFL club employs someone with the title of Director of Player Development or Director of Player Engagement. These employees are often ex-players who are responsible for assisting the club’s players with a blend of professional and personal issues, including transitioning from college to the NFL, getting the player and his family settled in a new environment, dealing with the media, continuing their education, planning for retirement, and providing general life coaching and guidance.³ As respected elder statesmen of the game, these individuals have the opportunity to play an important role in assisting players and making sure the actions taken are in their best interests.

Nevertheless, the ability of these staff members to have a meaningful impact on the club and players depends on the resources provided and the club’s commitment to player development. For example, in February 2012, the Washington football club hired 15-year veteran defensive end Phillip Daniels as their Director of Player Development.⁴ Daniels left the organization after one season because he felt the club did not take his position or player development seriously.⁵ Daniels never met with head coach Mike Shanahan or General Manager Bruce Allen and said he was not given any financial resources to implement the types of programs he thought would be beneficial to the club’s players and their families.⁶

3) SCOUTS

Quality scouts can also be the core of a successful football team. Each NFL club employs approximately 10 to 15 people in their player personnel/scouting departments. Scouts are separated into two categories: professional and college. Professional scouts are responsible for scouting players on other NFL clubs, while the college scouts fan out across the country and provide scouting reports on thousands of college football players.⁷

Scouts seek out every personal and professional detail on players and thus provide valuable insight to a club when it comes time for personnel decisions. For example, in

^a In any given season, there are, however, a handful of head coaches who possess final control over the club’s roster as opposed to the general manager.

addition to how well they play football, scouting reports often include details of family and romantic relationships, academic performance, troubles with the law or coaches, personality profiles, injury history, and perceived toughness and intelligence.^b Scouts often interview the players, their high school and college coaches, college medical staff, and others who know the players to obtain these details.⁸ Scouts then have the power to decide whether to label a prospect as “injury prone” or someone with “bad character.”

Moreover, it is important to note that many NFL clubs share scouting reports through one of two scouting services: National and BLESTO.⁹ Both services employ scouts who provide comprehensive reports to multiple clubs.¹⁰ Consequently, one scout can have a very big impact on a player’s future. It is thus essential that the scout’s information be accurate.

Scouting information can also play an important role once a player joins a club. If a club knows from a scouting report that a player has any particular social issues, such as family, friends or drugs, the club is potentially in a position to effectuate positive change.^c Additionally, if a scouting report reveals that a player suffers or has suffered from a physical ailment of some kind, the club can ensure that the player is treated appropriately. Indeed, out of their own self-interest, clubs are likely to try and provide a player with the support (physical, social, and otherwise) he needs to be a successful football player.

(B) Current Legal Obligations^d

The 2011 CBA contains no provisions specifically addressing the obligations of general managers, developmental staff, or scouts.

- b One scout described his efforts to obtain information about a college player as follows: “When you arrive at a school, you get there early in the morning and you meet with the football operations director. He gives you background information on the kid: the hometown, their family and those types of things. After that, you’ll go to a film room and watch tape for the biggest part of the day. You meet with the strength coach. You meet with an academic advisor that gives you some background on the player’s performance in those areas. You meet with the trainer to see if they have ever been injured, how their rehab habits are. Then you go to practice. You get a feel for their effort in practice, how hard they work and that type of thing.” See John Zernhelt, *Scout’s Tales: Aaron Donald*, St. Louis Rams (Mar. 27, 2015), <http://www.stlouislam.com/news-and-events/article-1/Scouts-Tales-Aaron-Donald/910aff46-e2cd-49d5-8a7a-45814fa773de>, archived at <http://perma.cc/NSJ6-4Q7L>.
- c For example, when the Dallas Cowboys drafted wide receiver Dez Bryant in the first round of the 2010 NFL Draft, after Bryant’s college career had ended in suspension, the Cowboys and Bryant negotiated a set of regulations concerning Bryant’s off-field activities and provided Bryant with a three-man security team. Josh Alper, *Cowboys Enact Set of Behavioral Rules for Dez Bryant*, ProFootballTalk (Aug. 26, 2012, 12:07 PM), <http://profootballtalk.nbcsports.com/2012/08/26/cowboys-enact-set-of-behavioral-rules-for-dez-bryant/>, archived at <http://perma.cc/6LFT-XYFL>.
- d The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

