Protecting and Promoting the **Health of NFL Players:**

Legal and Ethical Analysis and Recommendations

Executive Summary

THE FOOTBALL PLAYERS HEALTH STUDY AT HARVARD UNIVERSITY

Christopher R. Deubert
I. Glenn Cohen
Holly Fernandez Lynch

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

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EXECUTIVE SUMMARY

1) INTRODUCTION

Who is responsible for the health of NFL players, *why,* and *what* can be done to promote player health? These are the fundamental questions motivating this Report, authored by members of the Law and Ethics Initiative of **The Football Players Health Study at Harvard University.**[d]

To date, there has been no comprehensive analysis of the universe of stakeholders that may influence NFL player health, nor any systematic analysis of their existing or appropriate legal and/or ethical obligations. This sort of undertaking, however, is essential to uncovering areas in need of improvement and making clear that the responsibility for player health falls on many interconnected groups that must work together to protect and support these individuals who give so much of themselves—not without benefit, but sometimes with serious personal consequences—to one of America's favorite sports. It is critical to address the structural and organizational factors that shape the environment in which players live and work. Moreover, acknowledging a variety of potentiality relevant background conditions is an essential and complementary approach to clinical interventions for improving player health.

In identifying the universe of appropriate stakeholders and making recommendations regarding player health, we have taken as our threshold the moment that a player has exhausted or foregone his remaining college eligibility and has taken steps to pursue an NFL career. From that point on what needs to happen to maximize his health, even after he leaves the NFL? We have selected this timeframe not because the health of amateur players—those in college, high school, and youth leagues—is secure or unimportant. Instead, the reason is largely pragmatic: there is only so much any one report can cover, and adding in-depth analysis of additional stakeholders such as the NCAA, youth leagues, and parents would confuse an already complicated picture.

We recognize that what happens at the professional level can have a trickle-down effect on the culture of football across the board, and also that some amateur players may be taking health risks in hopes of eventually reaching the NFL, even when that may be highly unlikely. Moreover, we acknowledge that the legal and ethical issues that arise with regard to individuals who are not competent to make their own decisions (*e.g.,* children) are substantially more difficult. Nonetheless, our goal with this Report, prompted by the limited scope of the request for proposals for this project and in part by the fact that further analysis will be possible by others, is to address the already complicated set of factors influencing the health of NFL players, current, future, and former.

This Report has four functions. First, to **identify** the various stakeholders who influence, or could influence, the health of NFL players. Second, to **describe** the existing legal and ethical obligations of these stakeholders in both protecting and promoting player health. Third, to **evaluate** the sufficiency of these existing obligations, including enforcement and current practices. And fourth, to **recommend** changes grounded in that evaluation for each of the identified stakeholders.

The issues at hand are complex and nuanced. Consequently, we urge readers to read the entire Report, or at least the Introduction and those chapters of particular interest. In this Executive Summary, we provide only a short synopsis of some of the key issues discussed in the Report.

In the remainder of this Introduction, we describe the definition of "health" used to focus the Report, discuss the ethical principles that guided our analysis, and identify the stakeholders discussed in the Report. In the second part of this Executive Summary, we summarize our discussion of the most stakeholders discussed in the Report (players, club doctors, the NFL, and the NFLPA), including highlighting major recommendations. Then, in the third part of this Executive Summary, we briefly discuss the other stakeholders analyzed in the Report and important

d This Report is part of The Football Players Health Study. The 2011 Collective Bargaining Agreement (CBA) between the NFL and NFLPA allocated funds for research, and in 2014, the NFLPA and Harvard University entered into an agreement to create and support The Football Players Health Study using a portion of these funds. The contract governing this project protects our academic integrity as researchers; no external party has any editorial control over our work. A version of this Report was shared with the NFLPA, the NFL, and other stakeholders prior to publication. The NFLPA was treated the same as other stakeholders, with the exception of a contractually guaranteed 30-day review to ensure that we did not use any confidential information. We considered all feedback provided to us from all stakeholders but retained final editorial control. The content is solely the responsibility of the authors and does not necessarily represent the official views of the NFLPA or Harvard University.

recommendations concerning them. Lastly, we conclude with some final recommendations.

Before continuing with the Introduction, we provide a list of our "Top 10" recommendations; those recommendations that, if implemented, could have the most meaningful and positive impact on player health. Additional information on these recommendations, including explanations of their significance, is provided in the full Report.

