



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

Chapter Summaries

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Chapter Summary: Introduction

This document is a summary of the full Introduction to the *Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full Introduction includes the following sections: (A) The Public Debate Surrounding the Health of NFL Players; (B) Risks and Autonomy; (C) Audience; (D) Goals and Process; (E) The Collective Bargaining Agreement (“CBA”); (F) A Brief History of the NFL’s and NFLPA’s Approaches to Player Health; (G) Dispute Resolution; and, (H) Scope of the Report. For more information, including relevant citations, please see the full Introduction.

This Report aims to answer the following fundamental questions: *Who* is responsible for the health of NFL players, *why*, and *what* can be done to promote player health? To date, there has been no comprehensive analysis of the universe of stakeholders that may influence player health, nor any systematic analysis of their existing or appropriate legal and/or ethical obligations. However, this sort of undertaking 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 the individuals who give so much of themselves – not without benefit, but sometimes with serious personal consequences – to one of America’s favorite sports. Without addressing and resolving these structural and organizational issues, and acknowledging a variety of potentiality relevant background conditions, any clinical approach to improving player health will necessarily fall short.

Audience

This Report has several key audiences. First, there are the major change agents: current players; club owners; the NFL; the NFLPA; club medical staff; and, various player advisors. If change is to occur, these are the key individuals and entities that will need to effectuate it. However, we live in an era where discussions about protecting and promoting player health extend far beyond these change agents. Fans, the media, the NFL’s business partners, and others all have a stake in – and more importantly, some power to shape – how the policies and practices of NFL football will evolve to best protect and promote player health. Writing for such divergent audiences is a significant challenge. Ultimately, we decided to err in favor of providing a more comprehensive analysis, with all the complexity and length that entails.

Goals and Process

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.

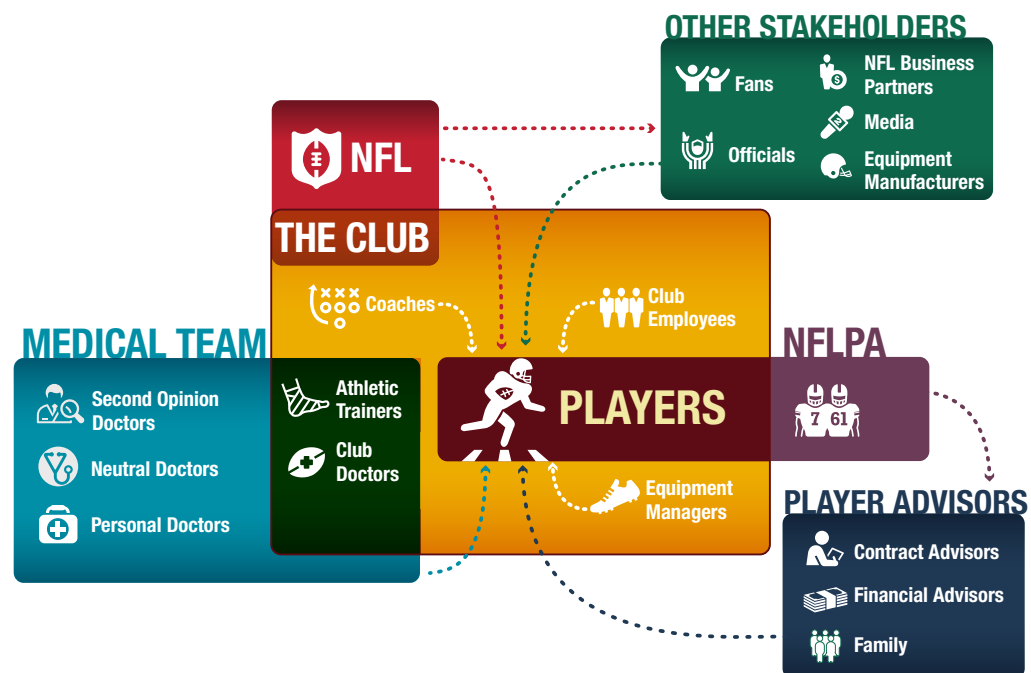
1. Identification: Understanding the Microenvironment Affecting Player Health

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 representatives of the many 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 to focus on. The stakeholders

are: players; club doctors; athletic trainers; second opinion doctors; neutral doctors; personal doctors; the NFL; NFLPA; NFL clubs; coaches; club employees; equipment managers; contract advisors; 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? 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. The result is an extensive mapping of a complex web of parties.

Introduction-B: Player Health Microenvironment



2. Description

Once our stakeholders were identified and appropriately organized in line with the microenvironment discussed above, we undertook a comprehensive analysis of their existing legal obligations and the ethical codes applicable to each (if any) through legal research, review of academic and professional literature, and interviews with key experts. We conducted formal and informal interviews with a number of current and former players, NFL and NFLPA representatives, sports medicine professionals, contract advisors, financial advisors, player family members, members of professional organizations representing coaches, athletic trainers, officials, and equipment managers, the media and others working in and around the NFL. In the hopes of encouraging full and candid disclosure, we offered these individuals the opportunity to have their comments be used confidentially and we have honored their preferences in this Report. It is important to note that that these interviews and discussions were intended to be illustrative but certainly not representative of all views and should be read with that limitation in mind.

We have not always been able to achieve as much access to interview subjects or documents as would have been ideal. 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 (the joint association for NFL clubs, *i.e.*, the employers of these individuals), we did not believe that the interviews would be successful and thus did not pursue the interviews at that time; instead, we provided these stakeholders the opportunity to review a draft of the Report. We again requested to interview club personnel in July 2016 but the NFL did not respond to our request. The NFL was otherwise cooperative – it reviewed our Report and facilitated its review by club personnel, including 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.

In April 2016, we engaged the NFL Physicians Society (NFLPS), the professional organization for club doctors, about reviewing relevant portions of a draft of this Report and related work. The NFLPS at that time questioned how many club doctors we had interviewed in developing the Report, apparently unaware of the NFL’s prior response to our planned interviews. We were surprised to find that the NFL had not previously discussed the matter with the NFLPS and immediately invited the NFLPS to have individual club doctors interviewed, an offer the NFLPS ultimately declined. Instead, it chose to proceed with reviewing our work and providing feedback in that manner.

The absence of individual interview data from club personnel is an important limitation to our work. The result is that we instead rely largely on the perspectives of players concerning these individuals. Nevertheless, we believe this gap is mitigated by our extensive research and the review of this Report by NFL personnel and club doctors.

3. Evaluation

Once we had a better sense of the existing obligations, or lack thereof, and how those obligations were or were not complied with or enforced, we were able to begin normative analysis, evaluating the current successes as well as gaps and opportunities for each stakeholder in protecting and promoting player health.

4. Recommendations

Finally, we applied a series of legal and ethical principles to the current state of affairs for each stakeholder in order to arrive at recommendations for positive change where needed. These principles, generated for the unique context of professional football, served to guide the proper scope and direction of the recommendations set forth for each stakeholder, and also as a litmus test for inclusion of various recommendations in this Report. For every recommendation we describe both the *reason* for the change and, where applicable, potential *mechanisms* by which it may be implemented. However, we avoided being overly specific or prescriptive when multiple options for implementation may exist, and where we lacked sufficient information to determine which mechanism might be best.

The Collective Bargaining Agreement (CBA)

It is important that our recommendations be actionable. We recognize that the most realistic way in which our recommendations will be effectuated is through the CBA and/or side letters. Pursuant to the National Labor Relations Act (NLRA), the NFLPA is “the exclusive representative” of current and rookie NFL players “for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.” Also pursuant to the NLRA, NFL clubs, acting collectively as the NFL, are obligated to bargain collectively with the NFLPA

concerning the “wages, hours, and other terms and conditions of employment” for NFL players. Since 1968, the NFL and NFLPA have negotiated 10 CBAs. The most recent CBA (executed in 2011) is 301 pages long and governs nearly every aspect of the NFL. Generally speaking, most important changes in NFL policies and practices are the result of the CBA process. Consequently, CBAs are of paramount importance to understanding how the business of the NFL functions and making recommendations for improvement.

Defining Health

It is necessary to understand what we mean by “health” and to explain the rationale for our definition, which extends beyond the sort of clinical measurements that might immediately be evoked by the phrase. Our mantra “The Whole Player, The Whole Life” motivates the definition used in this Report. “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 the absence of a malady.

We believe in the importance of considering the full range of non-medical inputs that can influence health, also known as the social determinants of health. These social determinants extend beyond the sorts of things for which one would seek out a doctor’s care, and 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.” Indeed, the NFL’s Player Engagement Department itself includes “physical strength,” “emotional strength,” “personal strength,” and “financial strength” within its concept of “total wellness.”

Acknowledging these social determinants of health allows us to recognize that no set of analysis or recommendations that was limited exclusively to medical care, medical relationships, and medical information would 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 well-being 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, we define health for purposes of this Report as “a state of overall wellbeing in fundamental aspects of a person’s life, including physical, mental, emotional, social, familial, and financial components.”

Professional Football Players

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? The reason we have selected this frame is 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 analysis of additional stakeholders such as the National Collegiate Athletic Association (NCAA), youth leagues, and parents would distract from 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. Nonetheless, our goal with this Report, is to address the already complicated set of factors influencing the health of NFL players, current, future, and former. Moreover, we acknowledge that the legal and ethical issues that arise regarding individuals who are not competent to make their own decisions (e.g., children) are substantially more difficult.

That said, many of our recommendations will be most relevant to current and future players, simply because former players may not continue to be engaged with or affected by many of the stakeholders that we have covered, or may be past the point at which implementation of particular recommendations could help them. For example, no matter what improvements we recommend related to club doctors, these simply could not affect players who are no longer affiliated with any club.

We nonetheless acknowledge that concerns about the health of former NFL players have been an important contributing motivation for research on NFL player health issues, including the Football Players Health Study. Although we focus on current players, the health benefits available to players after their career are an important component of player health.

* * *

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.

Chapter Summary: Guiding Ethical Principles

This document is a summary of the full chapter on Guiding Ethical Principles in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. In the Report, we make recommendations for how a wide variety of stakeholders can better protect and promote player health. Although each stakeholder is unique in important ways and may be subject to more specific ethical principles, as we discuss more fully in the Report, we identified seven overarching ethical principles to guide our assessment of all stakeholder responsibilities and to structure the nature of our recommendations. Here, we provide an abbreviated discussion of these ethical principles. The full chapter includes the following sections: General Principles of Bioethics; Professional Ethics; Human Rights Norms; Principles of Corporate Social Responsibility; and, Generating Specific Ethical Principles to Promote NFL Player Health. More specifically, it explains where our Guiding Ethical Principles come from and their relationship to other sets of principles frequently used in bioethics. For more information on the Guiding Ethical Principles of the Report, including relevant citations, please see the full chapter.

* * *

The seven overarching ethical principles applicable to all stakeholders in the Report are as follows:

Respect: The NFL is undeniably a business, but it is a business that relies on individuals who are exposed to substantial risks. These are not passive, inanimate widgets, but persons with inherent dignity and interests, social relationships, and long-term goals that extend beyond their playing days. Thus, no matter the enjoyment of the fans, the revenue generated, or the glory to players themselves, no stakeholder may treat players “merely as a means” or as a commodity solely for promotion of their own ends.

Health Primacy: The fact that football is a physical game and that injuries are relatively common does not mean that player health is unimportant. Health is special because it is foundational to all other pursuits. For this reason, it ought to be accorded special moral weight as compared to other possible goods, and we should be particularly wary in cases where goods will accrue to others whose health is not at risk.

When players are expected or encouraged to sacrifice their health for the game, or even when they are simply not discouraged from doing so, they are potentially treated as mere means, which is ethically problematic. Players have a moral right to have their health at the very least protected, and often promoted. Thus, as a general rule, avoiding serious threats to player health should be given paramount importance in every dealing with every stakeholder. However, there may be instances when a player, acting with full information and with minimal bias or other impairment, may rationally determine for himself that other values are more important than his capability for health.

While health matters, and indeed is often at the top of any pyramid of human values, we do not maintain that players must, or even should, always choose health over all other goods; this is certainly not a demand we make of the general population. Thus, we recognize that Health Primacy must be balanced against the principle of Empowered Autonomy, as described below, and that in some instances Empowered Autonomy will trump. That said, all stakeholders bear an obligation to try to reduce these instances of trade-offs as much as possible, and to reject an institution that demands or expects that players sacrifice their health on a regular basis.

Empowered Autonomy: Serious risks to health in football must be minimized as a structural matter. Beyond that, though, players are ultimately the ones who are most able to make decisions and take steps to protect and promote their health. In order to effectively do so, however – like all patients – they need support and empowerment. They need trustworthy factual information presented in a readily understandable way, as well as decision-making tools that help them see not only short-term benefits and costs, but also longer term implications. They need to have unfettered access to competent doctors whose conflicts of interest are minimized, contract advisors (*i.e.*, agents), financial advisors, and others they trust. The goal is not merely to allow players to choose for themselves which capabilities and values to prioritize, but to promote *informed* and *authentic* choice. Such choice also requires that players have access to good options and alternatives – *e.g.*, unconflicted and qualified medical advisors, educational opportunities and assistance with post-play career transitions, and the like – with the freedom to select among them without undue pressure from others.

Although perhaps not a perfect resolution of the various background pressures players may face, it is essential to take steps to at least ensure that player choice regarding matters related to their health will be free from misinformation, lack of understanding, bias, and avoidable negative influences. Other stakeholders have a responsibility to help achieve these criteria whenever possible. Where they are lacking, however, as in situations of cognitive impairment or unresolved biases, the principle of Health Primacy reigns supreme.

Transparency: All parties should be transparent about their interests, goals, and potential conflicts as they relate to player health. Failure to do so disrespects players and may also result in player health being inappropriately subrogated to other interests. Thus, information relevant to player health must be shared with players immediately. This means medical information about individual players themselves and about risks to players in general, including new information that would be sufficiently credible to be taken seriously by experts, even if not fully validated. This also means information about relationships that could influence judgment and recommendations related to player health. Promoting transparency will allow players to make better decisions for themselves, and also promote trust in all those who play a role in their health.

Managing Conflicts of Interest: While it is helpful to explain to players where conflicts of interest exist, as it may allow them to be on guard to better protect their own interests, mere disclosure will not help players when sufficient alternatives are lacking. Instead, all stakeholders should take steps to minimize conflicts of interest, and when they cannot be eliminated, to appropriately manage them. Many conflicts of interest are structural – the way in which a system is set up may create challenges for even well-intentioned and ethical individuals to do the right thing. When structure is the problem, it is structure that must be changed. Among other things, this will often involve removing problematic incentives, altering conflicted relationships, creating separate and independent sources of advice, and auditing the behavior of those with incentives that diverge from protecting and promoting player health.

Collaboration and Engagement: Protecting and promoting the health of professional football players depends on many parties who should strive to act together whenever possible to advance that primary goal. Further, part of treating players as ends in themselves and not as mere means is to refrain from making decisions *about* them and instead to make decisions *with* them. Players should be engaged by stakeholders in all matters that influence their health.

Justice: Finally, 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. Stakeholders should also be aware of the ways in which changing rules, laws, or programs – for example, trading benefits to former players for benefits to current players – may have differential

effects on certain sub-categories of players, and be attuned to ways in which those disadvantages can be blunted or recompensed. The principle of Justice also demands awareness of implications beyond the NFL itself. The way in which player health is protected and promoted at the top echelons of the sport will influence policies, practices, and culture all the way down the line, influencing the health not only of future NFL players, but also the vastly larger pool of Americans who will play football and never make it to the NFL.

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These principles, generated for the unique context of professional football, served to guide the proper scope and direction of the recommendations set forth for each stakeholder, and also as a litmus test for inclusion of various recommendations in this Report. In sum, the ethical principles that we advance in this Report reflect well-established principles applied to the unique context of the NFL. They may not prove exhaustive, and we anticipate several others will be generated through critical public reflection on the work herein, but they are the right starting point for further discussion. Ultimately, we can offer one simple meta-principle to guide all the relevant stakeholders: *in every scenario, ask what system and rules you would wish to be in place to protect and promote health if you or your son were an NFL player.*



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

Chapter 1

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SUMMARY: **Players**



This document is a summary of the full chapter on players in the *Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of players, including relevant citations, please see the full chapter.

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, behaviors with both positive and negative effects. That said, as we emphasize in this Report's Introduction, players are often making choices against a constrained set of background conditions, pressures, and influences – and sometimes limited expertise and information – all of which impact their capacity to optimally protect their own health, especially given potentially competing interests. Thus, while they are competent adults with a bevy of responsibilities to protect themselves, they cannot do so alone. Players must be treated as partners in advancing their own health by offering them a variety of support systems, 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, which is predictable, albeit undesirable. In an effort not to miss playing time, a player might, for example, try to intentionally fail the Concussion Protocol's baseline examination, try to avoid going through the Concussion Protocol, or avoid telling the club that he suffered a substantial blow to the head. Players we interviewed did not believe that players were doing a good job of taking care of themselves (for a variety of reasons, ranging from youthful optimism to pressures to succeed), and agreed that players often need to be protected from themselves. Nevertheless, we emphasize that the existing scientific data on player health issues are incomplete and often unclear, leaving players without sufficient information to make truly informed decisions about their own health.

