

## APPENDIX G \ Model Article 39 of the Collective Bargaining Agreement — Players' Medical Care and Treatment

**Preliminary Note:** Below is a model collective bargaining agreement (CBA) provision setting forth our proposed recommendation for the structure of NFL player healthcare, discussed at length in Chapter 2: Club Doctors. This CBA provision would replace the existing Article 39, which governs “Players’ Medical Care and Treatment.” In particular, the model CBA provision is focused on the creation of a Medical Committee to select, review, and terminate the doctors that care for players. We leave the processes for such selection, review, and termination to medical experts and the proposed Medical Committee. Nevertheless, it seems at a minimum that the Players’ Medical Staff should be reviewed each year.

This model CBA provision does not address certain related issues. First, it does not address medical sponsorships, discussed in detail in Chapter 2: Club Doctors, Section (A)(i). While medical sponsorship is an important issue, it is not an issue that has been collectively bargained, *i.e.*, has not been included in Article 39 or prior CBA provisions governing player medical care. Consequently, we do not address the issue in our model Article 39. Second, our proposal may be complicated to implement. The logistics of implementation, including any phasing in process, are determinations best left to the NFL and NFLPA and thus are not addressed here. Third, the model CBA provision does not include a dispute resolution mechanism. There are a variety of dispute resolution mechanisms in the 2011 CBA, and which one is best for resolving issues under our model CBA provision is not our principal focus and thus not addressed here.

### ARTICLE 39: Players’ Medical Care and Treatment

#### SECTION 1: MEDICAL COMMITTEE

- (a) **Responsibilities.** The Medical Committee shall be responsible for selecting, reviewing, and terminating (as necessary) the Players’ Medical Staff, as described in Section 2. The process for selecting, reviewing, and terminating members of the Players’ Medical Staff is at the Medical Committee’s discretion.
- (b) **Composition.** The NFL and NFLPA shall each select three medical professionals to serve on the Medical Committee. The NFL and NFLPA must each select two doctors (either M.D. or D.O.) and one athletic trainer (certified by the Board of Certification for the Athletic Trainer). The six members collectively chosen by the NFL

and NFLPA shall then jointly select a seventh medical professional to serve as Chairperson of the Medical Committee. The NFL and NFLPA retain the right to select and replace their three members of the Medical Committee according to their discretion, provided neither the NFL or NFLPA shall take any action that interferes or potentially interferes with a member of the Medical Committee performing his or her obligations as described in this Article with the utmost professionalism and independence. The Chairperson may only be replaced or removed by a majority vote of the other members of the Medical Committee.

- (c) **Funding.** The NFL and NFLPA shall be jointly responsible for providing the Medical Committee with funding sufficient to permit the Medical Committee to carry out its obligations as described in this Article, including but not limited to hiring other professionals the Medical Committee determines to be necessary. Nothing in this Article shall be deemed to impose or create any duty or obligation upon the NFL, NFLPA or Medical Committee regarding diagnosis, medical care and/or treatment of any player.

#### SECTION 2: PLAYERS’ MEDICAL STAFF

- (a) **Players’ Doctors.** For each Club, the Medical Committee shall select two appropriately qualified “Players’ Doctors” who shall be responsible for providing medical care to the Club’s players in accordance with all applicable laws and ethical standards, except as otherwise provided for in this Article. The Medical Committee shall designate one of the two Players’ Doctors as the Head Players’ Doctor, who shall be responsible for directing and supervising the work of the other members of the Players’ Medical Staff, as defined in this Section. The Players’ Doctors must have a Certificate of Added Qualification in Sports Medicine at the time of their selection.
- (b) **Players’ Specialists.** In addition to the Players’ Doctors, for each Club, the Medical Committee shall also select a doctor board-certified in each of the following specialties or sub-specialties to be available for the treatment of players as determined to be necessary by the Head Players’ Doctor (“Players’ Specialists”):
- i. Orthopaedic surgery;
  - ii. Internal medicine;
  - iii. Emergency medicine;
  - iv. Family medicine;
  - v. Cardiovascular disease or interventional cardiology; and,
  - vi. Neurological surgery.