The CBA does contain many provisions concerning the responsibilities of clubs. General managers, as the persons at the top of the club’s football hierarchy, are generally responsible for ensuring the clubs’ compliance with its various CBA-identified obligations. Indeed, it is not uncommon for general managers to be fined when a club fails to comply with NFL policies.¹¹

Although scouts and development staff could potentially be complicit in the violation of the CBA or NFL policy, they are under no general obligation to ensure compliance with the CBA or NFL policies.

(C) Current Ethical Codes

There are no ethical codes specific to general managers, developmental staff, or scouts.^e

(D) Current Practices

It is generally believed that general managers have little involvement with player health decisions or treatment, other than in an administrative capacity such as relaying information from the club doctor to the contract advisor or letting the contract advisor know if the player is being placed on Injured Reserve. Moreover, the players we interviewed generally said they have had no relationship with their general managers.^f Some contract advisors believe general managers’ involvement in player health decisions has decreased in the last five years or so, as clubs have looked to avoid conflict and/or liability concerning these issues.^g

General managers are involved with the player’s health to the extent that it affects the club’s roster.^h Athletic trainers and, to a lesser extent, club doctors keep coaches and general managers apprised of players’ injury status during weekly meetings so the general manager can make a decision about whether or not to sign another player in the

- e If any of these club employees were licensed in some other way, they might have additional obligations.
- f Current Player 7: “For the most part, the General Managers are up in the office. We don’t really see them, or the owners.” Current Player 8: “[T]he top 10 to 20 percent on each team, I think, have a passing relationship with [the General Manager], or some may have more but, again, this is going into my eighth year and I’ve never had a relationship with any General Manager.”
- g Contract Advisor 1: “I think in the last five to seven years, the coaches and general managers have taken a step back from the medical component. There’s too much risk and owners have probably told them . . . why would you do this, not to mention for the most part, general managers are not interested in having players get hurt on their watch more severely than they needed to be.” Contract Advisor 6: “[V]ery few general managers have a clue. They rely strictly on their medical staff. So they don’t really spend a lot of time [dealing with player health issues].”
- h Former Player 3: “I think general managers are probably better than coaches at looking at the long view [on player health] because they have a little bit longer shelf life.”

event a player is unable to play.ⁱ Club medical staff keep coaches and general managers apprised of players' injury status during weekly meetings so the general manager can make a decision about whether or not to sign another player in the event a player is unable to play. Players indicated that these meetings place pressures on players to practice to avoid having the athletic trainer tell the general manager that he should consider signing a potential replacement.

Current players often recognize the tenuous nature of their career and that it lays in the hands of the general manager and coaches, as Current Player 1 stated:

[Y]ou like to think that they care about you but I think you kind of realize that it's a business. They're just trying to get the most out of you for as many years as they can [while] they feel that you're still serviceable and productive.