Recommendations Concerning Players

This Report is intended to improve the lives and careers of players by protecting and promoting their health. While there are many stakeholders with a role to play in achieving this goal, it is important that players recognize and accept that they are on this list as well, not only with regard to their own health, but also with regard to the health of former, current, and future players. Thus, we direct the following recommendations at players:

Goal 1: To have players be proactive concerning their own health with appropriate support.

Recommendation 1:1-A: With assistance from contract advisors, the NFL, the NFLPA, and others, players should familiarize themselves with their rights and obligations related to health and other benefits, and should avail themselves of applicable benefits.

Discussions with various stakeholders reveal that many players are not sufficiently aware of their numerous rights, obligations, benefits and opportunities pursuant to the CBA or other programs, or do not take full advantage of them, even if they are aware. For example, a player is entitled to a second medical opinion, the surgeon of his choice, and may be entitled to tuition assistance, and a variety of injury and disability-related payments.

In Chapter 7: The NFL and NFLPA, Recommendation 7:3-A, we discuss ways in which the NFL and NFLPA have sought to advise players of certain benefits and opportunities. And while the NFL and NFLPA have an obligation to publicize these benefits and make them as easily accessible and comprehensible to the players as possible, players ultimately have to be the ones to act on the benefits.

This recommendation applies to former players as well. To the extent a former player is unaware of his rights and the benefits available to him, he should consult with his financial advisor and former contract advisor, as well as contact the NFL and the NFLPA, both of whom have staff and resources that can assist the player in understanding and obtaining benefits.

Recommendations Concerning Players – continued

Recommendation 1:1-B: Players should carefully consider the ways in which health sacrifices now may affect their future health.

While the health of the average former player is uncertain (and currently under analysis by The Football Players Health Study at Harvard University and others), there is no doubt that injuries suffered during an NFL career can cause players permanent damage that will make the remainder of their life more difficult. Players – in their desire to win, help their club and teammates, or just to remain employed – routinely play with injuries or conditions even though continuing to play might subject them to further or permanent injury. In so doing, players (like most human beings) exhibit “present bias,” which is the tendency to make decisions that are beneficial in the short-term but harmful in the long-term. It is important for players (with the help of other stakeholders) to recognize the impact of this potential bias on their decision-making. Some players may rationally decide that the decisions that they make now may be worth the consequences they suffer later, but it is important that those choices be as well-informed as possible. Players should pause – or have a support system that can help them pause – and understand the risks and benefits of playing through certain injuries or conditions, with particular emphasis on understanding the long-term implications of the decision.

Recommendation 1:1-C: Players should take advantage of opportunities to prepare for life after football.

One reason that some players may behave in ways that jeopardize their health is because of their strong desire to remain in the NFL given the lack of attractive alternatives available to them outside the sport. The NFL and NFLPA offer a wide variety of programs and benefits to help players prepare for life after football, including educational courses and seminars. These programs are discussed in more detail in Chapter 7: The NFL and NFLPA, Appendix D: Summary of Programs Offered by NFL’s Player Engagement Department and Appendix E: Summary of Programs Offered by NFLPA. As one example, the NFL’s Tuition Assistance Plan reimburses players for tuition if they complete their college degrees within four years of leaving the NFL. Unless the player is nearly certain to have a lengthy career in coaching, broadcasting or something else (all of which are rare), players should take advantage of this opportunity to finish their education at no or little cost. Doing so may somewhat lessen background pressures and influences to risk one’s health.

Recommendation 1:1-D: Players should seek out and learn from more experienced players, including former players, concerning health-related matters.

In any line of work, younger employees are well-advised to engage with more experienced colleagues and to ask for their advice and guidance. NFL players are no different. Indeed, the uniqueness of NFL employment makes it even more important that players engage experienced players for advice.

Recommendation 1:1-E: Players should take on a responsibility to one another, to support one another’s health, and to change the culture for the better.

Players are in a unique and important position to help one another. There are a variety of aspects of an NFL career that only players can understand, including the incredible pressure to play and succeed and why they might sometimes make decisions that are not in the best interests of their health, short-term and/or long-term. With this understanding and the

Recommendations Concerning Players – continued

rapport that develops among teammates, players have the credibility to positively influence the decisions players make and to improve the overall culture of player health.

Given the difficult decisions players face when it comes to their careers and health, it would likely be very helpful for players to be able to rely on other players for support and advice. In addition, players can lead by example concerning their own health and the health of other players. Players are more likely able to objectively view situations and prevent players from making decisions that are not in their best interests, for example returning to play too soon after a concussion or other major injury. At the very least, players can take it upon themselves not to pressure one another to play while injured, either explicitly or implicitly.

Recommendation 1:1-F: Players should not return to play until they are fit to do so.

As discussed above, players play through all types of injuries to help the team win, protect their position on the team, prove their toughness, etc. Indeed, when a player is “fit” to return is a difficult question and can involve balancing a number of factors, including but not limited to the player’s short- and long-term health, the player’s career goals and status with the club, and the importance of the club’s upcoming games. At least some of the players and contract advisors we talked to believe that club medical staff sometimes encourage players to return to the field when the players are less than 100% healthy to assist the club in terminating the player or in fighting a potential Injury Grievance. While clubs might not engage in such conduct with their more important players, these situations are a very real concern for many players simply seeking to retain their status on the roster. Players indicated that they do not realize that the club would do such a thing until they have seen it done or have been so advised by older players. While we cannot confirm that clubs engage in such behavior, players believe they do, which affects the trust relationship between the player and club medical staff. In sum, players need to understand the full panoply of risks when they make health-related decisions, not only to their own health, but also to their economic interests.

Recommendation 1:1-G: 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, financial advisor, and/or other counsel, as appropriate.

As is discussed in more detail in Chapter 2: Club Doctors, players sign collectively-bargained forms authorizing club doctors to disclose the players’ medical records and information to club officials, coaches and many others. A copy of this waiver is included as Appendix L. Additionally, at the NFL Combine, players similarly execute waivers and forms authorizing the disclosure of their medical records and information. These forms have the potential to effectively strip players of important privacy rights and empower clubs to make adverse employment decisions about players based on the player’s medical information. As discussed in Chapter 2: Club Doctors, employers are entitled to certain parts of an employee’s medical records under the Health Insurance Portability and Accountability Act, and other state laws, including worker’s compensation laws. Nevertheless, the waivers executed by the players are broad and potentially exceed the bounds of the aforementioned exceptions. Players should be careful and as knowledgeable as possible about those rights that they are waiving. Considering the stakes at hand, players would be wise to consult with the appropriate professional and expert advisors before executing any documents provided by the NFL or NFL clubs.

Recommendations Concerning Players – continued**Recommendation 1:1-H: Players should be aware of the ramifications of withholding medical information from club medical staff.**

Anecdotal evidence suggests that players often hide their medical conditions from the club. Players principally do this to protect their status on the club and fear of being viewed as less tough by the coaches. Players know that their careers are tenuous and also know that if the club starts perceiving a player to be injury-prone, it is often not long before the club no longer employs that player. However, there are serious downsides to players not disclosing medical conditions to club medical staff. As a preliminary matter, not telling the medical staff about a condition he is suffering prevents the player from receiving necessary medical care and risks worsening the condition.

Additionally, players should be aware that not advising club medical staff about their conditions might harm their financial interests. Players are obligated by the CBA and their contracts to disclose their medical conditions at certain times. Moreover, if the condition is affecting the player's performance, it increases the likelihood that the club will terminate the player's contract, generally without any further obligation to pay the player. Normally, when a player's contract is terminated because he is physically unable to perform, the club is required to continue paying the player for so long as the player is injured (during the season of injury only) via the Injury Grievance process. But if the player has not advised the club that his diminished performance is the result of an injury, he has undermined his ability to bring an Injury Grievance.

Recommendation 1:1-I: Players should review their medical records regularly.

Beginning with the 2014 season, all 32 NFL clubs use electronic medical records. Players can view their records online at any time after registering with the relevant website. Players should view their records regularly, including specifically at the beginning and conclusion of each season and when they are being treated for an injury or condition. Reviewing the records will ensure that the club's medical staff is properly documenting the player's condition and concerns while also helping the player ensure he is following the proper treatment for the condition. Research has also shown that patients who have access to their medical records feel more in control of their healthcare and better understand their medical issues.

Chapter 2

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SUMMARY: **Club Doctors**



This document is a summary of the full chapter on club doctors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Introduction to Current Legal Obligations and Ethical Codes; (C) Current Legal Obligations and Ethical Codes When Providing Services to Player; (D) Current Legal Obligations and Ethical Codes When Providing Services to Clubs; (E) Additional Ethical Obligations; (F) Current Practices; (G) Enforcement of Legal and Ethical Obligations; (H) Recommendations; and, (I) The Special Case of Medications. Here, we provide our recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of club doctors, including relevant citations, please see the full chapter. Also as explained in the full chapter, the NFL and NFL Physicians Society (NFLPS), the professional organization for club doctors, declined our request to interview club doctors.

The 2011 CBA between the NFL and the NFLPA, the key document that governs the relationship between and among players, clubs, 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 following fields: neurological; cardiovascular; nutritional; and, neuropsychological. 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 NFLPS.

Club doctors are chosen by, and report to, the club’s executives. They are affiliated with a wide variety of private practice groups, hospitals, academic institutions, and other professional sports leagues; some of these institutions have long-standing relationships with clubs that often help lead to the doctor being retained by the club. The NFLPA currently plays no role in the selection of club doctors, other than ensuring that they have the required qualifications and credentials.

Club doctors are one component of the more expansive club medical staff. There are various medical professionals who provide healthcare to players, including but not limited to athletic trainers, physical therapists, massage therapists, chiropractors, dentists, nutritionists, and psychologists. Club doctors and athletic trainers have the most systematic and continuous relationships with players as compared to these other professionals, and are generally the principal healthcare providers for the players.

The club medical staff is responsible for keeping the club apprised of each player’s medical condition. Players execute waivers (which are collectively bargained between the NFL and NFLPA) permitting the club doctors and athletic trainers to disclose the player’s medical information to club employees, such as coaches and the general manager. As club doctors only have part-time relationships with the clubs, the responsibility generally falls on athletic trainers to keep coaches and general managers apprised of players’ injury statuses during regular meetings to enable the general manager to decide whether or not to sign another player in the event a player is unable to play.

Club doctors have an inherent structural conflict of interest: they provide care to players while also having some type of contractual or employment relationship with, and thus obligations to, the club. Indeed, a club doctor’s principal responsibilities are: (1) providing healthcare to the players; (2) helping players determine when they are ready to

return to play; (3) helping clubs determine when players are ready to return to play; (4) examining players the club is considering employing, *e.g.*, at the NFL Combine or as part of free agency; and, (5) helping clubs to determine whether a player’s contract should be terminated because of the player’s physical condition, *e.g.*, whether an injury will prevent the player from playing. The first two responsibilities might be considered “Services to Player,” a scenario in which the club doctor is treating and advising the player, including taking into consideration the player’s athletic and other goals, whereas the last three responsibilities might be considered “Services to Club,” a scenario in which the doctor is exclusively advising the club.

Nevertheless, in the current system the club doctor’s two roles are not and cannot be separated in practice. The current structure forces club doctors to have obligations to two parties – the club and the player – and to make difficult judgments about when one party’s interests must yield to another’s.

This is not a moral judgment about club doctors 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 necessarily compatible.

On the one hand, club doctors are hired by clubs to provide and supervise player medical care. As a result, they enter into a doctor-patient relationship with the players and have a legal and ethical responsibility to protect and promote the health of their player-patients, in line with players’ interests as defined by the players themselves. This means providing care and medical advice aligned with player goals, and also working with players to help them make decisions about their own self-protection, including when they should play, rest, and potentially retire.

On the other hand, clubs engage doctors because medical information about and assessment of players is necessary to clubs’ business decisions related to a player’s ability to perform at a sufficiently high level in the short- and long-term. Additionally, clubs engage doctors to advance the clubs’ interest in keeping their players healthy and helping them recover as fully and quickly as possible when they are injured. These dual roles for club doctors may sometimes conflict because players and clubs often have conflicting interests, but club doctors are called to serve both parties.

While the practical impact of these conflicts in the NFL almost certainly varies from club to club depending on the club’s approach to player health and the medical staff’s autonomy, the conflict itself is unavoidable whenever the club doctor is expected to wear both hats, with

simultaneous and sometimes conflicting obligations both to players and to clubs. A system that requires heroic moral and professional judgment in the face of a systemic structural conflict of interest is one that is bound to fail, even if there are individual doctors who manage to negotiate this conflict better than others. Moreover, even if a club doctor can successfully manage the conflicts, their mere existence can compromise player trust – a critical element of the doctor-patient relationship. That is why we describe the conflict of interest as inherent; the conflict is as rooted in the perceptions of others as it is in the decisions and actions of the conflicted party. Ultimately, it is the system that deserves blame, and thus, as will be discussed below, our recommendations are focused on improving that system.

In our research for this report we saw how the current structure may be corrosive of player trust. A 2016 *Associated Press* survey of 100 current NFL players addressed this issue. The survey asked players whether “NFL teams, coaches and team doctors have players’ best interests in mind when it comes to injuries and a player health.” 47 players answered yes, 39 of the players answered no, and 14 players were either unsure or refused to respond.

We also spoke with several former and current players to get a better understanding about NFL player health issues. It is important to note that these interviews were intended to be illustrative but certainly not representative of all players’ views and should be read with that limitation in mind. The players we spoke to generally indicated that the current structure of club medical staff often caused players to distrust club doctors, although this feeling is not universal.

Some of the players we interviewed also indicated that the communications between the club medical staff and the coaches and general manager place pressure on players to practice and also cause them to withhold information from the medical staff. Players often do not want to tell the medical staff that they are not healthy enough to practice, for fear that the medical staff will then relay that message to the general manager, with the suggestion that the general manager should consider signing a potential replacement player.

To be sure, not all share this view of the relationship between players and club medical staff, and of course, as we acknowledge, the situation varies from club to club and over time. But the problem is structural and thus a structural solution is needed, as recommended in this chapter.

Recommendations Concerning Club Doctors

Goal 1: To ensure that players receive the best healthcare possible from providers who are as free from conflicts of interest as possible.

Recommendation 2:1-A: 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”).

The CBA requires clubs to retain several different types of doctors. Currently, the use of these doctors and their opinions are largely filtered through the head club doctor, who is the doctor that visits the club’s practices a few times a week, directs the athletic trainers, and otherwise generally leads the medical staff. Under our recommendation, this structure and process would largely remain, but with two important distinctions – doctors and the other medical staff for all of the clubs would: (1) be chosen, reviewed, and have their compensation determined by a committee of medical experts jointly

Recommendations Concerning Club Doctors – continued

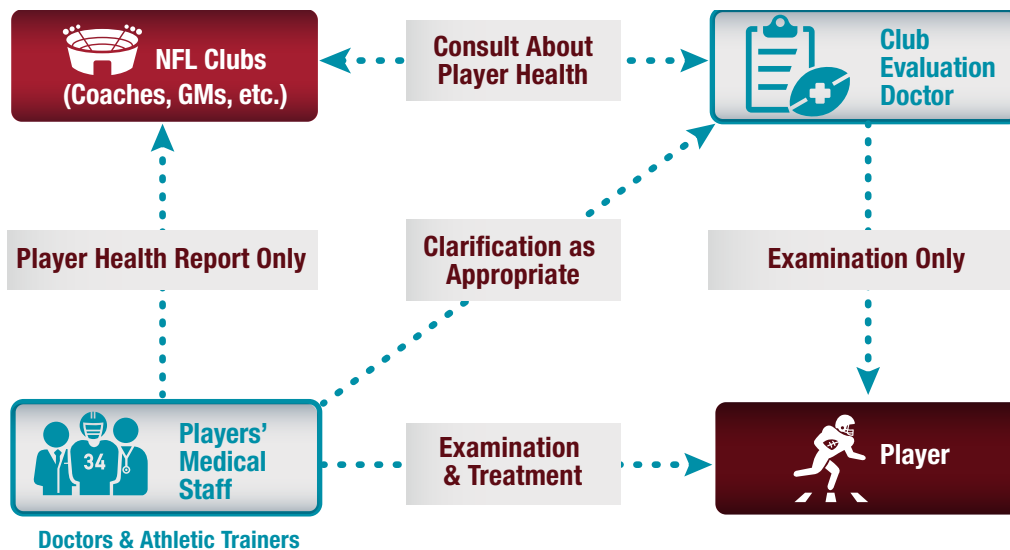
selected by the NFL and NFLPA (“Medical Committee”) (but still paid by the club); and, (2) have as their principal obligation the treatment of players in accordance with prevailing and customary medical ethics and laws. For shorthand, we refer to the head doctor in this new role as the **Head Players’ Doctor**, and to the collection of doctors and other medical personnel – including the Head Players’ Doctor – as the **Players’ Medical Staff**.