Top 10 Recommendations

1. The current arrangement in which club (*i.e.,* "team") medical staff, including doctors, athletic trainers, and others, have responsibilities both to players and to the club presents an inherent conflict of interest. To address this problem and help ensure that players receive medical care that is as free from conflict as possible, division of responsibilities between two distinct groups of medical professionals is needed. Player care and treatment should be provided by one set of medical professionals (called the "Players' Medical Staff"), appointed by a joint committee with representation from both the NFL and NFLPA, and evaluation of players for business purposes should be done by separate medical personnel (the "Club Evaluation Doctor"). (Recommendation 2:1-A).
2. The NFL and NFLPA should not make player health a subject of adversarial collective bargaining. (Recommendation 7:1-A).
3. As recommended throughout the Report, various stakeholders (*e.g.*, club doctors, athletic trainers, coaches, contract advisors, and financial advisors) should adopt, improve and enforce Codes of Ethics. (Final Recommendation 3).
4. The NFL and NFLPA should continue to undertake and support efforts to scientifically and reliably establish the health risks and benefits of playing professional football. (Recommendation 7:1-B).
5. The NFL, and to the extent possible, the NFLPA, should: (a) continue to improve its robust collection of aggregate injury data; (b) continue to have the injury data analyzed by qualified professionals; and, (c) make the data publicly available for re-analysis. (Recommendation 7:1-C).
6. The NFLPA should consider investing greater resources in investigating and enforcing player health issues, including Article 39 of the 2011 CBA [covering players' rights to medical care and treatment]. (Recommendation 7:5-A).
7. Clubs and Club medical staff should support players in their right to receive a second opinion. (Recommendation 4:1-A).
8. Players diagnosed with a concussion should be placed on a short-term injured reserve list whereby the player does not count against the Active/Inactive 53-man roster until he is cleared to play by the Concussion Protocol (Recommendation 7:1-E).
9. With assistance from Contract Advisors, the NFL, the NFLPA, and others, players should familiarize themselves with their rights and obligations under the CBA, including all possible health and other benefits, and should avail themselves of applicable benefits. (Recommendation 1:1-A).
10. Players should receive a physical from their own doctor as soon as possible after each season. (Recommendation 6:1-B).

(A) Defining Health

Our definition of "health" includes and extends beyond the sort of clinical measurements that might immediately be evoked by the phrase. Indeed, the comprehensive mantra of The Football Players Health Study, "The Whole Player, The Whole Life," motivates our definition. "Health" clearly covers the conventional and uncontroversial reference to freedom from physical and mental illness and impairment. But health is much more than the mere absence of a malady. The full range of non-medical inputs that can influence health, also known as the social determinants of health, must also be considered. These social determinants extend beyond the sorts of things for which one would seek out a doctor's care, and, according to the World Health Organization, include broadly "the conditions in which people are born, grow, live, work, and age," as affected by the "distribution of money, power, and resources at global, national and local levels."

Such social determinants are fully at play in the lives of NFL players. Acknowledging these social determinants of health allows us to recognize that a set of recommendations limited exclusively to medical care, medical relationships, and medical information would not suffice to achieve our goal of maximizing player health. We cannot focus solely on avoiding brain injury, protecting joints, and promoting cardiovascular health, for example, but we must also address wellbeing more generally, which depends on other factors such as the existence of family and social support, the ability to meet economic needs, and life satisfaction.

Thus, for purposes of this Report, health is defined as "a state of overall wellbeing in fundamental aspects of a person's life, including physical, mental, emotional, social, familial, and financial components." This definition is patterned on numerous definitions of health, including that of the World Health Organization. According to our definition, we make recommendations not only about ways to influence players' medical outcomes, but also about ways to positively influence the role of social determinants of their health.

(B) Guiding Ethical Principles

We identify seven overarching ethical principles to guide our assessment of all stakeholder responsibilities and to structure the nature of our recommendations, though we also offer more tailored ethical analyses for each stakeholder. Here, we provide an abbreviated discussion of these ethical principles:

- **Respect:** The NFL is a business that relies on individuals who are exposed to health risks, but no stakeholder can treat players "merely as a means" or as a commodity solely for promotion of its own goals.
- **Health Primacy:** Avoiding serious threats to player health should be given paramount importance in every dealing with every stakeholder, subject only to the player's Empowered Autonomy.
- **Empowered Autonomy:** Players are competent adults who should be empowered to assess which health risks they are willing to undertake, provided they have been given trustworthy, understandable information and decision-making tools, and the opportunity to pursue realistic alternatives.
- **Transparency:** All parties should be transparent about their interests, goals, and potential conflicts as they relate to player health, and information relevant to player health must be shared with players immediately.
- **Managing Conflicts of Interest:** All stakeholders should take steps to minimize conflicts of interest, and when they cannot be eliminated, to appropriately manage them.
- **Collaboration and Engagement:** Protecting and promoting the health of professional football players depends on many parties who should strive to act together—and not as adversaries—whenever possible to advance that primary goal.
- **Justice**: All stakeholders have an obligation to ensure that players are not bearing an inappropriate share of risks and burdens compared to benefits reaped by other stakeholders.