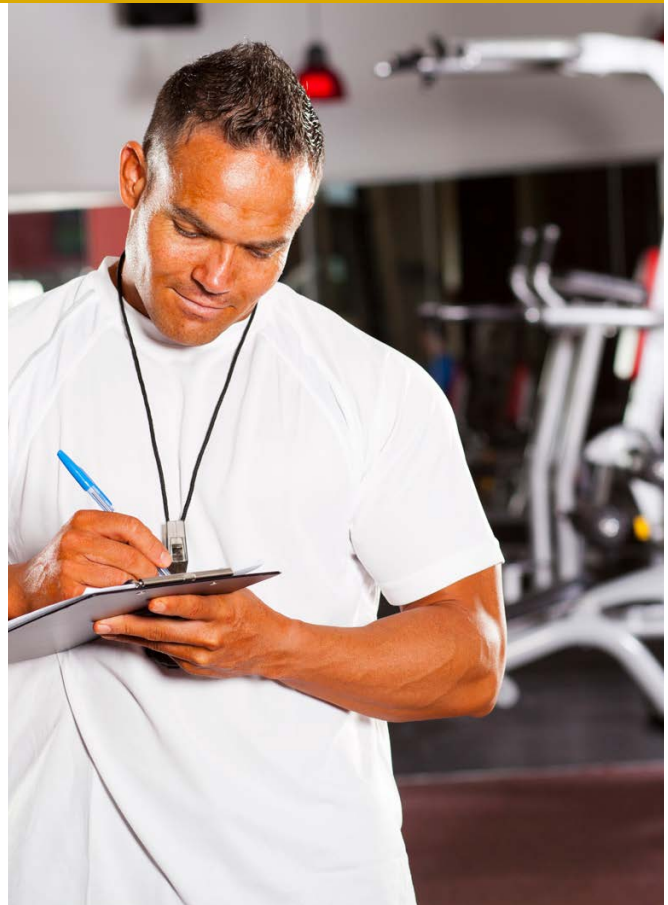
i Current Player 1: "[O]ur head trainer has a meeting with our GM and head coach at least once a week about whatever injuries are going on in the team." Current Player 9: "[General Managers] are in meetings with the head coaches and with the head trainers."

Players indicated that developmental staff is a "great resource" for a player, particularly when he is new to the club or city. The staff is able to get them situated with housing, transportation, and other living necessities. In addition, some players explained that the developmental staff would meet with rookies before the season to try to help them adjust to the NFL and also to understand the realities of the NFL.^j For example, the developmental staff might try to make the player aware of the possible brevity of his career and encourage him to spend his money wisely and to begin to consider life after football. Nevertheless, players also indicated that the development staff is generally far removed from matters concerning player health or the player's status on the club.

Despite the incredible amount of information and data that scouts collect about players, scouts generally do not play any role in player health once the player joins the club.

j Current Player 1: "[W]hen you're a rookie you spend a ton of time with the director of player of development. We have numerous meetings talking about how to spend your money, how to deal with family relationships now that you're in the NFL, [and] how to deal with outside influences. He really helps you to develop[.]" Current Player 8: "I think that the player development guy on each team assists the young guys in kind of the mental and social changes that they have to go through."

Club medical staff keep coaches and general managers apprised of players' injury status during weekly meetings so the general manager can make a decision about whether or not to sign another player in the event a player is unable to play.



(E) Enforcement of Legal and Ethical Obligations^k

In the event a player or the NFLPA believes a club employee has violated his obligations to the players, the player could try to commence a Non-Injury Grievance in accordance with the CBA.¹ The 2011 CBA directs certain disputes to designated arbitration mechanisms^m 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.¹² Importantly, Non-Injury Grievances provide players with the benefit of a neutral arbitration and the possibility of a “money award.”¹³

However, there are several impediments to pursuing a Non-Injury Grievance against a club employee. First and foremost, club employees are not parties to the CBA and thus likely cannot be sued for violations of the CBA.¹⁴ Instead, the player could seek to hold the club responsible for the club employee’s violation of the CBA.¹⁵ Second, the player’s claim might be barred by workers’ compensation statutes. Workers’ compensation statutes provide compensation for workers injured at work and thus generally preclude lawsuits against co-workers based on the co-workers’ negligence.¹⁶ This was the result in the *Stringer* case (discussed in detail in Chapter 9: Coaches), and in multiple cases brought by NFL players against club doctors.¹⁷ It is unclear if or how this bar would apply in an arbitration. Third, Non-Injury Grievances must be filed within 50 days “from the date of the occurrence or non-occurrence upon which the grievance is based,”¹⁸ a timeframe that is much shorter than your typical statute of limitations. And fourth,

players likely fear that pursuing a grievance against a club employee could result in the club terminating him.ⁿ