In this role, the Head Players’ Doctor effectively replaces the individual currently known as the club doctor. In many respects, the daily responsibilities of the doctors and athletic trainers do not change under our proposed system. The key change, though, is for whom they now work – the players, as opposed to the clubs. The Head Players’ Doctor would be at practices and games for the treatment of players for the same amount of time as club doctors currently are and would also still be responsible for directing the work of the athletic trainers (also part of the Players’ Medical Staff). The Head Players’ Doctor – and the entire Players’ Medical Staff – would provide care and treatment to the players without any communications with or consideration given to the club, outside of our proposed “Player Health Report” discussed below. Moreover, the Head Players’ Doctor (with input from the player) controls the player’s level of participation in practices and games. Even though the Head Players’ Doctor would still be paid by the club, he or she would be selected, reviewed and potentially terminated by the Medical Committee, thus avoiding a key source of conflict. Such a review should include a determination of whether the Head Players’ Doctor has abided by all relevant legal and ethical obligations, on top of an evaluation of their medical expertise.

To further understand our recommendation, we next review our proposed Player Health Report; the club’s access to player medical records; and, the remaining need for doctors to provide services to the clubs.

Figure 2-D below shows the permissible forms of communication concerning player health under our proposal, which will be elaborated on below.

Figure 2-D: Permissible Communications Concerning Player Health



Recommendations Concerning Club Doctors— continued

The Player Health Report

Under our recommendation, the club would be entitled to regular written reports from the Players' Medical Staff about the status of any players currently receiving medical treatment ("Player Health Report"). Clubs – like many employers – have a legitimate business interest (and indeed in many circumstances a legal right) to know about their employees' health insofar as it affects their ability to perform the essential functions of their jobs. The Player Health Report would serve this purpose by briefly describing: (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 (*e.g.*, out, doubtful, questionable or probable); (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. The Player Health Report would be a summary form written for the lay coaches and club officials, as opposed to a detailed medical document. Generally speaking, we propose that the Player Health Reports be provided to the club before and after each practice and game. Additionally, the club would be entitled to a Player Health Report on days where there is no practice or game if a player has received medical care or testing. The Player Health Reports should also be made available to players as they are issued, perhaps through their electronic medical records. 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.

Generating the Player Health Report is substantially similar to club doctors' current duties and requirements. Club doctors and athletic trainers regularly update the club on player health status and are also required to advise the player in writing of any information that the club doctor provides to the club concerning a player's condition "which significantly affects the player's performance or health." That player notification requirement would stand.

The important distinction, however, is that under this recommendation, the Players' Medical Staff's determination as to the player's status would control the player's level of participation in any practice or game. If the Players' Medical Staff declares – via the Player Health Report – that the player cannot play, the player cannot play (except for the situation described below). If the club deviates from the limitations set forth in the Player Health Report, the club should be subject to substantial fines or other discipline under the CBA. The club, of course, would retain the right to not play the player for any number of reasons, including injury or skill.

As will be explained further below, in the event a doctor hired by the club for the purposes of advising the club (*i.e.*, not a member of the Players' Medical Staff) needs clarification from the Head Players' Doctor concerning a player's status, such communication should be permitted, as determined to be reasonably necessary by the Head Players' Doctor. While it is expected that the Players' Athletic Trainers would help create the Player Health Report, communications between the Club Evaluation Doctor (working solely on behalf of the club as explained below) and the Players' Medical Staff should only be with the Head Players' Doctor. Beyond these minimal levels of communication, there should be no need for the Players' Medical Staff (doctors and athletic trainers) to communicate with any club employee, including a coach or general manager. By minimizing the communication in this way, and formalizing it, the goal is to minimize the club's ability to influence the medical care provided to the player, including more subtle forms of influence, *e.g.*, occasional workplace conversations. We say "minimize" because, as we discuss below, our recommendation does still allow for some communications between the Players' Medical Staff and the club. We think that this reduced level of communication is necessary and appropriate to protect player health, but nevertheless acknowledge that the existence of any such communications may cause a player to be less trusting of the medical staff, even if designated as the Players' Medical Staff as we recommend.

In creating the Player Health Report, it is important that the Head Players' Doctor take into consideration the player's desires and not strictly clinical criteria. Players, like all patients, are entitled to autonomy – the right to make their own choices concerning healthcare. Thus, if a player who is fully informed of the risks wishes to play through an injury, the Head Players' Doctor should take that into consideration in completing the Player Health Report and deciding whether the player can play. Nevertheless, players who have suffered concussions or other injuries that might affect the player's cognition at the time of decision-making should be given significantly less deference.

Recommendations Concerning Club Doctors— continued

If the Head Players' Doctor declares that a player cannot play but the player nonetheless wants to do so, the player could receive a second opinion. The logistics of when and how the player obtained the second opinion would need to be well coordinated; it would likely have to be a local doctor or practice group prepared to handle these situations for the players on short notice. If the second opinion doctor says the player can play, then the player should be allowed to decide if he wants to play. Recognizing that players may shop for doctors who will clear them to play, it is our recommendation that the Medical Committee create a list of well-qualified and approved second opinion doctors for the players to consult. This compromise also helps resolve concerns that the Head Players' Doctor for one club might be overly conservative as compared to Head Players' Doctors for other clubs. Nevertheless, during in-game situations, the Head Players' Doctor would retain substantial control over the player's participation – as is currently the case. To minimize communication between the Players' Medical Staff and club personnel, in-game decisions about a player's status should be communicated through the Club Evaluation Doctor, discussed below.

The Club's Access to Player Medical Records

Importantly, the Player Health Report is distinct from the player's medical records. The Player Health Report is a limited view of the player's current health and provides information on the player's immediate or near-immediate availability to the club. A player's complete medical record provides a fuller picture of the player's health and would provide additional information needed for assessing a player's long-term health, as well as a separate check on the assessment provided in the Player Health Report.

Under our recommendation, in addition to the Player Health Report, the club would also be entitled to the players' medical records, as is the case under the status quo. We reiterate the clubs' legitimate business need for a clear understanding of player health issues clubs would obviously and rightfully be interested in understanding a player's medical condition in both the short- and long-term. While some might believe that clubs should only be entitled to those medical records that are specifically relevant to football, in reality this is not a line that can easily be drawn. Clubs might believe that most of a player's medical issues, including both physical and mental health issues, are relevant to the player's status with the club. That said, as we discuss in a forthcoming article, there may be important legal restrictions on the request for and use of some of that information by an employer, including constraints imposed by the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act.

Club Evaluation Doctors

Under this new approach, clubs would be free to retain doctors and other medical professionals, as needed, who work solely for the clubs for the purposes of examining players and advising the club accordingly. These doctors, whom we call "Club Evaluation Doctors," could perform the pre-employment examinations at the Combine, during the course of free agency, and also examine players during the season. However, they would not *treat* the players in any way nor control their treatment. The Standard Player Contract's requirement that players make themselves available for an examination by the club doctor upon request would largely remain. Additionally, the Club Evaluation Doctor would have the opportunity to review the players' medical records at any time and communicate with the Head Players' Doctor about the Player Health Report, if clarification is needed and appropriate. As discussed below, the Player Health Report should substantially minimize the need for duplicative medical examinations. This arrangement would thus permit a Club Evaluation Doctor to provide an opinion as to a player's short- and long-term usefulness to the club, without relying on the Players' Medical Staff's opinion.

The Club Evaluation Doctor would be the only additional doctor contemplated under our proposal. The number of other medical personnel would otherwise stay the same – but their loyalties would now be exclusively to the players.

We recognize that there are many possible objections to our recommendation, from both a player-centric perspective, a view that might maintain that our recommendation is not sufficiently protective of player interests, and a club-centric perspective, a view that might maintain that our recommendation is unworkable or unnecessary. In the full chapter, we discuss and respond to objections to our recommendation from both player-centric and club-centric perspectives.

Recommendations Concerning Club Doctors— continued

In addition, in the full chapter we address additional comments about our recommendation from the NFL and NFL Physicians Society.

Included as Appendix G to the Report is a model CBA provision setting forth our proposal here. In addition, this recommendation is the subject of a forthcoming Special Report from The Hastings Center Report. Included with the Special Report are commentaries from a diverse group of experts, including professors, bioethicists, a former player, a former player that is now a doctor, a current player that is also a medical student in the offseason, and the NFLPS.

Club doctors are clearly one of the most important stakeholders in protecting and promoting player health. While identifying and seeking to improve this structural conflict of interest is the most important contribution of this chapter of the Report, we also make additional recommendations concerning club doctors that are worth highlighting, although *some of these might not be necessary or would need be altered if Recommendation 1-A above were adopted*. Nevertheless, we make all recommendations we believe can improve player health under the current structures and set of practices, even if they would become partially redundant or inconsistent if other primary recommendations are adopted.

Recommendation 2:1-B: The NFLPS should adopt a Code of Ethics.

Club doctors have many codes of ethics relevant to their practice, dependent on their particular medical specialties. However, none of them are specific to their unique role as doctors for NFL clubs. Club doctors face a variety of complex situations that are not adequately contemplated or addressed by existing codes of ethics, most notably balancing their obligations to provide care to the player while also advising the club about players' health. A code of ethics adopted by NFLPS would supplement the club doctors' existing codes of ethics by providing guidance and tenets for the unique and competitive environment in which they must operate.

Finally, enforcement is essential. Violations of a professional code of ethics should include meaningful punishments, ranging from warnings and censures to fines and suspensions. In order to be effective, the enforcement and disciplinary schemes might need to be included in the CBA.

Recommendation 2:1-C: Every doctor retained by a club should be a member of the NFLPS.

While many (if not most) doctors retained by clubs are members of the NFLPS, the 2011 CBA's addition of the several different types of doctors required to be retained by clubs makes it likely that at least some doctors treating NFL players are not members of the NFLPS. In order for our recommendation that the NFLPS adopt a code of ethics to have an impact, the doctors treating players must be members of the NFLPS.

Recommendation 2:1-D: 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.

The Concussion Protocol requires the presence of an Unaffiliated Neurotrauma Consultant to help identify and diagnose potential concussions. However, the Concussion Protocol also declares that “[t]he responsibility for the diagnosis of concussion and the decision to return a player to a game remains exclusively within the professional judgment of the Head Team Physician or the Team physician assigned to managing TBI.” Thus, the possibility exists that even if the Unaffiliated Neurotrauma Consultant diagnoses a player with a concussion, if the club doctor does not, the player can return to play.

Recommendations Concerning Club Doctors— continued

While there is no evidence this scenario has taken place, the possibility that it could is unacceptable and unnecessary. If the Unaffiliated Neurotrauma Consultant is to have meaningful impact, he or she must have the same rights and duties concerning possible player concussions as the club doctor. If a player has been diagnosed by the Unaffiliated Neurotrauma Consultant with a concussion, he should not be able to return to play – regardless of what the club doctor believes. While we acknowledge that the club doctor is likely to have greater familiarity with the player – and can thus better determine whether a player has suffered a concussion, this is a common sense protection that errs on the side of player health.

Recommendation 2:1-E: The NFL and NFLPA should reconsider whether waivers providing for the use and disclosure of player medical information should include mental health information.

In Appendices L and M we provide copies of the broad confidentiality waivers that all players execute at the request of their clubs. The first waiver authorizes the club, the NFL and other parties to use and disclose the player’s “entire health or medical record” expressly including “all records and [protected health information] relating to any mental health treatment, therapy, and/or counseling, but expressly exclude[ing] psychotherapy notes.” The second waiver authorizes all of the players’ “healthcare providers,” including “mental health providers” to disclose player health information and records to the NFL, NFL clubs and other parties.

These waivers are collectively bargained between the NFL and NFLPA but are nevertheless troubling. While we acknowledge, as discussed above in Recommendation 2:1-A, that clubs have a legitimate interest in player health information, mental health information is potentially different. As explained in Chapter 1: Players, players have strong reason to believe they are entitled to confidential mental healthcare because the NFL’s insurance plan explicitly states that the submission of claims by players or their family members for mental health, substance abuse and other counseling services provided for under the insurance program “will not be made known to [the] club, the NFL or the NFLPA.” This declaration suggests that the NFL and NFLPA have recognized a particular interest in enabling players to seek mental healthcare without fear that the club will terminate or otherwise alter their employment, thereby encouraging players to seek care. However, the breadth of the waivers executed by players undermines the promise of confidentiality. As a result, players may be reluctant to seek needed mental health treatment. To effectuate the goal of unencumbered access reflected in the insurance provisions, we recommend that the NFL and NFLPA re-assess whether the collectively-bargained waivers executed by the players are overly broad.

Recommendation 2:1-F: Club doctors should abide by their CBA obligation to advise players of all information they disclose to club representatives concerning the players.

The CBA contains a requirement regarding this issue:

All club physicians are required to disclose to a player any and all information about the player’s physical condition that the physician may from time to time provide to a coach or other club representative, whether or not such information affects the player’s performance or health. If a club physician advises a coach or other club representative of a player’s serious injury or career threatening physical condition which significantly affects the player’s performance or health, the physician will also advise the player in writing.

However, we have learned that in practice some players believe club doctors regularly disclose information to the club that is not disclosed to the player. In addition, many players do not believe they are ever advised about their conditions in writing, despite the CBA’s requirement. As a result, players may be unaware of the full extent of their medical conditions

Recommendations Concerning Club Doctors— continued

and also how the club might take adverse employment action against the player due to his medical condition. In particular, club doctors might not be providing players with a copy of medical evaluations that the club doctor has provided to the club. Players are entitled by the CBA and by their status as patients to this information. It is thus imperative that club doctors comply with the CBA and that the NFLPA enforce this provision against club doctors who do not.

Recommendation 2:1-G: 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.

Players are often confused about whether club doctors are providing care for their benefit or for the clubs’. This confusion sows distrust which interferes with the effectiveness of the doctor-player relationship. This confusion and distrust begins before players are even a member of the club, including at the NFL Combine where club doctors extensively examine players. To avoid confusion and to make sure everyone’s role is properly understood, players should be advised that the doctor is working only on behalf of the club in such situations. The document should clarify the role and ethical obligations of doctors in that situation.

Recommendation 2:1-H: The NFL’s Medical Sponsorship Policy should prohibit doctors or other medical service providers (“MSPs”) from providing consideration of any kind for the right to provide medical services to the club, exclusively or non-exclusively.

The NFL has a League Policy on Club Medical Services Agreements and Sponsorships (“Medical Sponsorship Policy”) governing the relationship and arrangements between medical service providers (“MSPs”) and the clubs. According to the Medical Sponsorship Policy, MSPs include “hospitals, universities, medical practice groups, rehabilitation facilities, laboratories, imaging centers and other entities that provide medical care and related services.” Although doctors are not specifically included in the definition of MSPs, the NFL includes doctors as MSPs for purposes of the Policy.

The Medical Sponsorship Policy appropriately prohibits clubs from *trading* the right to treat a club’s players in exchange for sponsorship money. However, the Policy does not address – and thus seemingly permits – the *open sale* of the rights to provide medical services to the club (but only on a non-exclusive basis). For example, an MSP could pay \$5 million for the right to treat the club’s players (in addition to other MSPs). While the MSP might not obtain the right to use club trademarks or to post advertisements in the stadium, the MSP would generally be permitted to advertise the fact that it provides medical services to the club, a potentially significant reputational benefit. In reviewing a draft of this chapter, the NFLPS stated that no MSP currently pays for the right to provide medical services to players. Nevertheless, the incentive exists for MSPs to pay for the right to provide medical services, even if this not currently the practice.

If the incentive exists for MSPs to pay for the right to provide medical services, clubs would likely prefer to sell these services to the highest bidder. This scenario again raises the problematic question of whether clubs might choose MSPs based on their qualifications or instead on the amount they are willing to pay. While the NFLPS says no MSPs are currently paying for the right to provide medical services, we know that the practice existed in the past. Consequently, it is possible that the practice could return or proliferate. To ensure that clubs are choosing MSPs based solely on whether or not they will do the best job in providing care to the players, it is appropriate to strictly prohibit MSPs from providing consideration of any kind – whether in the form of payment or free/discounted services – for the right to provide medical services to the club, exclusively or non-exclusively.

In reviewing a draft of this chapter, the NFL stated that the Medical Sponsorship Policy does prohibit MSPs from paying for the right to provide medical services and from offering discounted or free services. As we explain in much greater



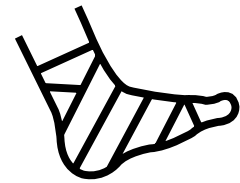
Protecting and Promoting the
Health of NFL Players:
Legal and Ethical Analysis and Recommendations

Chapter 3

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SUMMARY: **Athletic Trainers**



This document is a summary of the full chapter on athletic trainers in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of athletic trainers, including relevant citations, please see the full chapter. Also as explained in the full chapter, the NFL and Professional Football Athletic Trainers Society (PFATS), the professional organization for NFL club athletic trainers, denied our request to interview athletic trainers.