(C) Stakeholders

Over several months, we conducted a comprehensive review of the sports law and ethics literature, and had in-depth conversations with a number of former players and, where they were willing to speak with us, representatives of many of the stakeholders we identified as crucial to our analysis. This allowed us to supplement our existing expertise and understanding to generate a list of 20 stakeholders on whom to focus. The stakeholders discussed in this Report are:

- Players;
- Club doctors;
- Athletic trainers;
- Second opinion doctors;
- Neutral doctors;
- Personal doctors;
- The NFL;
- The NFLPA;
- NFL clubs;
- Coaches;
- Club employees;
- Equipment managers;
- Contract advisors (aka "agents");
- Financial advisors;
- Family members;
- Officials;
- Equipment manufacturers;
- The media;
- Fans; and
- NFL business partners.

Each stakeholder is discussed in its own chapter except the NFL and NFLPA, which are discussed together in light of their interdependence.

How did we arrive at this list of stakeholders, and determine who was and was not a stakeholder within the ambit of this Report? The key criterion for inclusion was simple: who (for better or worse) does—or should—play a role in NFL player health? The answer to that question came in three parts, as there are individuals, groups, and organizations who *directly impact* player health, for example, as employers or caregivers; those who *reap substantial financial benefits* from players' work; and, those who have some *capacity to influence* player health. Stakeholders may fall under more than one of these headings, but satisfaction of at least one criterion was necessary for inclusion in this analysis. The result is an extensive mapping of a complex web of parties.

2) KEY STAKEHOLDERS

Below, we summarize some of our discussion on those stakeholders we believe to be the most important: players; club doctors; the NFL; and, the NFLPA, but the full Report contains chapters on every stakeholder.

(A) Players

The heart of this Report is about protecting and promoting player health. No one is more central to that goal than players themselves, and therefore it is important to understand who they are and what they are doing concerning their own health and the health of their NFL brethren. That said, it is also important to recognize that players are often making choices against a constrained set of background conditions, pressures, and influences—doing so often with limited expertise and information—all of which impact their capacity to optimally protect their own health. Thus, while they are competent adults with a bevy of responsibilities to protect themselves, they cannot do it alone. Players must be treated as partners in advancing their own health by offering them a variety of support systems to do so, all of which will be accompanied by recommendations geared to other stakeholders.

Significant concerns exist about players' actions regarding their own health. Historically, there is considerable evidence that NFL players underreport their medical conditions and symptoms to avoid missing playing time or jeopardizing their position within a club. This behavior is understandable, but they may be doing so at great risk. Nevertheless, we emphasize that the existing data on player health is incomplete and often unclear, leaving players without sufficient information to make truly informed decisions based on calculations of risk and benefit.

Our most important recommendation to players is **Recommendation 1:1-A: With assistance from contract advisors, the NFL, the NFLPA, and others, players should familiarize themselves with their rights and obligations under the NFL-NFLPA Collective Bargaining Agreement (CBA), including all possible health and other benefits, and should avail themselves of applicable benefits.** Our formal interviews, literature review, and other feedback from stakeholders revealed that many players are not sufficiently aware of their rights, obligations, benefits, and opportunities pursuant to the CBA, or do not take full advantage of them even if they are aware. This prevents players from truly maximizing their health.

Other recommendations concerning players are:

- Players should carefully consider the ways in which health sacrifices now may affect their future health (1:1-B).
- Players should take advantage of opportunities to prepare for life after football (1:1-C).
- Players should seek out and learn from more experienced players, including former players, concerning health-related matters (1:1-D).
- Players should take on a responsibility to one another, to support one another's health, and to change the culture for the better (1:1-E).
- Players should not return to play until they are fit to do so (1:1-F).
- Players should not sign any document presented to them by the NFL, an NFL club, or an employee of an NFL club without discussing the document with their contract advisor, the NFLPA, their financial advisor, and/or other counsel, as appropriate (1:1-G).
- Players should be aware of the ramifications of withholding medical information from the club medical staff (1:1-H).
- Players should review their medical records regularly (1:1-I).

(B) Club Doctors

The 2011 CBA between the NFL and the NFLPA requires that each club retain a board-certified orthopedic surgeon and at least one physician board-certified in internal medicine, family medicine, or emergency medicine. All physicians must also have a Certificate of Added Qualification in Sports Medicine (or be grandfathered in). In addition, clubs are required to retain consultants in the neurological, cardiovascular, nutritional, and neuropsychological fields. While each club generally has a "head" club doctor, approximately 175 doctors work with NFL clubs in total, an average of 5.5 per club. Most (if not all) of the doctors retained by NFL clubs are members of the National Football League Physicians Society (NFLPS), the professional organization for club doctors.

