

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.

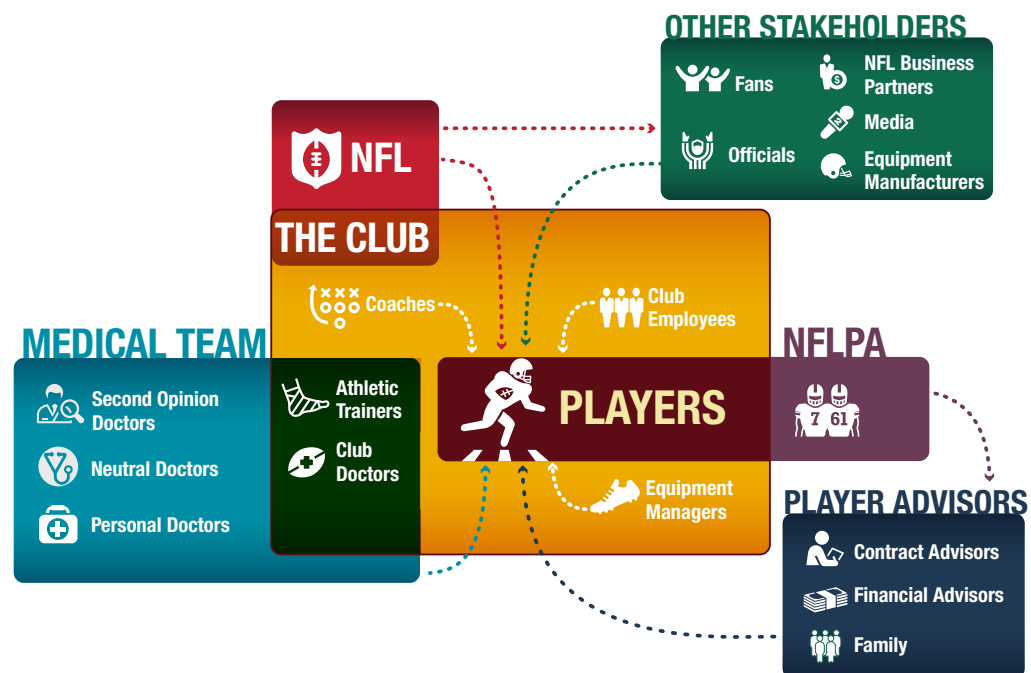
1. Identification: Understanding the Microenvironment Affecting Player Health

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.

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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.