The CBA dictates the required presence, education and certification of athletic trainers, and each NFL club employs approximately 4 athletic trainers. They are full-time employees of the club. Generally, state licensing statutes and regulations require athletic trainers to work under the direction of a licensed physician, but athletic trainers are often the first and most consistent source of medical care provided to players. During the week of practice, club doctors generally only visit practice for a few hours a few times per week while athletic trainers are with the club on a near constant basis. Athletic trainers help prepare players for each practice and respond to any new injuries that occur. Each day, athletic trainers, in consultation with the club's coaches and management, complete the daily Injury Report, and are also largely responsible for maintaining the player's electronic medical records. On game days, athletic trainers

work closely with the various club doctors present to assist in the evaluation of injuries.

Players and contract advisors we interviewed confirmed that athletic trainers are generally the player's first and primary source of medical care. Nevertheless, some players expressed distrust of athletic trainers. Communications between the athletic trainers and the coaches and general manager may place pressure on players to practice and also may cause them to withhold information from the athletic trainer. Some players we interviewed also complained that athletic trainers utilize outdated treatment methods, and explained that their concerns about athletic trainers and the club's healthcare operations caused them to self-treat or to seek care and treatment outside of the club, both during the season and in the offseason.

Recommendations Concerning Athletic Trainers

Goal 1: To ensure that players receive the best healthcare possible from providers who are as free from conflicts of interest as possible.

Recommendation 3:1-A: 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”).

This recommendation also appears in and is described at length in Chapter 2: Club Doctors. We recommend that club doctors and athletic trainers be treated the same way. To be clear, this recommendation contemplates that athletic trainers (in addition to the other medical professionals treating players) be chosen, reviewed, and terminated (as necessary) by a League-wide independent Medical Committee whose members are jointly selected by the NFL and NFLPA. The athletic trainers' principal day-to-day duties would remain largely the same as they are now – providing medical care to the players and updating the club on player health status (just in a different way). However, the key distinction is that this recommendation eliminates the athletic trainer's obligations to and relationship with the club. The athletic trainer would no longer report to or meet regularly with coaches and club executives concerning player health. Instead, player health status would be transmitted to the club via a Player Health Report completed by the Players' Medical Staff. Additional logistics concerning the recommendation are discussed in Chapter 2: Club Doctors and Appendix G: Model Article 39 of the Collective Bargaining Agreement – Players' Medical Care and Treatment. Nevertheless, most importantly, the proposed structure removes any conflict of interest in the care being provided to players by athletic trainers and other medical staff. This recommendation concerns both club doctors and athletic trainers and is an important recommendation for the improvement of player health. Like club doctors, athletic trainer best practices include the avoidance and minimization of conflicts of interest.

Recommendations Concerning Athletic Trainers – continued

Recommendation 3:1-B: The Professional Football Athletic Trainers Society should revise its Code of Ethics.

As discussed in the full chapter, PFATS' existing Code of Ethics is contradictory and reflects the inherent conflicts of interest in the current structure of club medical staff that runs counter to the best interests of the players. The Code of Ethics should be revised to eliminate the contradictions and problematic provisions we identified. More specifically, the PFATS Code of Ethics should emphasize the principle of health primacy and minimizing conflicts of interests by indicating (like the National Athletic Trainers Association Code of Ethics) that the athletic trainer's foremost duty is the furthering of the best interests of the player under the athletic trainer's care, regardless of the club's policies or wishes.

In addition, enforcement is essential. Violations of a professional code of ethics should include meaningful punishments, ranging from warnings and censures to fines and suspensions. However, PFATS has not initiated any enforcement proceedings in at least the last 10 years. In order to be effective, the enforcement and disciplinary schemes might need to be included in the CBA.

Recommendations Concerning Club Doctors— continued

depth in the full chapter, we disagree with the NFL's reading. While the NFL may enforce the Medical Sponsorship Policy in such a way, we disagree that the plain text of the Policy prohibits such arrangements. In any event, it appears that the NFL agrees with us that the Policy should prohibit any club doctor from paying for the right to provide healthcare to players. If the Policy is intended to prohibit club doctors from paying for the right to provide medical services to players, the text of the Policy should be clarified.

Recommendation 2:1-I: Club doctors' roles should be clarified in a written document provided to the players before each season.

As discussed throughout this chapter, club doctors play two roles: providing care to players; and, providing services to the club. When the players are under contract with the club, the club doctor is often performing both roles at the same time. Even if the club doctor is principally concerned with providing an injured player the best possible care, conflict may arise to the extent the club doctor is also working with clubs on business decisions about the player, leading to potential confusion and distrust.

Recommendation 2:1-A is intended to address this problem, but barring that, prior to the season, the club doctor should advise players as to: (1) how often the club doctor communicates with the coaches and executives; (2) what information the club doctor communicates to the coaches and executives; (3) the doctor's relationship to the athletic trainer with an explanation of the athletic trainer's role; and, (4) the club's access to player medical records. Beyond just the preseason, this distinction should be publicized more generally to ensure the players' understanding. Finally, disclosing the club doctor's compensation might also be appropriate.

While we recommend disclosure, we recognize it is not a complete solution given the social science research on the failures of mandated disclosure of conflicts of interest.

Goal 2: To provide a fair and efficient process for resolving disputes between players and club doctors.

Recommendation 2:2-A: 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.

As discussed in Section G: Enforcement, there are challenges to adjudicating club doctors' legal obligations to players. Arbitration is a favored dispute resolution system – it generally minimizes costs for all parties and leads to faster and more accurate resolutions of legal disputes. The CBA contains many arbitration mechanisms for almost every reasonably possible scenario involving NFL players and the NFL almost always argues in court that a player's claims must be resolved through the CBA's arbitration mechanisms. The one exception appears to be the NFL's position that club doctors can be sued in court – and not via arbitration. However, changes to the 2011 CBA likely increase the chances that a player's civil court claims would be preempted by the terms of the CBA and create confusion about players' rights and enforcement options. Moreover, because club doctors are not parties to the CBA, a Non-Injury Grievance against them would be unlikely to proceed. A robust arbitration process is the fairest and most efficient way of ensuring that players have the same legal rights as regular patients. It is our intention that such a system would provide players with roughly comparable remedies to those currently available to them in civil litigation – only now in a private and more efficient forum.



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

Chapter 4

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SUMMARY:

Second Opinion Doctors



This document is a summary of the full chapter on second opinion doctors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of second opinion doctors, including relevant citations, please see the full chapter.

Second opinion doctors is a generic term for doctors whom players may consult concerning an injury or medical condition to compare or contrast their opinion to that provided by the club doctor. In addition, some might be the players' primary caregiver or "personal doctor" and thus fall under the same recommendations we make in that chapter.

Under the CBA, players have the right to a second opinion doctor and the surgeon of their choice, the full cost of which must be paid by the club, provided the player consults with the club doctor and provides the club doctor with a report concerning treatment provided by the second opinion doctor. That said, second opinion doctors' care of the player does not include the same type of structural conflicts that potentially hinder the care provided by club doctors because they do not work for or report to the club, so our recommended changes as to them are more sparing.

Second opinion doctors are an important component of a player's healthcare, largely as a result of recommendations made to players by their contract advisors to seek second

opinions. In talking with players and contract advisors, most believed that club doctors are generally – but not always – cooperative with players obtaining second opinions, a marked departure from historical practice and even just 5-10 years ago. Some contract advisors indicated that by almost always obtaining a second opinion, it removes any concern that the club doctor might have been making a recommendation that was in the club's interest and not the player's.

If the second opinion doctor's diagnosis or recommended treatment plan does differ, a decision then must be made as to which course of treatment to pursue and which doctor will perform the surgery (if necessary). In some cases, the contract advisor might arrange for the second opinion doctor to talk with the club doctor to see if a consensus can be reached. Sometimes a third doctor will provide an opinion. Nevertheless, the prevailing sentiment among the contract advisors interviewed is that when there is a conflict, the second opinion doctor's recommended course of treatment is almost always the one taken in today's NFL.

Recommendations Concerning Second Opinion Doctors

Second opinion doctors are important advocates for players' health and do not suffer from the inherent structural conflicts of interest faced by club doctors. While we do not have recommendations directed specifically towards second opinion doctors, we do have recommendations concerning how other stakeholders can promote and support the use of these doctors.

Goal 1: To help players obtain the best possible healthcare.

Recommendation 4:1-A: Clubs and club medical staff should support players in their right to receive a second opinion.

The right to and value of a second medical opinion is well-accepted in our society, particularly for serious conditions. This right to a second opinion is all the more important for NFL players considering that their careers depend on their health and the complexity of their conditions. Consequently, no matter the club doctor's best intentions or practices, players should regularly obtain second opinions and clubs and club medical staff should support them in exercising that right. Supporting the player's right to a second opinion means, among other things, advising the player of his right to a second opinion, not resisting a player's desire to obtain a second opinion, and cooperating with the second opinion doctor by providing the necessary medical records and other information in a timely fashion. Indeed, AMA Code Opinion 1.2.3 requires such cooperation. Accepting a player's right to obtain a second opinion and cooperating with that right is important for players to receive the best possible healthcare. For this reason, the parties should also consider whether this recommendation should be included in the CBA.

Recommendations Concerning Second Opinion Doctors – continued

Recommendation 4:1-B: In the event that club medical staff diagnose or treat a player for an injury that is beyond a threshold of severity, the medical staff should remind the player of his right to obtain a second opinion at the club's expense.

As discussed above, a player's right to a second opinion is important to his health. Nevertheless, many players, particularly younger players, do not avail themselves of this right. Some players might not know they have the right to a second opinion at the club's expense or are worried about offending the club doctor and thus the club. By requiring (perhaps in the CBA) club medical staff to advise players of their CBA-protected right to a second opinion in more serious situations, it is likely that players will increasingly take advantage of this right and thus also protect their own health. When a player misses a game or a week of practice it might indicate a sufficiently severe injury to trigger this obligation.



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

Chapter 5

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SUMMARY: **Neutral Doctors**



This document is a summary of the full chapter on neutral doctors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with necessary background information. For more information and analysis of the role and responsibilities of neutral doctors, including relevant citations, please see the full chapter.

In the NFL, what the CBA describes as a “neutral” doctor, is sometimes used when there are conflicting opinions or interests. Neutral doctors – particularly when providing care – can be an important component of a player’s healthcare.

The 2011 CBA demarcates 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 on inadequate medical care by a club as part of the Joint Committee on Player Safety and Welfare.

In addition to these CBA provisions requiring a neutral doctor, the NFL and NFLPA have agreed on protocols regarding the diagnosis and management of concussions (“Concussion Protocol”). The Concussion Protocol requires an “Unaffiliated Neurotrauma Consultant” to be assigned to each club for each game. The Unaffiliated Neurotrauma Consultant is present on the sideline during the game and “shall be (i) focused on identifying symptoms of concussion and mechanisms of injury that warrant concussion

evaluation, (ii) working in consultation with the Head Team Physician or designated [Traumatic Brain Injury] TBI team physicians to implement the club’s concussion evaluation and management protocol (including the Sideline Concussion Assessment Exam) during the games, and (iii) present to observe (and collaborate when appropriate with the Team Physician) the Sideline Concussion Assessment Exams performed by club medical staff.”

Despite the important role of the Unaffiliated Neurotrauma Consultant, “[t]he responsibility for the diagnosis of concussion and the decision to return a player to a game remains exclusively within the professional judgment of the Head Team Physician or the Team physician assigned to managing TBI.” In Chapter 2: Club Doctors, Recommendation 2:1-D, we recommend that this be changed and that if either the Unaffiliated Neurotrauma Consultant or club doctor diagnoses a player with a concussion, the player cannot return to the game.

Importantly, the neutral doctors’ responsibilities do not include the same type of structural conflicts that potentially hinder the care provided by club doctors.

Recommendations Concerning Neutral Doctors

Neutral doctors play a limited but important role in player health. Perhaps most importantly, 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, as the prior chapters suggest, 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.



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

Chapter 6

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SUMMARY: **Personal Doctors**



This document is a summary of the full chapter on personal doctors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of personal doctors, including relevant citations, please see the full chapter.

Players might have personal doctors – as opposed those employed by the clubs – they see as primary care physicians or for other specific ailments. Consequently, to the extent players choose to utilize the services of their own doctor (maybe even for a second opinion), these doctors too are an important stakeholder in ensuring and promoting player health. While controversy exists about the role of club doctors, the responsibilities of a player’s personal doctor are clear: a player’s personal doctor’s first and only loyalty is to the player, and the doctor is thus bound to confidentially provide care within an acceptable standard of care.

Importantly, personal doctors have no relationship with or responsibilities to the NFL or NFL clubs.

Personal doctors might be the least utilized of the doctors discussed in this Report. In talking with players, several indicated that the frequent moves from city to city and their busy schedules made finding and seeing a personal doctor problematic. Consequently, players principally rely on club doctors and second opinion doctors for their care. In some circumstances, a second opinion doctor might also be or become the player’s personal doctor.

Recommendations Concerning Personal Doctors

While personal doctors might not supply care as regularly as club doctors, they can be an important and trusted source of medical advice and guidance provided solely in the player’s interest. While our recommendations below are principally targeted at other stakeholders, they concern the use of personal doctors and thus we include them here.

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

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

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

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

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

Recommendations Concerning Personal Doctors – continued

provider familiar with their health, injury history, habits, etc., will help ensure players can make a more seamless transition into post-play health and healthcare.

A personal physical can also provide important legal and financial protections to players. In the event the club terminates the player's contract during the offseason, the club is generally under no obligation to pay the player any additional money unless the player was injured. The club's season-end physical might describe the player as healthy. However, unless the player obtains a physical which disagrees with the club around the same time as the club's season-end physical, it will be difficult for the player to dispute the club's assertion that he was healthy at the time his contract was terminated. The player's personal doctor, via a season-end physical, might provide a medical opinion that supports the player's position.



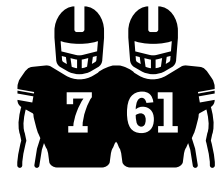
Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations

Chapter 7

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SUMMARY: **The NFL and NFLPA**



This document is a summary of the full chapter on The NFL and NFLPA in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background on the NFL; (B) Background on the NFLPA; (C) A History of the NFL's and NFLPA's Approaches to Player Health; (D) Current Legal Obligations of the NFL; (E) Current Ethical Codes Relevant to the NFL; (F) Current Practices of the NFL; (G) Enforcement of the NFL's Legal and Ethical Obligations; (H) Current Legal Obligations of the NFLPA; (I) Current Ethical Codes Relevant to the NFLPA; (J) Current Practices of the NFLPA; (K) Enforcement of the NFLPA's Legal and Ethical Obligations; and, (l) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of the NFL and NFLPA, including relevant citations, please see the full chapter.

The NFL and NFLPA are clearly in a position to protect and promote player health. There is also no doubt that both parties have made significant progress on this front in recent years, and that the NFL and NFLPA offer many benefits and programs intended to help current and former players. Nevertheless, there are still many important changes the NFL and NFLPA can make that will further advance player health.

Before explaining our recommendations for the NFL and NFLPA, it is important to review a key principle of labor law. The National Labor Relations Act (NLRA) obligates employers and unions to collectively bargain “in good faith with respect to wages, hours, and other terms and conditions of employment.” While there is sometimes debate about which issues must be negotiated, as a general matter, the NFL and NFLPA generally make progress on player

health issues through a collective bargaining agreement (CBA). Nevertheless, we do not intend to suggest that each of the below recommendations must be collectively bargained. We encourage collaboration between the parties but nonetheless urge progress first and foremost, including where that progress can be made unilaterally.

Additionally, it is again important to remember that the NFLPA’s legal duties are to current players – not former players. This is true even though the NFLPA has negotiated increased benefits and additional programs for former players many times. Indeed, beyond the NFLPA’s legal duties, we recognize that many former players rely on the NFLPA for information and assistance. Nevertheless, for reasons discussed in the Introduction, Section H: Scope of the Report, our recommendations focus on current players.

Recommendations Concerning The NFL and NFLPA

Goal 1: To make player health a priority.

Recommendation 7:1-A: The NFL and NFLPA should not make player health a subject of adversarial collective bargaining.

As discussed throughout this Report, collective bargaining is the principal method by which changes are made to NFL player health policies. Pursuant to federal labor law, this will and should continue to be the case. However, we do not believe that collective bargaining over player health issues should be an adversarial process.

We acknowledge the realities of labor negotiations and do not mean to naively suggest that the one party accept at face value every player health proposal the other might make. Nevertheless, 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. Indeed, for the NFL to demand a quid pro quo in exchange for improving player health policies or practices would be ethically problematic. For player health to be maximized, it is important that the NFL view the issue as an independent obligation of its own – rather than an issue to be forced upon it. Similarly, the NFLPA should not delay on player health issues in order to advance other collective bargaining issues. We hope the NFL and NFLPA have adopted and will in the future adopt this attitude toward collective bargaining.

Recommendation 7:1-B: 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.