Club doctors are clearly important stakeholders in player health. They diagnose and treat players for a variety of ailments, physical and mental, while making recommendations to players concerning those ailments. At the same time, club doctors have obligations to the club, namely to advise clubs about the health status of players. While players and clubs share an interest in player health—both

want players to be healthy so they can play at peak performance—there are several areas where their interests may diverge, such as when a player feels compelled to return to play from an injury more quickly than is recommended in order to try and help the club win or, if he does not, potentially have his contract terminated.

Given the various roles just described, it is evident that club doctors face an inherent structural conflict of interest. **This is not a moral judgment about them as competent professionals or devoted individuals, but rather a simple fact of the current organizational structure of their position in which they simultaneously perform at least two roles that are not compatible.** The intersection of club doctors' dual obligations creates significant legal and ethical quandaries that can threaten player health. Most importantly, the current structure of NFL club medical staff—how they are selected, evaluated, and terminated, and to whom they report—creates an inherent structural conflict of interest in the treatment relationship and poses concerns related to player trust, no matter how upstanding or well-intentioned any given medical professional might be.

The current structure of NFL club medical staff—how they are selected, evaluated, and terminated, and to whom they report—creates an inherent structural conflict of interest.

To see why there is an inherent structural conflict of interest, consider an analogy in clinical medicine. In the organ donation process, structural conflicts of interest are avoided as follows: both law and ethics require two separate care teams is one to care for dying patients and pronounce them dead, and one to conduct the transplant and care for the recipient. If a single medical team served both roles, the structural problem of dual loyalty to both the dying patient and the patient in need of transplant would arise, even though the interests of both parties may conflict. In particular, the donor has an interest in not being declared dead prematurely, and the recipient has an interest in the donor's death being declared quickly enough so that the organs are not rendered unusable for transplant.

Note that in the organ context, this bifurcation of roles is well-established and mandatory. For example, even if an individual doctor swears that he or she is not influenced in declaring a donor's death by the desire to get the patient an organ, and even though it would be impossible in any particular case to prove or disprove such influence, this bifurcation of roles is required. Moreover, anything short of eliminating such conflict completely would deeply undermine the public's trust and peoples' willingness to consider organ donation.

The existing ethics codes and legal requirements are insufficient to satisfy the goal of ensuring that players receive the best healthcare possible from providers who are as free from conflicts of interest as is realistically possible. Of course, achieving this goal is legally, ethically, financially, and structurally complicated. **In Recommendation 2:1-A, we propose to resolve the problem of dual loyalty by largely removing the club doctor's ties with the club and refashioning the role into one of singular loyalty to player-patients.**

The recommendation is complex and described at length in the full Report, but the main idea is to separate the roles of serving the player and serving the club and replace them with two distinct sets of medical professionals: the "Players' Medical Staff" (with exclusive loyalty to the player) and the "Club Evaluation Doctor" (with exclusive loyalty to the club). The Players' Medical Staff would be selected and reviewed by a committee of medical experts jointly selected by the NFL and NFLPA. The Players' Medical Staff would then serve as a champion for player health, while clubs are free to hire additional medical professionals for their distinct business needs. Nevertheless, the club will still be entitled to player health information through the player's medical records and regular written reports from the Players' Medical Staff, given the importance of players' physical capacity to their employment.

We believe this recommendation could substantially lessen a major concern about the current club doctor arrangement—the problem of dual loyalty and structural conflict of interest—by providing players with a medical staff that principally has the interests of the players in mind and who they can trust. The Players' Medical Staff would be almost entirely separated from the club and the pressures inherent in club employment, while being held accountable to a neutral medical committee. At the same time, this recommendation does not interfere with the clubs' legitimate interests. For these reasons, we believe that this recommendation is critical to improving player health and among the most important set forth in the Report.

Accordingly, it should be adopted as part of the Collective Bargaining Agreement.