In addition to workers’ compensation statutes, the CBA also presents a major obstacle for a player suing a club employee. This is because the Labor Management Relations Act (LMRA)¹⁹ bars or “preempts” state common law^o 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.²⁰ In order to determine whether a club employee was appropriately attentive to a player’s health or welfare needs, the court might have to refer to and analyze the terms of the CBA governing player health, resulting in the claim’s preemption.²¹ Preemption occurs even though club employees are not parties to the CBA and thus likely cannot be a party in any CBA grievance procedure. So long as the player’s claim is “inextricably intertwined” with the CBA, it will be preempted. 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 a 1995 lawsuit, two Houston Oilers players alleged that a Houston Oilers general manager and strength and conditioning coach subjected the players to a phony and brutal rehabilitation program designed to coerce the players into quitting the club.²² The players alleged state law claims of coercion, duress, extortion, assault and battery, and intentional infliction of emotional distress. The United States District Court for the Southern District of Texas held that the players’ claims were preempted by the CBA, because the CBA and the players’ contracts governed rehabilitation programs.²³ The United States Court of Appeals for the Fifth Circuit affirmed.²⁴

Currently, the only enforcement of club employees’ obligations concerning player health tends to be discipline by the NFL. It is thus suspect whether current practices and the current enforcement scheme are sufficiently protective of player health.

^k 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.

^l See 2011 CBA, Art. 43 (discussing Non-Injury Grievance procedures). 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.

^m 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.

ⁿ 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[.]” While it is illegal for an employer to retaliate against an employee for filing a grievance pursuant to a CBA, *N.L.R.B. v. City Disposal Systems Inc.*, 465 U.S. 822, 835–36 (1984), such litigation would involve substantial time and money for an uncertain outcome.

^o 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.*

(F) Recommendations Concerning Club Employees

NFL club general managers and scouts make important decisions concerning a player's career, often based on a player's current or expected health status. In addition, general managers, scouts, and developmental staff all have unique relationships with players that provide them a unique opportunity to promote player health. Indeed, like coaches, many NFL club employees develop close relationships with players, or are former players themselves, and are thus sensitive to protecting player health. Nevertheless, the inherent pressures of winning and running a successful business can sometimes cause these employees to make decisions or create pressures that negatively affect player health. While we were unable to interview these employees to gauge their viewpoints,^p we make the below recommendations to help improve the role of club employees in player health.

In Chapter 9: Coaches, we recommended that the NFLCA adopt and enforce a Code of Ethics that demands that coaches be responsible for player health. We then highlighted several important ethical concepts or practices for coaches, including that:

- Coaches should establish a locker room culture in which players and their health and safety are respected.
- Coaches should keep communications with players about their health to a minimum.
- Coaches should consider, respect, and care about players' post-career lives.
- Coaches should not encourage in any way the injury of opposing players.
- Coaches should ensure that the medical staff acts independently and does not feel pressured to act in any way other than in the player's best interests.
- Coaches' interests in winning cannot supersede player health.

Each of the above-listed ethical concepts or practices can also be applied to the club employees discussed in this chapter.

Additionally, while we recommended that the NFLCA enact and enforce such a Code of Ethics, we recognized that it might not have the resources or will to do so. Consequently, we recommended that the most important principles concerning coaches' conduct be incorporated into the CBA. Similarly, since there are generally no professional societies governing general managers, developmental staff, or scouts, these principles as applied to those club employees should be incorporated into the CBA.

Below are recommendations more specific to the club employees discussed in this chapter.

Goal 1: To encourage clubs and their employees to advance a culture of health.

Principles Advanced: Respect; Health Primacy; Managing Conflicts of Interest; and, Collaboration and Engagement.