According to the NFL, “over the past 6 years the NFL has dedicated more than \$93 million in funds for scientific and medical research.” These funds have primarily been used to study traumatic brain injury, which is of course very important. In addition, as we have emphasized in this Report, it is important to focus on the health of the whole player for the

Recommendations Concerning The NFL and NFLPA – continued

whole lifetime, which means also supporting research in other health domains. Without knowing the actual results of a football career over many different health domains, it is difficult to craft policies and practices that can maximize player health. On this point, the NFL has funded studies derived from data collected from medical screenings of 3,599 former players through the Player Care Foundation and the NFLPA has awarded funding to Harvard University for The Football Players Health Study at Harvard University. Research on these issues should continue.

Recommendation 7:1-C: 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 qualified professionals analyze the injury data; and, (c) make the data publicly available for re-analysis.

As explained in Chapter 1: Players, the NFL Injury Surveillance System (NFLISS) allows for the accumulation of current information about the nature, duration and cause of player injuries. Also as stated in Chapter 1, we rely on NFLISS data in this Report because it provides the best available data concerning player injuries, although we cannot independently verify the data’s accuracy. We acknowledge that the NFL’s past injury reporting and data analysis have been publicly criticized as incomplete, biased, or otherwise problematic, although we are not aware of any criticism of the NFLISS specifically. Without resolving the debate concerning the NFL’s collection and use of injury data, we nonetheless stress the importance of accurate, comprehensive, and mandatory injury data collection – and meaningful disciplinary action for responsible parties (e.g., club medical staff) who fail to accurately record injury data.

If accurately collected, this data has the potential to improve player health through analysis by qualified experts, so long as it is made available to them. In particular, analysis can be performed to determine, among other things, the effects of rule changes, practice habits, scheduling, new equipment, and certain treatments, while also identifying promising or discouraging trends and injury types in need of additional focus. Notably, the NFL already conducts this type of analysis through Quintiles, as explained in Chapter 1: Players. Although the NFL does release some data publicly at its annual Health & Safety Press Conference at the Super Bowl, the data released is minimal compared to the data available and the analyses performed by Quintiles. For the data collected to have the potential meaningful applications mentioned above, it must be made available in a form as close to its entirety as possible. Such disclosure would permit academics, journalists, fans, and others to scrutinize and analyze the data in any number of ways, likely elucidating statistical events, trends and figures that have the opportunity to improve player health, as well as simply providing independent verification of any analysis done by Quintiles for added public trust. To be clear, we are recommending the release of more aggregate data, not data that could lead to identification of the injuries of any particular player or cause problems concerning gambling (see Chapter 18: Fans).

Publicly releasing injury data, nevertheless, comes with important complications that are discussed further in the full chapter.

Recommendation 7:1-D: 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.

As part of the 2011 CBA, the NFL and NFLPA created a joint Accountability and Care Committee (ACC) which is to “provide advice and guidance regarding the provision of preventive, medical, surgical, and rehabilitative care for players[.]” Among the ACC’s responsibilities is to “conduct a confidential player survey at least once every two years to solicit the players’ input and opinion regarding the adequacy of medical care provided by their respective medical and training

Recommendations Concerning The NFL and NFLPA – continued

staffs and commission independent analysis of the results of such surveys.” Despite the provisions of the CBA, the first survey was not conducted until 2015. Moreover, no results of the survey have been made public.

We believe de-identified aggregate data from the results from the 2015 survey and all subsequent surveys should be made public, or at least made available to appropriate outside researchers. As discussed at length in Chapter 2: Club Doctors and Chapter 3: Athletic Trainers, there are serious questions concerning the relationship between club medical staff and players, including the possibility that at least some players do not trust the club medical staff – a serious concern for the efficacy of the patient-doctor relationship. Independent research on these issues is important, as it can allow qualified experts to analyze the data and identify potential areas of improvement. Nevertheless, as evidenced by the challenges in our own work, engaging players and club medical staff (including NFL permission) to participate in a research study is extremely difficult. The NFL and NFLPA have this data and thus can make it public to facilitate additional research.

This recommendation is reiterated in a forthcoming Special Report from The Hastings Center Report, to be published in December 2016.

Recommendation 7:1-E: 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 (see Appendix A).

According to the leading experts, 80-90% of concussions are resolved within 7-10 days. Thus, concussion symptoms persist for longer than 10 days for approximately 10-20% of athletes. In addition, there are a variety of factors that can modify the concussion recovery period, such as the loss of consciousness, past concussion history, medications, and the player’s style of play. Consequently, a player’s recovery time from a concussion can easily range from no games to several. The uncertain recovery times create pressure on the player, club and club doctor. Each roster spot is valuable and clubs constantly add and drop players to ensure they have the roster that gives them the greatest chance to win each game day. As a result of the uncertain recovery times, clubs might debate whether they need to replace the player for that week or longer. The club doctor and player might also then feel pressure for the player to return to play as soon as possible. By exempting a concussed player from the 53-man roster, the club has the opportunity to sign a short-term replacement player in the event the concussed player is unable to play. At the same time, the player and club doctor would have some of the return-to-play pressure removed.

In the full chapter, we explain why we believe it is appropriate to treat concussions differently than other injuries in this respect.

Recommendation 7:1-F: The NFL and NFLPA should research the consequences and feasibility of guaranteeing more of players’ compensation as a way to protect player health.

Guaranteed compensation in the NFL is a complicated issue, and we are not here making a recommendation that NFL player contracts be fully guaranteed, as is generally the case in Major League Baseball, the National Basketball Association and, to a lesser extent, the National Hockey League. Many people – particularly some players – maintain that fully guaranteeing a player’s contract is a fair exchange for the health risks players undertake, a notion consistent with our ethical principle of Respect. In addition, given our focus here on protecting and promoting player health, if a player’s contract were fully guaranteed, he would likely feel less pressure to play through injuries in an effort to continually prove himself to the club, a notion consistent with our ethical principle of Health Primacy. Relatedly, job and income insecurity likely cause

Recommendations Concerning The NFL and NFLPA – continued

stress and psychological harm for some players. However, we have concerns about the possibility of unintended consequences, as well as the feasibility, of such a recommendation to fully guarantee player compensation. These concerns are explained at length in the full chapter.

Ultimately, we recommend further research into this question, including player and club perspectives, economic and actuarial analysis, and comprehensive consideration of the relevant trade-offs, ramifications, and potential externalities. In the meantime, we note that the trend toward greater use of contractual guarantees can help promote player health and allow individual negotiation by players based on their own goals and priorities.

Goal 2: To ensure that there are effective enforcement mechanisms when players' rights related to health are violated.

Recommendation 7:2-A: 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.

Sections 1 through 6 of Article 39 contain a multitude of rules for clubs and club medical providers concerning player healthcare (see Appendix F), including the required standard of care for club doctors and a player's right to a second opinion paid for by the club. However, Article 39 does not contain any enforcement mechanisms. While the NFLPA or players could bring a Non-Injury Grievance or request an investigation before the Joint Committee (discussed in greater detail in Chapter 2: Club Doctors and Chapter 8: NFL Clubs), these processes are more likely to result in remedial – and not financial – action, particularly if no player has suffered distinct damage from the violation. Additionally, Recommendation 2:1-A in the club doctors chapter proposed a system of arbitration for resolving disputes between players and club doctors, e.g., claims of medical malpractice. While this recommendation offers possible remedial benefit to players, it should not be viewed as the exclusive enforcement mechanism against club doctors and other employees. Clubs and club medical providers should be penalized for violating the player healthcare provisions regardless of whether their bad acts result in clear and compensable harm to a player. Indeed, the CBA contains many provisions that permit fines without evidence of actual harm. If Article 39 is to be maximally effective, it should contain a fine system sufficient to deter violations and punish violators.

Recommendation 7:2-B: The statute of limitations on filing Non-Injury Grievances, at least insofar as they are health-related, should be extended.

The rights afforded to players under the CBA are only meaningful if there is meaningful enforcement. Nevertheless, there are at most a few health-related Non-Injury Grievances each year. This may be a result of few problems actually occurring, but it may alternatively reflect player concern about losing their job or status with the club. In particular, a player may fear that filing a Non-Injury Grievance would jeopardize the player's career, therefore causing him to forego the opportunity to pursue viable claims. Discussions with contract advisors confirmed that some players believe that filing a Non-Injury Grievance is not a viable option because of the likely effect on the player.

Currently, players have 50 days “from the date of the occurrence or non-occurrence upon which the grievance is based... or from the date on which the facts of the matter became known or reasonably should have been known” to file a Non-Injury Grievance. Setting a statute of limitations always requires trading-off protecting the injured party against the other side's interests in preserving evidence. There are tough judgment calls to be made in some cases, but the statute of

Recommendations Concerning The NFL and NFLPA – continued

limitations in this case is clearly too short to be fair. This statute of limitations is far shorter than the two- or three-year statute of limitations typical to negligence or medical malpractice actions under most states laws. Moreover, unless the player has left the club very close to the date of the action or omission that gave rise to the grievance, the player is unlikely to pursue a timely grievance.

We propose that the statute of limitations for Non-Injury Grievances be the latest of: (1) one year from the date of the occurrence or non-occurrence upon which the grievance is based; (2) one year from the date on which the facts of the matter became known or reasonably should have been known; or (3) 90 days from the date of the player's separation from the club, provided the Non-Injury Grievance is filed within three years from the date of the occurrence or non-occurrence upon which the grievance is based.

Goal 3: To improve player access to and understanding of their health rights and benefits.

Recommendation 7:3-A: The NFL and NFLPA should continue and improve efforts to educate players about the variety of programs and benefits available to them.

As detailed in Appendices C and D, the NFL and NFLPA offer many benefits and programs to current and former players to help them on a wide spectrum of issues, including most importantly healthcare and career-related guidance. However, it appears that many players are not taking full advantage of these programs.

The NFL and NFLPA do both make some efforts to address this problem, as explained in the full chapter. While these efforts are steps in the right direction, they do not appear to have been fully successful, a problem with which many employers struggle. In interviews we conducted, some current and former players were generally unclear and unsure about what information they had received. There is room for additional ideas and efforts in this area.

Each preseason every player should be given a manual that lists and explains all of the different programs and benefits for which they are eligible, either through the NFL, NFLPA, or otherwise. Players should receive the manual again whenever their contract is terminated and again at or near the conclusion of the season. Providing the manual near the conclusion of the season is important because many useful programs and seminars are conducted during the offseason. We further recommend that this manual be a joint creation of the NFL and NFLPA, and that an electronic copy be provided to every contract advisor and financial advisor so they can advise their clients accordingly.

We also believe the NFL and NFLPA should make all benefit and retirement plans publicly available on their websites. Information about NFL player benefits is made available to players by the NFL and NFLPA through the website mygoal-line.com, and to contract advisors and financial advisors through the NFLPA's website. However, players can only access mygoalline.com with a username and password, the full plan documents are not readily available to contract advisors and financial advisors, and neither the NFL nor the NFLPA websites otherwise make publicly available information about any of the various benefit and retirement programs which are available to NFL players. These plans should be readily available so that current, former and future players, player family members, and other trusted advisors can review them to assist players. Public access will also allow academics, government officials and others with an interest in the topic to review the plans and potentially make recommendations that would improve the plans and players' health.

Finally, bare provision of information and documents to the players is not sufficient. Although players are ultimately responsible for taking advantage of benefits available to them, we know from behavioral science that too much information can be overwhelming and that certain approaches are more likely to result in comprehension and action. The NFL and NFLPA must work together (including potentially with experts in behavioral science) to ensure that the information

Recommendations Concerning The NFL and NFLPA – continued

being provided to the players is understandable, digestible and actionable and that the players are actually processing the information. This will likely require substantial investments in education along with attempts to monitor whether players understand what they are being told.

Recommendation 7:3-B: 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.

Choice architecture refers to the ways in which choices are presented to consumers. A common and relevant choice architecture example is constructing retirement plans such that employees are automatically enrolled in them but allowed to opt-out if they so choose, which has the effect of “nudging” individuals into more favorable amounts of retirement savings. In addition to auto-enrollment, there are several other relevant choice architecture constructs, including claims processes, required documentation, payment schedules, notifications and assumptions about age, marital and dependent status, income and other information. A comprehensive analysis of how the NFL and NFLPA benefit and retirement programs are configured from a choice architecture perspective will help ensure that the maximum number of players are receiving the benefits to which they are entitled and in a manner that is most helpful to them.

Recommendation 7:3-C: The purpose of certain health-related committees should be clarified and their powers expanded.

As is discussed in the Enforcement section of various stakeholder chapters, players generally have three options within the confines of the CBA concerning healthcare-related problems – players can file: (1) a Non-Injury Grievance; (2) a complaint with the Accountability and Care Committee (“ACC”); or (3) a complaint with the Joint Committee on Player Safety and Welfare. While a Non-Injury Grievance can provide a player the opportunity to be compensated for a wide variety of wrongs, the Joint Committee and ACC are both supposed to be responsible for player health matters, including the possibility of conducting investigations. However, the authority of these Committees is unclear under the CBA and should be clarified.

At least one of the Committees should have the ability to conduct a thorough investigation and/or hold a hearing and make binding their findings and recommendations. If the responsible parties fail to comply with the recommendations, they should be meaningfully fined until there is compliance.

Goal 4: To hold players accountable for their own acts affecting their health and the health of other players.

Recommendation 7:4-A: The NFL and NFLPA should continue and intensify their efforts to ensure that players take the Concussion Protocol seriously.

As discussed in Chapter 1: Players, Section C: Current Practices, at least some players have sought to avoid undergoing the Concussion Protocol after suffering a suspected concussion. It is possible that players’ non-cooperation is sometimes a result of the concussion suffered and diminished capacity. However, other players who do so either do not fully understand

Recommendations Concerning The NFL and NFLPA – continued

the risks of playing with a concussion or are so committed to playing and winning that they will continue to play no matter the possible health consequences. It is our understanding that both the NFL and NFLPA are providing players with information about the risks of concussions. Nevertheless, steps should be taken by the NFL and NFLPA, among others, to resolve issues concerning players' cooperation with the Concussion Protocol.

While the Concussion Protocol is generally helpful for ensuring players do not play with suspected or actual head injuries, it only works if players cooperate. Consequently, it is important that the NFL and NFLPA continue to educate players on the risks of concussions and the importance of the Concussion Protocol for both their short-term and long-term health.

If players do not cooperate with the Concussion Protocol even after substantial effort has been made to educate them on its importance, it may be in the interests of player health to adopt stronger deterrent mechanisms, including fines and/or suspensions.

Recommendation 7:4-B: 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.

There have been instances in which players have openly discussed targeting a player's injured body part in an upcoming game. Generally, the NFL does not fine and/or suspend players unless they have violated the Playing Rules in an egregious way. However, when such threats are made, the NFL should not need to wait until the Playing Rules have been broken or a player is actually injured before taking action. The discussion or encouragement of targeting players' injuries increases the likelihood of players taking actions that unnecessarily harm other players and thus should not be tolerated. On this point, the threat to player health is too real not to act proactively.

Goal 5: For the NFLPA to take additional affirmative steps to hold accountable those stakeholders who do not meet their legal and ethical obligations concerning player health.

Recommendation 7:5-A: The NFLPA should consider investing greater resources in investigating and enforcing player health issues, including Article 39 of the 2011 CBA.

The 2011 CBA contains many provisions and rules concerning player health and club and club doctors' obligations related thereto. Article 39 of the CBA houses many of these obligations. However, as discussed above, there have been questions raised by some stakeholders we interviewed about the NFLPA's ability to investigate and enforce player health provisions through grievances. One possibility is for the NFLPA to hire additional attorneys with a focus on investigating and litigating player health, safety and welfare matters.

Recommendations Concerning The NFL and NFLPA – continued

Goal 6: To provide current and former players with the resources necessary to maximize their health.**Recommendation 7:6-A: The NFLPA should continue to assist former players to the extent such assistance is consistent with the NFLPA's obligations to current players.**

The NFLPA's principal obligations are to current players – not former players. This legal reality creates tension between the NFLPA and former players. In recent years, the NFLPA has made efforts to smooth this tension by negotiating benefits and creating programs intended to help former players. It is admirable of the current players that they effectively agreed to give up a portion of their potential income to help the players that came before them. The NFLPA should continue to try and balance these, at times, incongruent interests. To do so, the NFLPA can remind current players of the sacrifices made by former players and the different circumstances under which they played. The NFLPA works to advance the interests of current players, many of whom quickly become former players. Thus, the NFLPA should try to continue and help those men as much as it can.



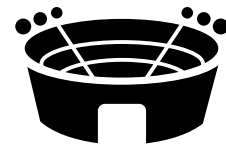
Protecting and Promoting the
Health of NFL Players:
Legal and Ethical Analysis and Recommendations

Chapter 8

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SUMMARY: **NFL Clubs**



This document is a summary of the full chapter on NFL clubs in the Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of NFL clubs, including relevant citations, please see the full chapter.

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. This chapter focuses on NFL clubs as individual entities, rather than the clubs' employees, many of which are discussed in other chapters.