Other recommendations concerning club doctors are:

- The NFLPS should adopt a code of ethics (2:1-B).
- Every doctor retained by a club should be a member of the NFLPS (2:1-C).
- The Concussion Protocol should be amended such that if either the club doctor or the Unaffiliated Neurotrauma Consultant diagnoses a player with a concussion, the player cannot return to the game (2:1-D).
- The NFL and NFLPA should reconsider whether waivers providing for the use and disclosure of player medical information should include mental health information (2:1-E).
- Club doctors should abide by their CBA obligation to advise players of all information the club doctors disclose to club representatives concerning the players (2:1-F).
- At any time prior to the player's employment with the club, the player should be advised in writing that the club doctor is performing a fitness-for-play evaluation on behalf of the club and is not providing any medical services to the player (2:1-G).
- The NFL's Medical Sponsorship Policy should explicitly prohibit doctors or other medical service providers from providing consideration of any kind for the right to provide medical services to the club, exclusively or non-exclusively (2:1-H).
- Club doctors' roles should be clarified in a written document provided to the players before each season (2:1-I).
- The NFL, NFLPA, and club doctors should consider requiring all claims concerning the medical care provided by a doctor who is a member of the NFLPS and is arranged for by the club to be subject to binding arbitration (2:2-A).

(C) The NFL and NFLPA

The NFL and NFLPA are clearly essential stakeholders in protecting and promoting player health. Although the parties have a long and complicated history on the issue and with each other, they have made significant progress concerning player health in recent years. Indeed, the NFL and NFLPA offer many extraordinary benefits and programs intended to help current and former players, and both deserve commendation for doing so. Nevertheless, access to the programs and benefits appears to be an issue, and questions remain whether players are sufficiently made aware or avail themselves of these programs and benefits.

Consequently, there are still many important changes that the NFL and NFLPA can make that will further advance player health.

The most straightforward way to implement many of the changes we recommend to protect and promote player health would be to include them in the next CBA between the parties. That said, whenever change is possible outside of the CBA negotiating process, such as through side letters, it should not wait—the sooner, the better. Moreover, although the CBA will often be the most appropriate mechanism for implementing our recommendations, we do not want to be understood as suggesting that player health should be treated like just another issue for collective bargaining, subject to usual labor-management dynamics. This is to say that as an ethical matter, players should not be expected to make concessions in other domains in order to achieve gains in the health domain. To the contrary, we believe firmly the opposite: player health should be a joint priority, and not be up for negotiation. **For this reason, our first recommendation, Recommendation 7:1-A, is that the NFL and NFLPA should not make player health a subject of adversarial collective bargaining.** If as part of its research or otherwise the NFL knows a policy or practice should change, it should do so without waiting for the next round of bargaining or by forcing the NFLPA to concede on some other issue. Similarly, the NFLPA should not delay on player health issues in order to advance other collective bargaining goals.

Other recommendations to the NFL and NFLPA are:

- The NFL and NFLPA should continue to undertake and support efforts to scientifically and reliably establish the health risks and benefits of playing professional football (7:1-B).
- The NFL, and to the extent possible, the NFLPA, should: (a) continue to improve its robust collection of aggregate injury data; (b) continue to have the injury data analyzed by qualified professionals; and, (c) make the data publicly available for re-analysis (7:1-C).
- The NFL and NFLPA should publicly release de-identified, aggregate data from the Accountability and Care Committee's player surveys concerning the adequacy of players' medical care (7:1-D).
- Players diagnosed with a concussion should be placed on a short-term injured reserve list whereby the player does not count against the Active/Inactive 53-man roster until he is cleared to play by the Concussion Protocol (7:1-E).

- The NFL and NFLPA should research the consequences and feasibility of guaranteeing more of players' compensation as a way to protect player health (7:1-F).
- The CBA should be amended to provide for meaningful fines for any club or person found to have violated Sections 1 through 6 of Article 39 of the CBA (7:2-A).
- The statute of limitations on filing Non-Injury Grievances, at least in so far as they are health-related, should be extended (7:2-B).
- The NFL and NFLPA should continue and improve efforts to educate players about the variety of programs and benefits available to them (7:3-A).
- The NFL and NFLPA should undertake a comprehensive actuarial and choice architecture analysis of the various benefit and retirement programs to ensure they are maximally beneficial to players (7:3-B).
- The purpose of certain health-related committees should be clarified and their powers expanded (7:3-C).
- The NFL and NFLPA should continue and intensify their efforts to ensure that players take the Concussion Protocol seriously (7:4-A).
- The NFL and NFLPA should agree to a disciplinary system, including fines and/or suspensions, for players who target another player's injury or threaten or discuss doing so (7:4-B).
- The NFLPA should consider investing greater resources in investigating and enforcing player health issues, including Article 39 of the 2011 CBA (7:5-A).
- The NFLPA should continue to assist former players to the extent such assistance is consistent with the NFLPA's obligations to current players (7:6-A).

3) OTHER STAKEHOLDERS

While above we focused on the four most important stakeholders, the remaining sixteen stakeholders are also critical to player health. In the Report, all of the stakeholders are grouped into parts as follows: Part 1: Players; Part 2: The Medical Team; Part 3: The NFL, NFLPA, and NFL Clubs; Part 4: NFL Club Employees; Part 5: Player Advisors; and, Part 6: Other Stakeholders. We briefly discuss these parts and the stakeholders included therein insofar as they were not discussed above.