If one of the Players' Doctors is certified in one or more of the above-listed specialties or sub-specialties, the Medical Committee need not select an additional Players' Specialist with the same specialty or sub-specialty. The Specialists shall be responsible for providing medical care to the Club's players in accordance with all applicable laws and ethical standards, except as otherwise provided for in this Article. The Players' Specialists will at all times provide medical care and advice that is in the player's best interests, taking into account the player's own goals and interests, without regard to any interest of the Club.

- (c) **Players' Athletic Trainers.** For each Club, the Medical Committee shall select four athletic trainers who shall be responsible for providing medical care to the Club's players in accordance with all applicable laws and ethical standards, except as otherwise provided for in this Article. The Medical Committee shall designate one of the four Players' Athletic Trainers as the Head Players' Athletic Trainer, who shall be responsible for directing and supervising the work of the other Players' Athletic Trainers. The Head Players' Doctor shall supervise and direct the work of all Players' Athletic Trainers. The Players' Athletic Trainers must be certified by the Board of Certification for the Athletic Trainer at the time of their selection.
- (d) **EMRs.** The Players' Athletic Trainers shall be responsible for entering all diagnosis and treatment notations into the electronic medical record ("EMR") system, including the notations of any examinations performed on a player during a game and any consultation with, or treatment provided by, Second Opinion Doctors as described in Section 5 below.
- (e) **Players' Other Medical Professionals.** In addition to the Players' Doctors, Players' Specialists, and Players' Athletic Trainers, for each Club, the Medical Committee shall also select one of each of the following medical professionals to be available for the treatment of players as reasonably determined to be necessary by the Head Players' Doctor:
- i. Physical therapist;
  - ii. Massage therapist;
  - iii. Nutritionist;
  - iv. Psychiatrist; and,
  - v. Neuropsychologist.
- (f) **Access to Club Facilities and Events.** The Players' Doctors, Players' Specialists, Players' Athletic Trainers, and Players' Other Medical Professionals (collectively, "Players' Medical Staff"), shall have access to Club facilities and events (including but not limited to locker rooms, practices, and games) as needed to perform their duties as described in this Article. The Club shall be responsible for providing all equipment and supplies as reasonably determined by the Head Players' Doctor to be necessary for the Players' Medical Staff to perform their duties as described in this Article.
- (g) **Compensation Arrangement.** The Club is responsible for compensating the Players' Medical Staff, in amounts to be determined by the Medical Committee. All members of the Players' Medical

Staff shall enter into written contracts detailing the terms of the arrangement between the Players' Medical Staff member and the Club. The contract between the Players' Medical Staff member and the Club must be approved by the Medical Committee prior to execution and shall explicitly reference this Article as controlling and superseding any provision of the contract in the event of a conflict. The Club has no authority to select, control, or terminate any member of the Players' Medical Staff. It is the intention of the NFL and NFLPA that each member of the Players' Medical Staff be considered and treated as an independent contractor under all applicable laws and regulations.

- (h) **Avoidance of Conflicts.** The Players' Medical Staff will at all times provide medical care and advice that is in the player's best interests, taking into account the player's own goals and interests, without regard to any interest of the Club. No member of the Players' Medical Staff shall have any obligation to the Club, except for the Player Health Report, discussed below in Section 4.

### SECTION 3: CLUB MEDICAL STAFF

- (a) **Retention and Duties.** Each Club is free to retain any qualified medical professional to provide services to the Club ("Club Medical Staff"). The Club Medical Staff shall not provide medical care to any player, except in emergency situations. The Club Medical Staff shall have no communication with players or the Players' Medical Staff, except as otherwise described in this Article.
- (b) **Physical Examinations.** Within the limitations set forth below, the Club shall be permitted to conduct physical examinations of players via Club Medical Staff. During any such physical examinations, the player will make full and complete disclosure of any physical or mental condition known to him which might impair his performance under his contract and will respond fully and in good faith when questioned by the Club Medical Staff about his condition.
- (c) A player under contract to a Club shall, upon the Club's request, submit to a complete physical examination by the Club Medical Staff at the following times:
- i. Once within seven days following the Club's last game of the season.
  - ii. After seven days following the Club's last game of the season, once before two days prior to the commencement of preseason training camp, provided the player is otherwise with the Club, e.g., during offseason workouts or minicamps.
  - iii. Once within two days prior and two days after commencement of the Club's preseason training camp.
  - iv. After two days following commencement of the Club's preseason training camp and before the last game of the season, upon the Club's reasonable request.
- (d) In addition to a physical examination, the Club may also request that the player submit to drills or other football-related activities for the purpose of assessing the player's fitness-to-play, unless the Head Players' Doctor states in writing that such

drills or football-related activities create an unreasonable risk of worsening the player's condition or delaying his recovery from such condition.