NFL clubs are the players' employers and hire many of the stakeholders discussed in this Report. Club owners typically hire a general manager who then hires the coaching and football operations staff. The general manager and other executives are also likely involved with the hiring of the medical staff. Like all organizations, there is thus likely to develop a specific culture on important issues, which will vary from club to club. In football, the club's attitude towards player health can have a significant impact.

The 2011 CBA contains multiple provisions governing clubs' health obligations to its players, including the types

and number of medical professionals to be retained and clubs' obligations to pay for players' healthcare. In addition to their obligations under the CBA, NFL clubs also have statutory obligations as employers concerning the health and safety of NFL players, including obligations under the 2010 Patient Protection and Affordable Care Act and the Occupational Safety and Health Act, or similar state or federal regulatory schemes. Finally, one additional statutory employee-benefit mechanism with which NFL clubs have regular interactions is workers' compensation laws, which have been a contentious issue in the NFL.

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

Recommendations Concerning NFL Clubs

NFL clubs collectively comprise the NFL. Thus, any recommendations concerning NFL clubs would ultimately be within the scope of recommendations made concerning the NFL. Moreover, NFL clubs only act 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 leader of each NFL club and its employees, take seriously and personally participate in player health issues, including overseeing the recommendations made in this Report.



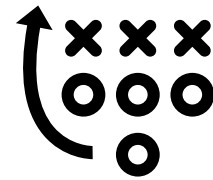
Protecting and Promoting the
Health of NFL Players:
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Chapter 9

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SUMMARY: **Coaches**



This document is a summary of the full chapter on Coaches in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of Coaches, including relevant citations, please see the full chapter. Also as explained in the full chapter, the NFL denied our request to interview coaches.

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. For these reasons and those discussed below, coaches are important stakeholders in player health.

The importance of NFL coaches to a player's career is obvious but cannot be understated. 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. Considering the size of NFL rosters and the scope of a head coach's duties, most players communicate principally with their position coaches. Coaches 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 pressure to win. That pressure no doubt affects their relationship with their players and in some cases is felt by the players.

NFL coaches might be members of one, both, or neither of two relevant professional associations: the American Football Coaches Association (AFCA) and the National Football League Coaches Association (NFLCA). The AFCA is a voluntary organization of over 11,000 high school, college, and professional football coaches, although it is largely directed towards college coaches. The NFLCA is more loosely organized than the AFCA. The NFLCA, in its own language, "is a voluntary non-union association that represents the over 600 coaches and assistant coaches currently employed by the thirty-two individual National Football League clubs, as well as many retired coaches formerly employed by the NFL teams." The NFLCA has no website, does not negotiate the terms and conditions of coaches' employment and rarely makes any positions known (to the extent it has any).

Recommendations Concerning Coaches

Coaches have tremendous influence over a player's career and can make decisions or dictate policies or culture that have a substantial impact on a player's health. Many coaches develop close relationships with players – or are former players themselves – and are thus sensitive to protecting player health. Nevertheless, the inherent pressures of coaching may sometimes cause coaches to make decisions or create pressures that are not in the best interests of player health. Unfortunately, when things go wrong, there are currently few, if any, fruitful avenues for players to pursue complaints against coaches related to their health. While we were unable to interview current coaches to gauge their viewpoints, we make the below recommendations to help improve the role of coaches in player health.

Goal 1: To hold coaches accountable for their role in player health.

Recommendation 9:1-A: The NFLCA should adopt and enforce a Code of Ethics that recognizes that coaches share responsibility for player health.

Codes of ethics provide important guidelines and instructions for a wide variety of professionals to ensure that they are conducting themselves in an appropriate and ethical manner. Currently, there is no code of ethics actively governing NFL coaches, which can allow for serious lapses concerning player health. To resolve the ethical void for NFL coaches, there are three options.

First, the AFCA could take a more active role in NFL coaching matters, including enforcing its code of ethics against NFL coaches who are members of the AFCA. However, the AFCA's focus on college coaches and issues seems appropriate and it would likely be better if there were an organization solely focused on NFL coaches.

Recommendations Concerning Coaches – continued

Second, if the AFCA is not well-suited to regulate NFL coaches, the NFLCA should be. The NFLCA seemingly has minimal resources and employees and engages in limited work. This seems to be a missed opportunity not only to advance the interests of NFL coaches but, also for our concerns here, to ensure the proper involvement of coaches in the lives and health of their players. Thus our recommended solution is that the NFLCA evolve into a more robust and active organization, including the self-regulation of its coaches.

Third, in addition to self-regulation, if the NFLCA is unable or unwilling to take on the role of enforcing the ethical obligations of its coaches, the next best option is likely for such obligations to be included in the CBA. It would be preferable if coaches and the NFLCA voluntarily undertook to recognize and clarify their responsibilities, but if they do not, the NFLPA should seek to have such responsibilities outlined in the CBA – a change the NFL should appreciate and willingly accept.

A code of ethics for NFL coaches should cover at least the following topics: coaches' obligations to players, including to help support players in preparation for post-football life; coaches' obligations to other players; communications with medical staff; use of player medical information; and, handling conflicts of interest, including winning and player health. Below, we elaborate on some of these issues.

- Coaches should establish a locker room culture in which players and their health and safety are respected.
- Coaches should orient communications with players about their health so as not to create undue pressure on the player where it may be detrimental to player health.
- Coaches should consider, respect and care about players' post-career lives while the player is playing for that coach.
- 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 should not supersede player health.

In order for the recommended NFLCA Code of Ethics to be effective, all NFL coaches must be members of the NFLCA. While it is unclear whether or not all coaches currently are members, it might be necessary for the CBA to require that all coaches be members or otherwise be bound by the proposed Code of Ethics.

Finally, enforcement is essential. Violations of a professional code of ethics should include meaningful punishments, ranging from warnings and censures to fines and suspensions. Again, in order to be effective, the enforcement and disciplinary schemes might need to be included in the CBA.

Recommendation 9:1-B: The most important ethical principles concerning coaches' practices concerning player health should be incorporated into the CBA.

As discussed above, professional self-regulation is important and useful. However, professional codes often fail to be sufficiently enforced. Additionally, player health and coaches' obligations towards player health are too important to leave in the hands of coaches alone. In particular, it currently seems unlikely that the NFLCA has the resources to adopt and enforce a meaningful code of ethics. Consequently, incorporating at least some of the ethical concepts described in this Report, particularly those concerning player health primacy, into the CBA is likely necessary, along with appropriate enforcement mechanisms.

Recommendations Concerning Coaches – continued

Recommendation 9:1-C: Coaches should consider innovative ideas and methods that might improve player health.

NFL coaches and players should consider whether new practice drills and other approaches can be implemented that might improve player health. Additionally, it would likely be helpful if coaches had a forum in which to share innovative ideas and methods that might improve player health, although we acknowledge that coaches are likely to have concerns about sharing information they might regard as a competitive advantage with other clubs.



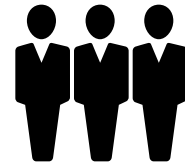
Protecting and Promoting the
Health of NFL Players:
Legal and Ethical Analysis and Recommendations

Chapter 10

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SUMMARY: **Club Employees**



This document is a summary of the full chapter on club employees in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of club employees, including relevant citations, please see the full chapter. Also as explained in the full chapter, the NFL denied our request to interview club employees.

This chapter discusses the roles of NFL club general managers (often referred to as “GMs”), developmental staff, and scouts. Other club employees are discussed elsewhere: Chapter 2: Club Doctors; Chapter 3: Athletic Trainers; Chapter 9: Coaches; and, Chapter 11: Equipment Managers. Each of these employees has involvement with players at key moments in players’ careers.

First, 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, media and community relations.

Second, 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. As respected elder statesmen of the game, Directors of

Player Development have the opportunity to play an important role in assisting players and making sure the actions taken are in their best interests.

Third, each NFL club employs approximately 10 to 15 people in their player personnel/scouting departments. 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 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. Scouts often interview the players, their high school and college coaches, college medical staff and others who know the players to obtain these details. Scouts then have the power to decide whether to label a prospect as “injury prone” or someone with “bad character.”

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. 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.

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 an important 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 some of these employees to make decisions or create pressures that negatively affect player health. While we were denied the opportunity to interview these employees to gauge their viewpoints, we make the recommendations below to help improve the role of club employees in player health.

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

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.

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, these interviews and news articles suggested that the developmental staff is 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, the hope is that clubs can make gains in player health.



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

Chapter 11

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SUMMARY: **Equipment Managers**



This document is a summary of the full chapter on equipment managers in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of equipment managers, including relevant citations, please see the full chapter. Also as explained in the full chapter, the NFL denied our request to interview equipment managers.

Each NFL club employs 3 to 4 equipment managers. While equipment managers assist players in a variety of ways, their principal job is to help outfit players in equipment that will maximize their safety on the field, a crucial component of player health.

Equipment managers are responsible for million dollar budgets and for ordering and constantly stocking hundreds of items players want and need in every conceivable variety, from their helmets and cleats to gum, washcloths and toothpaste. Equipment managers take pride in being responsive to the players' every need to make sure they are maximally comfortable and prepared to play. Perhaps most importantly, equipment managers help players select equipment and make sure the equipment fits according to the manufacturer's guidelines.

Equipment managers are also a critical link between equipment manufacturers and players. Equipment managers deal directly with equipment manufacturers and attend two NFL-organized seminars a year to keep up to date on the latest equipment so that they can provide the players the best available options. Players rely on the equipment managers to help prepare and protect them. Not surprisingly, players and equipment managers sometimes develop close, personal relationships during their tenures with a club.

The Athletic Equipment Managers Association (AEMA), a voluntary organization, provides certification to equipment managers working in sports across the country. The certification process requires: (1) a four-year college degree; (2) at least two years of experience working in athletics; and, (3) passing a written examination. The written examination covers management, administration, professional development, procurement, accountability, maintenance, and fitting and safety.

The AEMA has a limited role in the NFL, in part because, according to the AEMA, its limited resources prevent the AEMA from engaging with the NFL and other leagues as robustly as it would like. Approximately 60-70% of NFL equipment managers are AEMA-certified but neither the CBA nor the NFL independently requires any certification for equipment managers. Nevertheless, in recent years, the NFL has increasingly shown an interest in the AEMA's work and the importance of qualified, well-trained equipment managers.

The CBA contains no provisions specifically relevant to equipment managers or equipment. The NFL does have detailed policies on what equipment is mandatory for players, but these rules are directed at players, not equipment managers.

Recommendations Concerning Equipment Managers

As a preliminary matter, we recommend equipment managers continue their efforts to protect player health. Interviews we conducted and news reports indicate that equipment managers work diligently and take seriously their role in providing players with equipment that will minimize the health and safety risks of playing football. Equipment managers do not appear to have any incentive to make decisions that might jeopardize player health, e.g., such as pressuring a player to play with an injury, which may affect other club employees, such as coaches or medical staff. Additionally, the twice-annual meetings for equipment managers and manufacturers seem like an appropriate way for the equipment managers to remain current and educated on the latest equipment. Minimal other recommendations are needed concerning equipment managers.

Goal 1: To ensure that players are served by the best possible equipment managers.

Recommendation 11:1-A: The CBA should require that all equipment managers be certified by the AEMA.

As discussed above, the AEMA's certification program sets reasonable minimum education and experience requirements and requires equipment managers to pass a test certifying their competence in a variety of issues pertinent to the equipment industry, including fitting and safety. In addition, the AEMA requires its members to attend continuing education

Recommendations Concerning Equipment Managers – continued

courses. Requiring NFL equipment managers to be AEMA-certified is a meaningful way of ensuring that the equipment managers working with NFL players are among the most qualified and educated in the industry. The requirement is meaningful enough that it should be codified in the CBA. Ensuring highly-qualified equipment managers will help ensure that players are using the best, well-fitting and safest equipment possible.



Protecting and Promoting the
Health of NFL Players:
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Chapter 12

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SUMMARY: **Contract Advisors**



This document is a summary of the full chapter on contract advisors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of contract advisors, including relevant citations, please see the full chapter.

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 National Football League Players Association (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%).

Contract advisors often communicate with players on a near daily basis during the season and are obligated to represent the players’ interests, particularly when those interests conflict with those of the club. Consequently, contract advisors are typically the first and most important line in ensuring that player’s health-related rights are followed and enforced.

Recommendations Concerning Contract Advisors

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. They have the ability to ensure that the player receives proper medical care during his career, that the player’s health-related rights are respected and that the player considers the risks of an NFL career while at the same time helping to prepare the player for a life after football. Nevertheless, there are structural and regulatory issues with 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 the following recommendations.

Goal 1: To recognize contract advisors as an important resource alongside the NFLPA in their shared endeavor to advance player interests, and to seek opportunities to strengthen their connections whenever possible.

Recommendation 12:1-A: The NFLPA should create a Contract Advisor Committee that meets with NFLPA representatives at least twice a year to discuss issues affecting NFL player health, as defined broadly in this Report to include health, finances, education, and the like.

The relationship between the NFLPA and contract advisors could be considerably stronger. By law, contract advisors are agents of the NFLPA – acting in largely the same capacity as the NFLPA, *i.e.*, protecting players’ best interests. Contract advisors are typically players’ most trusted guides and the ones who take on almost all dealings with NFL clubs. For these reasons, the NFLPA should view contract advisors as partners in protecting players’ rights, particularly when it comes to their health, and should develop formal mechanisms for contract advisors to pass along their knowledge, experience, concerns, and suggestions. A committee comprised of contract advisors would provide such a mechanism.

Recommendation 12:1-B: The NFLPA should provide contract advisors with a copy of all materials and advice that it provides to players concerning player health.

Given their trust in their contract advisors and competing demands for their time, many players might only pay serious attention to information or a document if their contract advisor tells them to read it. The NFLPA provides players with documents during training camp and at other times during the season and offseason concerning various topics, including their rights, current issues, and their health. While the NFLPA does make summaries of the benefit plans available to contract advisors via a password-protected website, contract advisors that we interviewed expressed that the NFLPA does

Recommendations Concerning Contract Advisors – continued

not otherwise provide contract advisors with copies of the documents it is providing to players. During its review of this Report, the NFLPA stated that it believes it does provide contract advisors with all such documents. Without resolving this dispute, in order to ensure that the players take the notices seriously, the NFLPA should provide a copy of these documents related to health, as defined broadly by this Report, to contract advisors so that they can confirm that their players received and properly considered the information.

Goal 2: To improve professionalism and ethical conduct within the contract advisor industry.

Recommendation 12:2-A: The NFLPA should amend the Contract Advisor Regulations to prohibit 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.

The NFLPA’s Contract Advisor Regulations forbid “[p]roviding or offering money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services.” However, many (but not all) contract advisors routinely provide new clients with tens or hundreds of thousands of dollars in loans or advances which generally do not have to be repaid if the player continues to retain the contract advisor. The NFLPA Arbitrator has routinely found such arrangements not to be in violation of the NFLPA Contract Advisor Regulations based on a questionable legal analysis.

Although such arrangements would seem to benefit players by providing them with significant amounts of money up front, permitting these loans and advances may actually work to the detriment of players to the extent they cause players to choose their contract advisors for the wrong reasons – cash over competence, integrity, and experience. As a result, what appears to be a windfall in the short-term can result in long-term deficits to the player.

Recommendation 12:2-B: The NFLPA should consider investing greater resources in investigating and enforcing the Contract Advisor Regulations.

There are serious problems with the contract advisor industry that sometimes result in substandard representation for and advice to the players, including poor handling of player health matters. Additionally, the NFLPA admittedly has difficulty enforcing the Contract Advisor Regulations. Without meaningful enforcement, the Regulations lose their effectiveness to the detriment of players. One possibility is hiring more attorneys to focus on these matters.

Recommendation 12:2-C: Players should be given information to ensure that they choose contract advisors based on their professional qualifications and experience and not the financial benefits the contract advisor has or is willing to provide to the player.

Prospective NFL players often choose their contract advisors not based on their professional qualifications but instead on how much the contract advisor is willing to “loan” or “advance” to the player. Players understandably are excited about the opportunity to receive large sums from the contract advisors simply for letting the contract advisor represent them. However, players do so at their own peril. If the Contract Advisor Regulations are not amended to prohibit such

Recommendations Concerning Contract Advisors – continued

arrangements as recommended above, it is important that the players at least understand the downsides of choosing their contract advisor based on loans or advances.

However, presently, there are minimal resources for players about how to choose a contract advisor. The NFLPA could expand and intensify the information made available to prospective NFL players and could work with both the NCAA and the NFL (both of which more closely track potential NFL players) to ensure that players are receiving the necessary information. The NFLPA should also consider creating a system whereby players are able to rate their contract advisors' performance and share their experiences with others.

Recommendation 12:2-D: The Contract Advisor Regulations should be amended to require contract advisors to consider a player's long-term health interests in providing representation and advice.

It is clear that a player's career can be short and that the physical and mental tolls of a career can be permanent. Players will often take physical risks to maximize their earnings, even if those earnings come at the cost of future health. Balancing these risks and rewards is difficult. Nevertheless, the long-term effects of a player's decision – including whether to play through an injury and how to structure a contract – must be taken into consideration. Contract advisors must be aware, and make sure the players are aware, of these short-term versus long-term trade-offs.