(A) The Medical Team (Part 2)

A player's medical team includes not only club doctors, but also: athletic trainers; doctors whom players may consult concerning an injury or medical condition to compare or contrast that opinion to that of the club doctor (second opinion doctors); doctors who are called on when there are conflicting opinions or interests (neutral doctors); and, doctors who players see outside of the NFL environment (personal doctors). Each of these medical professionals is important in his or her own way.

Athletic trainers are generally the player's first and primary source of medical care. Nevertheless, some players distrust athletic trainers. Communications among athletic trainers, coaches, and the club's general manager place pressure on players to practice, sometimes causing them to withhold information from the athletic trainer. For this reason, **our principal recommendation concerning athletic trainers, Recommendation 3:1-A, matches Recommendation 2:1-A concerning club doctors: to separate the roles of serving "the player and serving the club and replace them with two distinct sets of medical professionals: the "Players' Medical Staff" (with exclusive loyalty to the player) and the "Club Evaluation Doctor" (with exclusive loyalty to the club).** The athletic trainers' principal day-to-day responsibilities would remain largely the same—providing medical care to the players and updating the club on player health status (just in a different way). Nevertheless, most importantly, the proposed change largely removes the structural conflict of interest in the care being provided to players by athletic trainers and other medical staff.

Under the CBA, players have the right to a second opinion doctor and the surgeon of their choice, provided the player consults with the club doctor and provides the club doctor with a report concerning treatment provided by the second opinion doctor (the full cost of which must be paid by the club). Many contract advisors arrange for their players to receive a second opinion for every injury. Given the importance of this right, **we recommend that club medical staff be more supportive of players in obtaining a second opinion (Recommendation 4:1-A).**

The 2011 CBA notes three situations where neutral doctors are required: (1) as the on-field emergency physician during games; (2) to perform examinations and provide opinions as part of the Injury Grievance process; and, (3) to investigate allegations of inadequate medical care by a club as part of the Joint Committee on Player Safety and Welfare. In addition to the CBA provisions requiring a neutral doctor, the Concussion Protocol requires an

"Unaffiliated Neurotrauma Consultant" to be assigned to each club for each game to assist in the evaluation of players suspected of having suffered a concussion. The Unaffiliated Neurotrauma Consultants are crucial to the effective operation of the Concussion Protocol, a signature component of player health. There is no indication that neutral doctors have done anything other than perform the roles assigned to them by the CBA and Concussion Protocol. Consequently, we make no recommendations concerning neutral doctors. **Indeed, the *neutrality* of these doctors is a positive benefit to players, and we should look for additional opportunities to have neutral doctor input and involvement.**

Personal doctors might be the least utilized of the doctors discussed in this Report. In talking with players, several indicated that frequent moves from city to city and their busy schedules made finding and seeing a personal doctor problematic. Consequently, many players principally rely on club doctors and second opinion doctors for their care. **Thus, we recommend that the NFLPA and clubs assist players to access and more frequently utilize the services of personal doctors (Recommendation 6:1-A).**

(B) The NFL, NFLPA, and NFL Clubs (Part 3)

Having discussed the NFL and NFLPA above, we discuss now the remaining stakeholder in Part 3: NFL Clubs. The NFL is an unincorporated association of 32 member clubs that 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, with its own legal obligations separate and distinct from club owners and employees. NFL clubs are the players' employers and hire many of the stakeholders discussed in this Report. In this respect, NFL clubs play an important role in dictating the culture concerning player health. They are powerful organizations that employ many people with direct day-to-day interaction concerning player health issues. Like all organizations, the specific culture on important issues varies from club to club.

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, personally take seriously and show leadership in player health issues, including overseeing the response to recommendations made in this Report.**

(C) NFL Club Employees (Part 4)

Part 4 discusses the non-medical stakeholders within the purview of the club: coaches; general managers; developmental staff; scouts; and, equipment managers. These stakeholders have varying degrees of influence on player health matters but are nonetheless all important.