Recommendation 10:1-A: Clubs and club employees, in particular general managers and developmental staff, should take steps to resolve any concerns discovered about a player's health.²⁵

^p As described more fully in the Introduction, Section D(2): Description of Legal and Ethical Obligations, citing ongoing litigation and arbitration, the NFL declined to consent to our request to interview persons currently employed by or affiliated with NFL clubs, including coaches, general managers, doctors, and athletic trainers. Therefore, we did not pursue interviews with these individuals.

Recommendations Concerning Club Employees – continued

Clubs expend considerable effort to learn a great deal of information about players, including their medical, family, intellectual, personality, financial and social issues. These issues can threaten a promising career. Clubs learn about these issues during the pre-Draft process, when considering signing the player as a free agent, and when the player is a member of their club. While clubs are interested in helping players address these issues to protect their investment in the player, clubs should look beyond what might only be short-term solutions that help the player while he is with the club to include longer-term solutions, such as a variety of programs offered by the NFL and NFLPA, that will improve player health over a more extended period of time.

Recommendation 10:1-B: Clubs should adequately support the developmental staff.

Players we interviewed generally spoke well of the effort by developmental staff to assist players, particularly young players. Nevertheless, through these interviews and news articles, it also seems likely that the developmental staff can sometimes be under-resourced and limited in its role. The developmental staff has the potential to be a powerful resource for players, particularly in pointing them to the various programs and benefits offered by the NFL and NFLPA, and helping them through the process of taking advantage of those programs and benefits. By better supporting these staffs and professionalizing their role, clubs can make gains in player health.



