



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.