Of all of the stakeholders considered in this Report, coaches have the most authority over players, and impose the most direct physical and psychological demands on them. Coaches can help players maximize their potential, but in some cases may also contribute to the degradation of a player's health. Head coaches are the individuals ultimately most responsible for the club's performance on the field and thus take on an immense stature and presence within the organization; indeed, some head coaches are the final decision-makers on player personnel decisions. Coaches largely determine the club's culture, dictate the pace and physicality of practice and workouts, and decide who plays—a decision often borne out by intense physical competition. Moreover, coaches must be successful in order to retain their jobs and face enormous pressure to win. That pressure no doubt affects their relationship with their players and in some cases is felt by the players. **To protect against the pressures inherent in coaches' roles, we recommend that the NFL Coaches Association adopt and enforce a code of ethics that recognizes that coaches share responsibility for player health (Recommendation 9:1-A). We also recommend specific issues that should be addressed in such a code of ethics and that the most important of these ethical principles be incorporated into the CBA (Recommendation 9:1-B).**

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. Relatedly, developmental staff—often ex-players who are responsible for assisting the club's players with a blend of professional and personal issues—have the opportunity to play an important role in assisting players and making

sure the actions taken are in their best interests. These club employees all have unique relationships with players that provide them an important opportunity to promote player health. Indeed, like coaches, many NFL club employees develop close relationships with players—many 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. Thus, **we recommend clubs and club employees—in particular general managers and developmental staff—take steps to resolve any concerns discovered about a player's health (Recommendation 10:1-A). Relatedly, we recommend that clubs adequately support the developmental staff, something that does not appear to always be the case (Recommendation 10:1-B).**

(D) Player Advisors (Part 5)

Part 5 discusses those individuals closest to the players and who should always have the players' best interests in mind: contract advisors; financial advisors; and, family members. In reading this part, it is important to remember our broad definition of health, which includes and extends beyond clinical measurements to the social determinants of health, including financial wellbeing, education, and social support. These stakeholders are particularly critical in protecting and promoting players' long-term health in this sense.

Contract advisors, more commonly known as "agents," are often players' most trusted and important resources and allies when it comes to protecting them during their NFL career, including protecting their health. In fact, contract advisors are agents of both players and the NFLPA, pursuant to the National Labor Relations Act. The NFLPA has a program whereby it certifies contract advisors and subjects them to its Regulations Governing Contract Advisors ("Contract Advisor Regulations"). Entering the 2015 NFL season, there were 869 NFLPA-certified contract advisors

but only 420 actually had clients (48.3 percent). A contract advisor is typically involved in all aspects of a player's life, including but not limited to his personal, career, medical, legal, and financial matters. Nevertheless, there are structural and regulatory issues within the contract advisor industry that prevent players from receiving the best possible representation and the best possible protection of their health-related rights. **We therefore make multiple recommendations for amending the Contract Advisor Regulations, including prohibiting loans or advances from contract advisors to players or prospective players in excess of the costs reasonable and necessary to prepare for the NFL Draft (Recommendation 12:2-A).**

Similarly, financial advisors play a critically important role in a player's long-term health. Proper financial advice and planning can help a player determine when to retire (if he has that choice), maximize a player's career earnings, potentially provide the player with a comfortable retirement, help mitigate the consequences of the health issues suffered by many former players, and help avoid financial distress evolving into physical or mental distress. The NFLPA has a program whereby financial advisors can register with the NFLPA and are subject to its Regulations and Code of Conduct Governing Registered Player Financial Advisors ("Financial Advisor Regulations"). While there are approximately 262 NFLPA-registered financial advisors, there are many financial advisors working with NFL players who are not NFLPA-registered, many of whom likely could not meet the registration requirements. Financial advisors are governed by many robust codes of ethics that echo some of the same principles we incorporated into this Report. However, there are a variety of industry practices and realities that are preventing some players from always receiving the best possible financial guidance. Consequently, **we make multiple recommendations for amending the Financial Advisor Regulations to provide greater professionalism and transparency to the industry (Recommendation 13:1-B).**

Families can play a crucial role in protecting and promoting player health, including encouraging players to seek proper medical care and carefully consider long-term interests; they can also offer support through challenging times. Unfortunately, in some cases, family members can also put inappropriate pressure on players or otherwise negatively influence their health. Consequently, **we recommend that family members be cognizant of the gaps in their knowledge concerning the realities of an NFL career, and that the NFL and NFLPA should offer programs or materials to help them become better health advocates (Recommendation 14:1-A). Relatedly, players should select and rely on professionals rather than family members for managing their business, financial, and legal affairs (Recommendation 14:2-A).**

(E) Other Stakeholders (Part 6)

Finally, Part 6 discusses several other stakeholders with a variety of roles in player health: officials; equipment manufacturers; the media; fans; and, NFL business partners.