- (e) A player not currently under contract may be required to submit to any physical examination, drills or other football-related activities requested by a Club as part of the negotiation of a prospective contract between the player and Club, provided such physical examinations, drills or other football-related activities otherwise comply with all applicable laws and regulations.
- (f) **Access to Medical Records.** The Club Medical Staff shall have full access to the EMRs of each player on its roster, subject to applicable law.
- (g) **Compliance with the Law.** All examinations (physical or otherwise) and possession or use of medical records by Club Medical Staff must comply with all applicable laws.

## SECTION 4: PLAYER HEALTH REPORT

- (a) **Content.** The Players' Medical Staff, under the direction of the Head Players' Doctor and Head Players' Athletic Trainer, are responsible for providing the Club with a regular status report of all players currently receiving medical treatment for a diagnosed condition ("Player Health Report"). The Player Health Report shall briefly describe: (1) the player's condition; (2) the player's permissible level of participation in practice and other Club activities; (3) the player's current status for the next game; (4) any limitations on the player's potential participation in the next game; and, (5) an estimation of when the player will be able to return to full participation in practice and games.<sup>a</sup> The Players' Medical Staff shall complete the Player Health Report in a good faith effort to permit the Club to be properly prepared for its next game.
- (b) **Provision of Player Health Report.** The Player Health Report will be provided to an individual designated by the Club at the following times:
  - i. At least one hour before practice on the day of the practice;
  - ii. Within two hours of the conclusion of practice on the day of the practice;
  - iii. Between 28 and 20 hours prior to kickoff of a game;
  - iv. Between 3 and 2 hours prior to kickoff of a game;
  - v. Within 2 hours after the conclusion of a game (provided there are games or the possibility of games remaining in the season);
  - vi. By the end of the day following a game (provided there are games or the possibility of games remaining in the season); and,
- (c) **Clearance to Practice.** The Head Players' Doctor's determinations, as detailed in the Player Health Report, concerning whether a player can practice or participate in football-related activities, including with any relevant limitations, are controlling, subject to Section 5 below. A Club shall not permit a player to practice or participate in football-related activities beyond the limitations set forth in the Player Health Report. If a player suffers an injury or other condition during the course of a practice, the Head Players' Doctor and Head Athletic Trainer will make best efforts to advise a designated Club representative of a player's status for the remainder of the practice as soon as is practicable.
- (d) **Clearance to Play.** As part of the Player Health Report provided between 3 and 2 hours prior to kickoff of a game, the Head Players' Doctor will declare: (i) whether the player can or cannot play; and, (ii) if the player can play, any relevant limitations on the player's playing. The Head Players' Doctor's determinations, as detailed in the Player Health Report, concerning whether a player can play, or whether the player can play with limitations, are controlling as to the player's status to play, subject to Section 5 below. A Club shall not permit a player to play beyond the limitations set forth in the Player Health Report. If a player suffers an injury or other condition during the course of a game, the Head Players' Doctor and Head Athletic Trainer will make best efforts to advise a designated Club representative of a player's status for the remainder of the game as soon as is practicable.
- (e) **Communication with Club Medical Staff.** The Club Medical Staff may seek reasonable clarification or explanation of the information contained in the Player Health Report via direct communication with only the Head Players' Doctor. The Head Players' Doctor shall make reasonable efforts to respond in good faith to all reasonable inquiries from the Club Medical Staff concerning the Player Health Report. At no time other than provided for in this Section shall the Players' Medical Staff communicate with any employee, representative, consultant or agent of the Club concerning the medical care or condition of a player.
- (f) **Compliance with the Law.** The creation, possession and use of the Player Health Report must comply with all applicable laws.

<sup>a</sup> We recommend that the NFL and NFLPA jointly agree on the form of the Player Health Report, which should be completed electronically and automatically incorporated into the players' EMRs. Additionally, the Player Health Report should mirror the terminology historically used by the NFL's Injury Reporting Policy concerning a player's status: Out (definitely will not play); Doubtful (at least 75 percent chance will not play); Questionable (50-50 chance will not play); and, Probable (virtual certainty player will be available for normal duty).