Endnotes

- 1 For a discussion of the role of NFL General Managers, see Christopher R. Deubert, Glenn M. Wong & Daniel Hatman, *National Football League General Managers: An Analysis of the Responsibilities, Qualifications, and Characteristics*, 20 Jeffrey S. Moorad Sports L.J. 427 (2013).
- 2 See *id.* at 475 (chart showing playing experience of NFL General Managers in 1992, 2002 and 2012).
- 3 See Mike Chappel, *Ex-Colt Pollard Feeling Blessed*, Indianapolis Star, Jun. 9, 2014, available at 2014 WLNR 15630530 (discussing fourteen-year veteran Marcus Pollard's hiring as the Jacksonville Jaguars Director of Player Development); Conor Orr, *Tyree's Hiring Comes With Controversy, Former WR Blasted For His Personal Views*, Star-Ledger (Newark, NJ), Jul. 23, 2014, available at 2014 WLNR 20130392 (discussing former wide receiver David Tyree's hiring as the New York Giants Director of Player Development).
- 4 Dan Steinberg, *Phillip Daniels Said He Was 'On an Island' When He Worked for the Redskins*, Wash. Post DC Sports Blog (Jun. 30, 2014), <http://www.washingtonpost.com/blogs/dc-sports-bog/wp/2014/06/30/phillip-daniels-said-he-was-on-an-island-when-he-worked-for-the-redskins/>, archived at <http://perma.cc/NZ5K-DW5K>.
- 5 *Id.*
- 6 *Id.*
- 7 See Deubert, *supra* note 1, at 466–72 (discussing composition, purpose and duties of scouting departments).
- 8 Ben Volin, *NFL Teams Go Extra Yard to Vet Prospects Before Draft*, Bos. Globe, Apr. 26, 2015, <http://www.bostonglobe.com/sports/2015/04/25/nfl-teams-homework-including-spying-draft-prospects/I5EIHkWSQBvI6fwvQNVkYl/story.html>, archived at <http://perma.cc/8NNY-GPR3>.
- 9 *Id.* BLESTO stands for Bears, Lions, Eagles and Steelers Talent Organization, although now approximately twelve Clubs use BLESTO.
- 10 Volin, *supra* note 8.
- 11 See *Fall From Grace, Saints Suffer Unprecedented Penalties from NFL for Running Bounty Program*, New Orleans Times Picayune, Mar. 22, 2012, available at 2012 WLNR 6061758 (\$500,000 fine for New Orleans Saints General Manager Mickey Loomis for alleged involvement in bounty program); J.P. Pelzman, *NFL Hits Jets with \$100K Fine*, N.J. Record, Sept. 17, 2009, available at 2009 WLNR 20070367 (\$25,000 fine for New York Jets General Manager Mike Tannenbaum for Club's failure to include injured quarterback Brett Favre on injury report); Mike Freeman, *Pro Football Notebook: Mara Not Blaming Tagliabue*, N.Y. Times, Dec. 17, 2000, <http://www.nytimes.com/2000/12/17/sports/pro-football-notebook-mara-not-blaming-tagliabue.html>, archived at <http://perma.cc/ZP64-WVUP> (\$400,000 fine for San Francisco 49ers General Manager Carmen Policy for Salary Cap violations).
- 12 See 2011 CBA, Art. 43, § 1.
- 13 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").
- 14 See *Jackson v. Kimel*, 992 F.2d 1318, 1325n.4 (4th Cir. 1993) (collecting cases holding that employees that are not signatories to the CBA cannot be sued for violations of the CBA).
- 15 See 2011 CBA, Art. 2, § 2 (generally discussing CBA's binding effect on NFL, NFLPA, players and Clubs but no other party).
- 16 See Alexander Cornwell, *Trapped: Missouri Legislature Seeks to Close Workers' Compensation Loophole with Some Co-Employees Still Inside*, 77 Mo. L. Rev. 235, 235 (2012); David J. Krco, *Case Note: Torts – Narrowing the Window: Refining the Personal Duty Requirement for Coemployee Liability Under Minnesota's Workers' Compensation System – Stringer v. Minnesota Vikings Football Club, LLC*, 33 Wm. Mitchell L. Rev. 739, 739 (2007); John T. Burnett, *The Enigma of Workers' Compensation Immunity: A Call to the Legislature for a Statutorily Defined Intentional Tort Exception*, 28 Fla. St. U. L. Rev. 491, 497 (2001).
- 17 See *Lotysz v. Montgomery*, 766 N.Y.S.2d 28 (N.Y. 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). 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). For more information on the possibility of players suing coaches, see Timothy Davis, *Tort Liability of Coaches for Injuries to Professional Athletes: Overcoming Policy and Doctrinal Barriers*, 76 UMKC L. Rev. 571 (2008).
- 18 CBA, Art. 43, § 2.
- 19 U.S.C. § 185.
- 20 *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202, 213, 200 (1985).
- 21 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).
- 22 *Smith v. Houston Oilers, Inc.*, 87 F.3d 717 (5th Cir. 1996).
- 23 *Id.*
- 24 *Id.*
- 25 Mark Cuban, owner of the NBA's Dallas Mavericks, has advocated such an approach: "“You don't go from the minors or college to the pros and all of a sudden become a spouse abuser, or any of a number of other serious personal issues. Those traits don't suddenly appear when you make a pro roster. They were there in college. They were probably there prior to college. Yet we as leagues ignore those issues when we sign and draft players. That has to change. We need to participate in programs that publicly identify those athletes that have issues, and not allow them to play unless they go through rigorous counseling. We need to demand that colleges and minor leagues and high schools and summer travel programs identify and report issues. By not reporting abuse or other issues with their players, they could be costing them a shot at the pros. It's our fault for not being more proactive. It's college's fault for not red-flagging these kids and getting them help.” Tim MacMahon, *Cuban: Be Proactive About Red Flags*, ESPN (Nov. 8, 2014, 1:46 PM), http://espn.go.com/dallas/nba/story/_/id/11836940/mark-cuban-need-more-proactive-athlete-red-flags, archived at <http://perma.cc/5U2J-7KNS>.