Officials—as the individuals responsible for enforcing the Playing Rules—have an important role in protecting player health on the field. While the NFL consults with officials on changes to the Playing Rules, the officials' principal job is to enforce them. On that front, we found little criticism that officials are failing to enforce the Playing Rules as enacted by the NFL and thus we have no formal recommendations for them. Officials should be praised for their efforts, particularly considering the high level of scrutiny around these issues. **While officials should continue their solid work, they must always be diligent and open to change for additional ways to protect player health.**

The football equipment market is dominated by Riddell and Schutt, each of which hold at least a 45 percent share of the football equipment market, across all levels of football. An additional important party in the equipment manufacturing industry is the National Operating Committee on Standards for Athletic Equipment (NOCSAE), a non-profit organization that determines the safety standards for athletic equipment. Our review shows that equipment manufacturers are generally working to create the safest equipment possible. Equipment manufacturers for a variety of reasons (including both liability and brand image) have generally sought to make equipment safer, and the recent increased emphasis on player health and safety can only have accelerated that interest. We thus expect and recommend that equipment manufacturers continue to invest in the research and development of safer equipment. Similarly, at present, it appears that equipment manufacturers have been more careful than in years past in ensuring they accurately convey the benefits and limitations of their equipment. **In this regard, equipment manufacturers should continue this work, and we have no formal recommendations for them.**

The NFL and the media have an important and significant relationship that makes the media a key stakeholder in player health. Nevertheless, the media's coverage of player health issues has been mixed. Many reporters have done

great work to expose problems in the way player health is or has been addressed and the resulting problems suffered by current and former players. At the same time, some of the coverage raises concerns. There have been many important scientific studies concerning the injuries, particularly concussions, suffered by football players. However, with the pressures of deadlines, the media may not always have adequate space or time to convey the implications and limitations of these studies. Similarly, the media has not always accurately reported on player health litigation. The scientific and legal nuances are difficult to understand, which makes accurate reporting on them critically important. Consequently, **we recommend that the media engage appropriate experts, including doctors, scientists, and lawyers, to ensure that its reporting on player health matters is accurate, balanced, and comprehensive (Recommendation 17:1-B).**

NFL football is the most popular sport in America by a variety of measures, and fans are undoubtedly a central component to the NFL's success. Fans engage with NFL football and players in a variety of ways, including by watching on television (more than 20 million people watch the primetime broadcasts), attending practices or games in-person (a mean of more than 68,000 people attend every NFL game), by gambling and playing fantasy sports, and through public events where fans might see or speak with players. Fans, ultimately, are what drive the success of the NFL, and they therefore wield incredible power. Consequently, **we recommend that fans recognize their ability to bring about change concerning player health (Recommendation 18:1-A).** At the same time, increased fan interest and engagement through social media has also resulted in inappropriate behavior, such as cheering injuries or Tweeting racist remarks. Thus, **we also recommend that fans recognize that the lives of NFL players are more than entertainment, and that NFL players are human beings who suffer injuries that may adversely affect their health (Recommendation 18:1-B).** Fans should not advocate, cheer, encourage, or incite player injuries or pressure players to play while injured.

In the 2015 season, the NFL had approximately 29 official business partners, which collectively paid the NFL more than one billion dollars annually. NFL business partners, due to the power of the purse, have a unique ability to influence the NFL to make positive changes concerning player health. Consequently, **we recommend that NFL business partners not remain silent on NFL player health-related policies (Recommendation 19:1-A). Moreover, NFL business partners should consider applying pressure on the NFL to improve player health (Recommendation 19:1-B), should consider supporting organizations conducting due diligence into player health issues (Recommendation 19:1-C), and should engage players concerning player health issues (Recommendation 19:1-D).**

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In addition to these stakeholders, there are other parties that have some role in player health and are also discussed in Part 7 of the Report: (a) the NCAA; (b) youth leagues; (c) governments; (d) workers' compensation attorneys; and, (e) health-related companies.

4) CONCLUSION

This Report explains the pressing need for research into the overall health of NFL players; the need to address player health from all angles, both clinical and structural; and, the challenges presented in conducting such research and analysis. The issues and parties involved are numerous, complex, and interconnected. To address these issues—and, ultimately, to protect and improve the health of NFL players—requires a diligent and comprehensive approach to create well-informed and meaningful recommendations for change. This is precisely the focus of this Report.

Nevertheless, our recommendations are only as useful as their implementation. For this reason, **we make the following final recommendations: the NFL, NFLPA, and other stakeholders should actively engage with and publicly respond to this Report; the stakeholders identified in this Report, media, academics, and others should actively advocate, encourage, and monitor the promotion of player health; and, as recommended throughout the Report, various stakeholders (*e.g.*, club doctors, athletic trainers, coaches, contract advisors, and financial advisors) should adopt, improve, and enforce Codes of Ethics.**

NFL football has a storied history and holds an important place in this country. The men who play it deserve to be protected and have their health needs met and it is our fervent hope that the health needs of these men will be met. We hope this Report succeeds in furthering that cause.