Recommendation 12:2-E: The NFLPA should amend the Contract Advisor Regulations to prohibit contract advisors from revealing a player's medical information or condition to anyone without the player's consent.

Players are obligated by the CBA to advise the club of any injury or medical condition. Contract advisors might often be a conduit for this information – particularly where the player has been seen by a second opinion doctor. Thus, it is unclear that there is a problem with contract advisors disclosing player medical information to clubs without the player's consent. Nevertheless, considering the importance of the information, we believe it is a practice that should be more closely examined.

Recommendation 12:2-F: The NFLPA should consider including at least one non-player member on the Committee on Agent Regulation and Discipline (CARD).

CARD is responsible for investigating and disciplining contract advisors for violations of the NFLPA Contract Advisor Regulations. However, the most egregious and regular violations of the NFLPA Contract Advisor Regulations are those that, on their face, seem to benefit players – large payouts and other improper inducements. As discussed above, these practices undermine the industry's professionalism at the expense of the players and their health. Yet, players on CARD might not consider these practices to be as detrimental as they are, perhaps because they themselves took benefits or inducements at one time, or know teammates or friends who have, or know and like contract advisors who have provided such inducements.

Adding a law professor or attorney familiar with the sports industry to CARD would provide a different and independent perspective on the relevant issues and practices.

Recommendations Concerning Contract Advisors – continued

Recommendation 12:2-G: The NFLPA should consider whether there are structural or regulatory changes that can be made to the contract advisor industry to remove or reduce possible conflicts of interests, including situations where the contract advisor represents players on the same club, players at the same position and/or players in the same NFL Draft.

There are a variety of situations and practices that could pose conflicts for contract advisors or, at a minimum, present the appearance of a conflict. It is not clear whether these potential conflicts are in fact harming players or how these conflicts can be removed or reduced without also harming players. There are no clear answers, but the NFLPA should more closely examine the issue via analyzing past and future situations that might present conflicts, and by discussing the issue with players and contract advisors.

Chapter 13

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SUMMARY: **Financial Advisors**



This document is a summary of the full chapter on financial advisors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of financial advisors, including relevant citations, please see the full chapter.

Financial advisors play a critically important role in a player's long-term health. Proper financial advice and planning can 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.

Financial advisors are a variety of professionals whose services depend on their area of expertise but can include services such as tax planning, investment advice and services, budgeting, financial planning, insurance, estate planning and retirement planning. 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.

Unlike contract advisors, who, under the National Labor Relations Act, are agents of the NFLPA as discussed in Chapter 12: Contract Advisors, financial advisors are not agents of the NFLPA. Consequently, the NFLPA does not have the authority to require players to only utilize NFLPA-registered financial advisors.

The financial advisor industry is extremely competitive. Many financial advisors recruit clients by calling them, texting them and sending recruitment materials as soon as the player demonstrates that he might become an NFL player. In addition, some financial advisors offer financial incentives as inducements to hire them, including payments in the tens or hundreds of thousands of dollars to players.

Players we interviewed were nearly unanimous in explaining the importance of financial advisors and financial health, while having mixed feelings about financial advisors themselves. The financial advisors we interviewed were similarly unanimous in their assessment that players are generally not well served by the current crop of financial advisors. The contract advisors we interviewed agreed, noting that while there are some well-qualified and ethical financial advisors, there are many who are not. However, some contract advisors recognized that financial advisors often have difficulty convincing the players to take certain financially responsible actions.

Despite the Financial Advisor Regulations' rigorous standards, the NFLPA currently lacks meaningful enforcement authority over financial advisors. The NFLPA requires registered financial advisors to consent to arbitration, but the arbitration mechanism only governs disputes concerning denial, suspension or revocation of the financial advisor's registration.

Recommendations Concerning Financial Advisors

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 players from receiving the best possible financial guidance. Below are recommendations designed to improve the financial support provided to players.

Goal 1: To make sure players get the best financial advice possible.

Recommendation 13:1-A: Players should be encouraged by the NFL, NFLPA, and contract advisors to work exclusively with NFLPA-registered financial advisors.

The NFLPA should encourage players to use those financial advisors whom it has determined have at least the minimal qualifications it is able to impose through its registration program. One possible mechanism by which the NFLPA could encourage players to use NFLPA-registered financial advisors is to collect the names of players' financial advisors each pre-season. If a player is using a financial advisor who is not registered with the NFLPA, the NFLPA should advise the player of the purposes and benefits of the NFLPA's registration system. If the player does not have a financial advisor, the NFLPA could advise the player to retain one and follow-up with the player to ensure that he does.

Recommendations Concerning Financial Advisors – continued

Recommendation 1-B: The NFLPA should strengthen its Financial Advisor Regulations.

The current Financial Advisor Regulations are robust and align well with other regulations and codes of ethics in the financial industry. Nevertheless, there are potential areas of improvement, including:

- **Requiring financial advisors to pass an examination concerning NFL economic and benefit provisions in order to be registered.** An examination would provide an additional and meritorious barrier to entry into the NFL player-financial advisor industry, while also educating financial advisors on the unique circumstances of NFL player employment and the variety of benefits available to players.
- **Prohibiting registered financial advisors from providing or offering money or any other thing of value to any player or any other person (e.g., the player’s family member) to induce or encourage the player to utilize the financial advisor’s services.** The NFLPA should prohibit such payments to ensure players are choosing financial advisors based exclusively on their merit and qualifications.
- **Providing the NFLPA with greater authority to conduct audits of financial advisors’ activities.** Section 3(l)(D) of the Financial Advisor Regulations requires registered financial advisors to consent to audits by a CPA at the player’s request. Players are unlikely to know when an audit might be necessary and are also unlikely to take advantage of this right. The NFLPA – in coordination with the right financial professionals – could undertake this action on behalf of players randomly. Even though the NFLPA would be unable to catch every bad actor, making it known that it conducts such audits should have at least some deterrent effect.
- **Requiring financial advisors to send the itemized statements required by Section 3(l)(A) of the Financial Advisor Regulations to the player’s contract advisor, unless the player objects.** Contract advisors can provide a valuable check on financial advisor fees and activities.
- **Requiring that financial advisors provide the NFLPA with a copy of any agreement with a player.** The NFLPA should review financial advisor-player agreements to ensure they are in compliance with the Financial Advisor Regulations and not otherwise concerning.
- **Requiring financial advisors to stay abreast of current issues affecting NFL players (with the NFLPA providing the necessary courses and information).**

* * *

We recognize that the above recommendations would increase the NFLPA’s involvement in the financial advisor industry and would potentially require delicate maneuvering through complicated financial laws and regulations. Nevertheless, the NFLPA is in the most powerful position – and has as its mission – to help players. Thus, it should take every step that it reasonably can to help players by overseeing the actions of financial advisors.

Recommendation 13:1-C: The NFLPA should consider investing greater resources in investigating and enforcing the Financial Advisor Regulations.

Without meaningful enforcement, the Regulations lose their effectiveness to the detriment of players. One possibility is hiring more attorneys to focus on these matters.

Recommendations Concerning Financial Advisors – continued

Recommendation 13:1-D: Players should be given information to ensure that they choose financial advisors based on their professional qualifications and experience and not the financial benefits the financial advisor has or is willing to provide to the player.

If the Financial Advisor Regulations are not amended to explicitly prohibit such arrangements as recommended above, it is important that the players understand the downsides of choosing their financial advisor based on loans or advances.

Goal 2: To help players better manage their finances.

Recommendation 13:2-A: The NFLPA and NFL should consider holding regular courses on financial issues for players.

As is true of the population more generally, players often lack the financial sophistication to make sound financial decisions. The NFL has partnered with Money Management International, the country's largest non-profit credit and counseling service, to provide players with an educational website and a 24 hours a day, 7 days a week advice hotline. The NFLPA has established a near identical partnership with Financial Finesse, a company that provides financial education services. Both the NFL and NFLPA should be commended for these partnerships. However, players might not take advantage of these services. Consequently, an in-person introductory financial course would help to bridge the knowledge gap. Relatedly, such courses could advise players of their rights concerning their financial advisors, including the right to have their financial advisors' work audited.

Recommendation 13:2-B: The NFL and NFLPA should consider amending the player payment schedule so that players, by default, are paid over a twelve month period.

Players receive a check for each game they play. Thus, players generally only receive pay during the season. Some players might spend recklessly during the season, causing financial problems in the off-season or when their career is over. By paying a player over an entire year or deferring a player's salary payments for some period of time, the player will have additional income at a later point when he may not have otherwise saved for it. Making a twelve month payment schedule the default option could help ensure that all players have the opportunity to benefit from this possible change in payment schedule. Players should be free to opt out of a twelve month payment schedule if they like, but based on what we know from research on decision science it is likely that most players will stay with the default option.



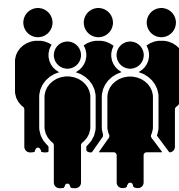
Protecting and Promoting the
Health of NFL Players:
Legal and Ethical Analysis and Recommendations

Chapter 14

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SUMMARY: **Family Members**



This document is a summary of the full chapter on family members in the Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of family members, including relevant citations, please see the full chapter.

Families can play a crucial role in protecting and promoting player health, including by encouraging players to seek proper medical care and appropriately consider long-term interests; they can offer support through challenging times. Unfortunately, in some cases, family members can also put inappropriate pressure on players or otherwise negatively influence their health. Thus, players' families – spouses, siblings, parents, adult children, and extended relatives – are an important stakeholder whose role we must address. Additionally, friends often play a similar role to that of family members and thus much of what we say in this chapter can also apply to them.

Family members can provide guidance, comfort, love and support. NFL players – given the multitude of issues with which they must deal – certainly benefit from having a caring and supportive family. However, NFL family members sometimes may be the source of problems for players. In 2016, the minimum salary for an NFL player is \$450,000 for a rookie and \$675,000 for a player with at least 3 years' experience. Clearly, NFL players are paid well while playing as compared to the general population. Thus, it should not be surprising that NFL players frequently feel pressure from family members for financial support. Coupled with the short careers of NFL players, it is also not surprising that family pressure can financially ruin current or former professional athletes.

Our interviews with players and contract advisors confirmed that family members play a role – but often a secondary one – in player health decisions. Players, of course, have varying relationships with their families, which dictate how involved a family member might be in advising a player or the player's contract advisor on various matters.

A family member's involvement might also vary depending on the player's point in his career.

When it comes to current players, while they generally discuss their current injuries and health concerns with their partners or other significant family members, they tend to rely most on their contract advisor and the doctors involved (e.g., club and second opinion) to determine the appropriate course of action. Relatedly, it is likely the contract advisor who will handle coordinating the logistics of the care.

Players approaching retirement are particularly likely to consult with their family members concerning their health. The players we interviewed discussed sometimes being “torn” between the desires of their family members that they stop playing and their own desires to keep playing. Family members often see a player when he is at his worst, perhaps even unable to move after a game, practice or particular injury. It is in these moments that family members often encourage players to stop playing for the sake of their future health. Nevertheless, encouragement and convincing are often two very different things.

In interviews, several players, contract advisors and financial advisors also stated that family members sometimes place excessive pressures, particularly financial, on players. In some instances family members might expect or request gifts, jobs or cash. For example, former NFL player Phillip Buchanon claimed that his mother demanded \$1 million from him when he was drafted in 2002.

Additionally, family members might set out to be substantially involved in the player's career, including potentially handling the player's financial matters. These situations can lead to mismanaged finances and broken family relationships.

Recommendations Concerning Family Members

Family members often are and should be one of a player's most trusted allies and confidants in matters concerning their health. In most cases, family members love and care for the players who are their husbands, fathers, sons, brothers, etc. Nevertheless, just as some players are not prepared for an NFL career, the same is sometimes true for family members. Below are recommendations concerning family members that can help improve the ways in which they support players.

Goal 1: To maximize the supportive role of players' family members in protecting and promoting player health.

Recommendations Concerning Family Members – continued

Recommendation 14:1-A: Family members should be cognizant of the gaps in their knowledge concerning the realities of an NFL career, and the NFL and NFLPA should offer programs or materials to help them become better health advocates.

The lives of players and their families are obviously intertwined. A player's career can have meaningful implications for his family members, particularly financially. Nevertheless, despite their best intentions, family members – like most people – might not have an accurate understanding of an NFL player's likely career length and earnings, as well as the physical risks players face in playing the game. Ideally, family members, with the help of the NFL and NFLPA, can understand the tenuous nature of an NFL career and encourage players to think long-term. At the same time, family members should be careful about the pressures they might place on players.

Family members often are more in touch with concerns about the player's life than a contract advisor or financial advisor might be. Consequently, family members can help themselves and players by learning about a player's health situations and understanding what might be done to safeguard them, including but not limited to the player's physical, mental and financial situations.

We do not suggest any formal legal or ethical responsibility on family members to advance player health in these ways, but we do recommend that interested family members be supported with adequate resources. For example, the NFL and NFLPA could provide information and seminars on relevant health issues or support systems and programs for players and families suffering from various conditions.

Goal 2: To separate family members from professional management of players' careers and affairs.

Recommendation 14:2-A: Players should select and rely on professionals rather than family members for managing their business, financial, and legal affairs.

Player financial and legal matters are complicated issues that should be handled by qualified professionals. Even if a player's family member is qualified, it is often best to preserve relationships by avoiding the conflicts that may arise by mixing family and finances. In Chapter 12: Contract Advisors and Chapter 13: Financial Advisors, we make recommendations for improving those industries to ensure that the professionals player do rely on are well-qualified.

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

Chapter 15

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SUMMARY: **Officials**



This document is a summary of the full chapter on officials in the Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of officials, including relevant citations, please see the full chapter.

Officials – as the individuals responsible for enforcing the Playing Rules – have an important role in protecting player health on the field.

There are 7 officials in an NFL game: Referee; Umpire; Head Linesman; Line Judge; Field Judge; Side Judge; and, Back Judge. Each official is equally responsible for calling penalties during a game. Additionally, each official is positioned differently on the field and the Referee is in charge of the officiating crew.

There were 122 officials during the 2015 season, with a mean of 11.5 years' experience in the NFL. Most NFL officials have 10 to 20 years of experience at the high school and college levels before becoming an NFL official. The NFL typically hires its officials from the best college football conferences.

NFL officials are represented by the National Football League Referees Association (NFLRA). The NFLRA collectively bargains the terms and conditions of the officials' employment with the NFL. The NFL-NFLRA CBA does not address player health issues.

Every NFL official is also a member of the National Association of Sports Officials (NASO). NASO is a voluntary organization of approximately 22,000 member officials, ranging from the lowest levels of youth sports to the professionals. NASO provides an extensive list of services to its members, including educational programs, legal advocacy and insurance policies. NASO, however, does not certify officials. Each sports organization, whether it is a state high school athletic association, the NCAA, or the NFL, judges the qualifications of its officials during its hiring process.

Many people have argued that the Playing Rules, and thus perhaps also the officials, have become overprotective of players' health and safety, while others believe the Playing Rules should go further to protect players. While this debate is likely to continue, it is generally not a debate in which the officials have a role. Certain rules do permit the official to take into consideration the likelihood of injury in determining whether to call a penalty, including roughing the passer and roughing the holder on a place kick. Additionally, penalties such as unsportsmanlike conduct and unnecessary roughness can be applied broadly to help protect players. While the NFL consults with officials on changes to the Playing Rules, it is 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.

In addition to calling penalties, an NFL official is empowered to call an "Injury Timeout" if he or she "determines a player to be injured." In recent years, the NFL has actively encouraged officials to try and pay particular attention to see if players might be injured and to stop play accordingly. However, the Playing Rules also direct that the official "should not try to determine if [a] player is injured." There are likely concerns about officials attempting to make medical determinations. Nevertheless, these two provisions seem to contradict one another, and thus clarification seems warranted.

Players that we interviewed generally believe that officials are doing an adequate job in enforcing the current rules, but are not likely to take any other action concerning player health.

Recommendations Concerning Officials

All indications are that officials are generally performing their jobs well concerning player health and safety 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. In particular, it has been established that players who suffer brain injuries are at risk of serious aggravation of their conditions if they are injured again shortly after the first injury. While the athletic trainers designated for spotting injuries from the press box can help, officials should exercise their discretion to stop play liberally to ensure, as much as possible, that injured athletes do not remain on the field where they can be exposed to further injury.



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

Chapter 16

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SUMMARY:

Equipment Manufacturers



This document is a summary of the full chapter on equipment manufacturers in the Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of equipment manufacturers, including relevant citations, please see the full chapter.

The football equipment market is dominated by Riddell and Schutt, each of which hold at least a 45% share of the football equipment market, across all levels of football. Riddell and Schutt offer all pads necessary for the game of football, including but not limited to helmets, faceguards, chin straps, mouth guards, shoulder pads, hip pads, thigh pads, knee pads and rib pads.