## SECTION 5: PLAYERS' RIGHT TO A SECOND MEDICAL OPINION

- (a) **Second Opinion Doctors List.** The Medical Committee shall create a list of doctors with whom players are permitted to consult for the purposes of providing a medical opinion other than that of the Players' Medical Staff ("Second Opinion Doctors"). In creating the Second Opinion Doctors List, the Medical Committee shall seek to identify well-qualified doctors in all relevant specialties for which a player might seek a second medical opinion. A player can request that a doctor be added to the Second Opinion Doctors List by submitting such a request to the Medical Committee Chairperson prior to the consultation or treatment. The NFL, NFLPA or a Club can request a doctor be added to or removed from the Second Opinion Doctors List by submitting such a request to the Medical Committee detailing the reason for the request. The Medical Committee shall act promptly with regard to all requests. Where a player has requested a doctor be added to the Second Opinion Doctors List, a doctor need not be added to the Second Opinion Doctors List in advance of such consultation or treatment to be considered a Second Opinion Doctor; so long as the doctor is at some point added to the Second Opinion Doctors List per the player's request. The existence of the Second Opinion Doctor List shall in no way limit players to their own choice of personal doctor. Players need only consult with a Second Opinion Doctor for purposes of Payment, discussed in Section (b) below, and Clearance to Practice or Play, discussed in Section (c) below.
- (b) **Payment.** The Club is responsible for the payment of any consultation with, or treatment provided by, a Second Opinion Doctor provided the following conditions are met:
- i. The player has first consulted in good faith with the Head Players' Doctor;
  - ii. At the time of the consultation or treatment, the Second Opinion Doctor is on the Second Opinion Doctor List, or the player has requested the doctor be added to the Second Opinion Doctors List in accordance with Section 5(a) above and the doctor is added pursuant to the player's request; and,
  - iii. All relevant records from the consultation or treatment are either incorporated into the player's EMR or provided to the Club within two business days of their receipt by the player or the player's NFLPA-certified Contract Advisor.
- (c) **Clearance to Practice or Play.** If at any time on the Player's Health Report, the Head Players' Doctor has limited a player's clearance to practice or has determined that a player is "Out," "Doubtful," or "Questionable" for the next game, the player has the right to seek clearance to practice or play from a Second Opinion Doctor. If the Second Opinion Doctor states in writing that the

player can practice or play in a manner more extensive than that determined by the Head Players' Doctor, the player, at his sole discretion, has the right to practice or play up to the limits imposed by the Second Opinion Doctor, if any. If the Second Opinion Doctor states in writing that the player can practice or play in a manner less extensive than that determined by the Head Players' Doctor, the player, at his sole discretion, has the right to practice or play up to the limits imposed by the Head Players' Doctor.

## SECTION 6: TREATMENT DETERMINATIONS

- (a) **Surgery.** A player has the right to choose the surgeon who will perform any surgery on him. A player is not obligated to undergo any surgery, regardless of the recommendations of the Players' Medical Staff, a Second Opinion Doctor, the Club Medical Staff, or any other party.
- (b) **Payment.** The Club is responsible for the payment of any surgery provided:
- i. The surgery is performed by: (x) a member of the Players' Medical Staff; (y) a surgeon who, at the time of the surgery, is on the Second Opinion Doctor List, or the player has requested the doctor be added to the Second Opinion Doctors List in accordance with Section 5(a) above and the doctor is added pursuant to the player's request and, the player has first consulted in good faith with the Head Players' Health Doctor; or, (z) any other medical professional in an emergency situation.
  - ii. All relevant records from the surgery are either incorporated into the player's EMR or provided to the Club within two business days of their receipt by the player or the player's NFLPA-certified Contract Advisor.

## SECTION 7: HOME GAME EMERGENCY MEDICAL COVERAGE

- (a) For each game, the Medical Committee shall select one doctor who is board-certified in emergency medicine, anesthesiology, pulmonary disease, or thoracic and cardiac surgery, and who has documented competence in rapid sequence intubations in the past twelve months. This doctor shall be responsible for game-day medical intervention for catastrophic emergencies.