Equipment manufacturers have not surprisingly had important interactions with the NFL. In 1988, the NFL and Riddell entered into an agreement without duration whereby Riddell provided free helmets, pads and jerseys to all NFL clubs in exchange for Riddell receiving the exclusive right to display its logo on NFL helmets. Players were still nonetheless free to wear a helmet from any manufacturer, provided it met NFL standards. Schutt unsuccessfully challenged the NFL-Riddell agreement as a violation of antitrust laws. After litigation was initiated against both the NFL and Riddell concerning concussions (see Chapter 7: The NFL and NFLPA), the NFL renegotiated the agreement to conclude with the 2013 season. Following the expiration of NFL's deal with Riddell, the NFL said it would no longer have an official helmet sponsor. Similarly, the NFL does not have an official equipment sponsor. Players are permitted to wear whatever equipment they like, provided it meets the standards of the National Operating Committee on

Standards for Athletic Equipment (NOCSAE), as will be discussed below.

The safety standards for athletic equipment that currently exist are almost exclusively determined by NOCSAE. NOCSAE is a non-profit organization with the stated purpose of improving athletic equipment and reducing injuries through equipment standards. NOCSAE was formed in 1969 in response to more than 100 high school and college football players killed by skull fractures and acute brain bleeding during the 1960s. NOCSAE's funding is derived from manufacturers' use of the NOCSAE logo as a symbol of certification. NOCSAE enters into licensing agreements with sports equipment manufacturers whereby the manufacturers are permitted to place the NOCSAE logo on its equipment provided the equipment meets NOCSAE's standards. Compliance with NOCSAE standards must then be confirmed by the Safety Equipment Institute, an independent organization that specializes in testing and certifying personal protective equipment. The licensing agreements also impose ongoing quality control and assurance requirements on the manufacturers. If the equipment does not meet NOCSAE standards, then the manufacturer cannot use the NOCSAE logo, and presumably, NOCSAE does not receive any licensing money from the manufacturer.

Recommendations Concerning Equipment Manufacturers

It appears 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 in ensuring they accurately convey the benefits and limitations of their equipment. In this regard, equipment manufacturers should continue to do what they have been doing and there is no need for formal recommendations.

NOCSAE has minimal enforcement authority against equipment manufacturers. As mentioned above, NOCSAE can only prevent non-conforming equipment from using the NOCSAE logo, substantially precluding the product from being sold. Since all NFL equipment meets NOCSAE standards, there is nothing further NOCSAE can offer in terms of player health, other than continued research.

Considering the public interest at hand, football equipment might be an area where additional regulation would be appropriate. Nevertheless, it is unclear who might fill this role of regulating equipment manufacturers. One possibility is for the government – including the Consumer Protection Safety Commission – to play a greater role in establishing and enforcing equipment standards. For this and other reasons we have included the government as an interested party in Part 7.



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

Chapter 17

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SUMMARY: **The Media**



This document is a summary of the full chapter on the media in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of the media, including relevant citations, please see the full chapter.

The NFL and the media have an important and significant relationship that makes the media a key stakeholder in player health. For our purposes, the term media includes traditional print journalists in newspapers and magazines, television and radio network broadcasters and reporters, and journalists who work for internet-based news sources who report news as a profession.

Media attention and interest concerning player health and safety has certainly increased in recent years. On the one hand, numerous news articles discussed and cited in this Report brought important attention to player health issues and increased scrutiny of current practices. At the same time, the media's interest in player injury information for reasons unrelated to player health has increased dramatically.

Perhaps the biggest contributing factor to increased media attention to player injuries is fantasy football. As discussed in more detail in Chapter 18: Fans, tens of millions of NFL fans play fantasy football with billions of dollars at stake. An essential component of fantasy football success is the health of the players on the fan's fantasy football roster. Media companies have responded with a variety of items to assist fans. For example, ESPN has a website called "Injury Central" which tracks injuries to key fantasy players, and CBS Sports partnered with a web application called "Sports Injury Predictor," which is supposed to help fans determine whether a player is likely to get injured. Additionally, every Sunday morning during the season, ESPN broadcasts a two-hour fantasy football show called "Fantasy Football Now." The program includes live updates from reporters on players' health statuses while also debating which players will "benefit" from the injury to another player. Another frequent topic of debate among fantasy football media is whether fans can "trust" a player and his health. Some have argued that fantasy football commoditizes and depersonalizes the players; media and fan focus is not on the health of players as human beings, but the health of the player as a replaceable unit in a gambling game.

In light of scientific advancements and more vocal player concerns related to their health, the media has also paid increased attention to player health issues as a matter of genuine, rather than instrumental, concern to readers.

Nonetheless, it is still common for journalists to question a player's toughness. Conversely, if the media glorifies players for playing with injuries, it creates pressure on other players to do the same.

The media's coverage of player health issues has been mixed. Beginning in January 2007, Alan Schwarz of *The New York Times* was one of the leading journalists to report on health problems among former NFL players and problems with the NFL's approach to player health issues, including its Mild Traumatic Brain Injury (MTBI) Committee. Schwarz appropriately received numerous accolades for this work. Mark Fainaru-Wada and Steve Fainaru of ESPN, authors of *League of Denial*, similarly exposed problems in the way player health is or has been addressed, and the resulting problems suffered by current and former players. Reporters from all over the country and world have taken the lead from this work and contributed their own stories of problems concerning player health. Without this work, many of the improvements concerning player health that have been made in the last 5 to 10 years may never have happened.

Despite the important work the media has done reporting on player health, there are also concerns. First, the media regularly reports on the perils and drawbacks of football, whether children should be allowed to play, and whether fans should continue to engage with the sport. While these may be legitimate and important aspects to cover, some of this coverage shows a tendency to ignore important *benefits* to players (including those offered by the NFL and NFLPA) and others, and other positive aspects of the game. In other words, some balance in coverage appears to be lacking, at least in some outlets.

Another problem relates to accuracy. There have been many important scientific studies concerning the injuries, particularly concussions, suffered by football players. However, 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.

Recommendations Concerning The Media

The media has a powerful and unique voice to shape the way player health issues are perceived and addressed. Below we make recommendations to improve the relationship between the media and the players they cover.

Goal 1: To recognize the media's responsibility in encouraging a culture of health for NFL players.

Recommendation 17:1-A: The media's reporting on players should take care not to dehumanize them.

The media can both help and hurt players. While many reporters are increasingly taking into consideration players' health, there are still many reporters who are willing to criticize and question the toughness of players who suffer injuries or who do not play with injuries. Such reports impossibly and improperly assume to understand the pain the player may be in or the medical consequences of the player's playing with the injury. Moreover, such reports fail to take into consideration the player's best interests, *e.g.*, the player's short- and long-term health.

Similarly, the fantasy football-related discussions, websites and applications take on a disturbing tone in some instances. At their worst, they do not acknowledge the players as human beings with medical conditions that could, and in many cases will, affect the quality and length of their lives. Instead, in some instances there is a dehumanization of the player and only a concern for the player's injury that will affect fantasy football rosters which, relative to player health, are meaningless. While many in the media work hard to avoid dehumanizing players, those media members that participate in and perpetuate such discussions should reconsider the tone and context of their reports and debates. We recognize that this is an aspirational goal and not one that can be readily monitored or enforced, but it is important to acknowledge this behavior as a problem and the role it plays in player health.

Through taking care in its reporting of player injuries and treating players with dignity, the media has the power to draw greater public emphasis to player health and also reduce pressure on players to play while injured.

Recommendation 17:1-B: The media should engage appropriate experts, including doctors, scientists and lawyers, to ensure that its reporting on player health matters is accurate, balanced, and comprehensive.

The media's coverage of player health issues, while excellent at times, also has been occasionally misleading or not entirely accurate. Inaccurate news reports will only undermine the credibility of the serious issues facing NFL players. The medical, scientific and legal issues concerning player health are extremely complicated, which demands that the media take care to avoid making assertions that are not supported or that do not account for the intricacies and nuance of medicine, science and the law. While we understand the pressures faced by members of the media trying to complete work on tight deadlines, we also emphasize the importance of engaging appropriate experts who can help the media understand these complex issues.



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

Chapter 18

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SUMMARY: **Fans**



This document is a summary of the full chapter on fans in the Report Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of fans, including relevant citations, please see the full chapter.

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. Indeed, many NFL fans have strong psychological connections to their favorite clubs, and being a fan may be a central component of their social identity. These different fan experiences also shape the fan's interests and role in player health.

A comprehensive analysis of issues in the NFL, including player health, is not complete without a discussion of gambling, including fantasy sports. The legal sports gambling market in Nevada saw, in total, \$3.9 billion wagered on sports in 2014, \$1.74 billion of which was on football

(about 45% of the total). Illegal gambling dwarfs these numbers; in the United States, illegal gambling on professional sports has been estimated at \$80-\$380 billion annually. If we assume the rate of illegal gambling on football matches Nevada's 45% rate of legal gambling on football, one would estimate that there is as much as \$170 billion illegally gambled on football each year.

Perhaps the most visible way in which gambling affects players today is through fantasy sports. These games have been partially exempted under the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), a legal status supported by the NFL, MLB, NBA, NHL and NCAA. An estimated 33.5 million Americans play fantasy sports every year, spending more than \$3 billion on fantasy games and related services and products. The high stakes of fantasy sports has come with a dark side. Fans now routinely harass players via social media or in person concerning their fantasy performance.

Recommendations Concerning Fans

Fans, ultimately, are what drive the success of the NFL, and they therefore wield incredible power. Below we make recommendations that seek to recognize and harness the power of the fans for the betterment of NFL players.

Goal 1: To wield the power of NFL fans to improve the health of NFL players.

Recommendation 18:1-A: Fans should recognize their ability to bring about change concerning player health.

As discussed above, fans are tremendously important when it comes to the NFL's success. Fans thus have the leverage to pressure the NFL and other stakeholders into making positive changes for player health. There is precedent for the exercise of such leverage. In 2009, the Sports Fan Coalition was formed by a former White House attorney for the purposes of protecting fans' interests. In its brief history, two items on the Sports Fan Coalition agenda have changed for the better: (1) NCAA college football created a playoff system; and, (2) the Federal Communications Commission eliminated a rule that permitted NFL clubs to "blackout" television broadcasts where the game did not reach a certain attendance level. While the Sports Fan Coalition's importance in these changes is unclear, it seems likely that the Sports Fan Coalition's expression of a collective fan voice had impact.

Fans could have a similar positive impact on NFL player health, including by putting pressure on the NFL, NFLPA, clubs, and other stakeholders to adopt recommendations like those we have made in this Report.

Recommendations Concerning Fans – continued

Recommendation 18:1-B: Fans should 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.

While NFL players' profession entails playing a sport largely for the entertainment of fans, an NFL career has real and important short and long-term impacts on players and their families. The fan experience sometimes strips some fans of understanding or sympathy for players – viewing them as mere means rather than human beings. Such a view is incompatible with the principle of Respect we have outlined in this Report. Fortunately, fans have increasingly taken note of the ways in which the game can harm players and through their behavior can help foster a norm of respect. This is a positive trend and hopefully one that will continue.

Recommendation 18:1-C: Fans should not pressure players to play while injured.

Fans should respect players and their physical and mental conditions. It is obvious that all NFL players often play with varying degrees of injury and pain. No fan – except perhaps former NFL players – can realistically understand the physical limitations of a player's particular injury and whether it can withstand the physical demands of playing in an NFL game. Moreover, fans should respect that the player has legitimate long-term interests in his health at stake. As part of the continuing theme, fans must treat players with dignity and respect, and not as combatants for the fans' amusement.

On a related topic, fans should exercise discretion when communicating with players via social media. While the interaction between players and fans via social media is a great way to build a connection, fans should obviously refrain from crossing the line with racist attacks or other threats. To the extent players are recipients of such communications, they should take them seriously and report them to club and NFL security.

Recommendation 18:1-D: Fans should not advocate, cheer, encourage, or incite player injuries.

It seems obvious that one should not encourage or be happy about the bodily or mental injury of another human being. Nevertheless, fans sometimes express joy when a player – even their own team's player – has been injured. That behavior is incompatible with showing respect for players and treating them as human beings.



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

Chapter 19

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SUMMARY: **NFL Business Partners**



This document is a summary of the full chapter on NFL business partners in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of NFL business partners, including relevant citations, please see the full chapter.

In the 2015 season, the NFL had approximately 29 official business partners, which collectively paid the NFL more than one billion dollars annually. While there are many other companies that might advertise on television during NFL games or around other NFL events, the business partners we are principally focused on here are those that have reached an agreement with the NFL to be considered an official partner or sponsor of the NFL. These business partners are an important component in professional football. Such a role includes the potential, and at times the obligation, to also play a role in player health.

The largest NFL business partners at the time of publication include Verizon (\$250m in sponsorship annually);

Anheuser-Busch (\$233m); Nike (\$220m); Pepsi (\$100m); and, Microsoft (\$80m). The relationship with the NFL generally provides the business partners, among other things, advertising during NFL games and through other NFL media, the right to include the NFL logo on their products and in their advertisements, the right to advertise themselves as the “official” brand of the NFL, exclusivity in their brand category, and/or the right to engage in promotional activities at NFL events, such as the Super Bowl. The business partners have clearly determined that the value of their association with the NFL and the related exposure exceeds the millions in sponsorship fees.

Recommendations Concerning NFL Business Partners

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. Below we make recommendations that can improve business partners’ approaches to player health issues, to the benefit of both players and the business partners. In making these recommendations, we also stress that while we recommend and encourage business partners to act independently when necessary, if business partners collaborated and worked collectively on these issues, they would be more likely to achieve positive changes quickly and effectively.

Goal 1: To encourage NFL business partners to work towards advancing a culture of health for NFL players.

Recommendation 19:1-A: NFL business partners should not remain silent on NFL player health-related policies.

During the 2014 season, the NFL’s business partners condemned the NFL’s failures to handle and address domestic violence issues. Several of the business partners’ statements reflected on the NFL’s place in our society and emphasized the need for ethical conduct and leadership. However, none of the business partners have ever made any statements concerning the risks players face in playing professional football and the tolls of such a career. Moreover, the business partners never made any statement concerning the allegations in the Concussion Litigation (see Chapter 7: The NFL and NFLPA) that for many years the NFL misrepresented the risks of playing professional football to players. Why this asymmetry? It is quite possible that business partners’ comments on the domestic violence issue were in response to greater public pressure, and the more diffuse public pressure on player health has not yet reached the same crescendo.

Nevertheless, for the same reasons business partners’ commented on the NFL’s domestic violence issues, it should also make their voices heard on player health-related issues.

Recommendations NFL Business Partners – continued

Recommendation 19:1-B: NFL business partners should consider applying pressure on the NFL to improve player health.

The NFL is a business and, like any business, does not want to suffer a drop in revenue. Individually, the business partners might not represent a significant portion of the NFL's revenue, but collectively the business partners' sponsorship fees comprise more than 10% of the NFL's revenue. Thus, collectively, the business partners have leverage, i.e., the ability to force the NFL to make change at the threat of losing hundreds of millions of dollars. The business partners, consistent with the spirit of the United Nations Guiding Principles on Business and Human Rights ("Guiding Principles") and other social responsibility initiatives and aspirations they have, should use their power of the purse to help the players from whom they derive considerable financial value.

To be clear, we are not claiming that any of the problems we discuss in this Report or which NFL players face by playing football rise to the level of human rights violations; given the simple fact of consent to play and payment for services, the difficulties players face do not compare to the numerous and ongoing tragedies around the world that human rights law is thought to govern. Nonetheless, the Guiding Principles provide a framework for understanding business enterprises' ethical obligations concerning others. This framework is useful to understanding the relationship between NFL business partners and players, even if we are not discussing human rights violations.

To be fair, business partners might reasonably be concerned that any exercise of such leverage will only result in the NFL replacing them with a competitor. However, the NFL has reasons to maintain continuity with its current business partners. Sponsor turnover is bad for brand loyalty and identification for both the sponsor and the NFL, thus decreasing the value of the replacement partner's sponsorship.

Recommendation 19:1-C: NFL business partners should consider supporting organizations conducting due diligence into player health issues.

The Guiding Principles, generally speaking, instruct business enterprises to conduct due diligence into how their actions and business relationships impact others. If business partners are going to make fully informed decisions about their relationships with the NFL, it would be advisable that they consider research and data on NFL players and the issues they face. While the business partners themselves likely lack the capabilities or expertise to conduct research into player health issues, they have the resources to support organizations conducting such research.

Recommendation 19:1-D: NFL business partners should engage players concerning player health issues.

NFL business partners receive tremendous economic value from their association with, and from the work of, NFL players. In such situations, the Guiding Principles direct that the business enterprise should engage the stakeholders involved to understand the impact of the business enterprise's conduct on the health of the stakeholder. Such conversations have the possibility to improve relations between the stakeholder and business enterprise, the business enterprise's own business operations and the health of the stakeholder. In this context, NFL business partners could hold conversations with current or former players to better understand them and the issues that matter to them. Additionally, through these conversations, the business partners could learn how they might adopt more consistent messaging concerning professional football, apply pressure on the NFL where appropriate, and what types of causes or organizations concerning football the business partners should support. Such conversations would establish a better dynamic between players and business partners and enhance the business partners' reputation for social responsibility.