



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

Chapter 4

Christopher R. Deubert
I. Glenn Cohen
Holly Fernandez Lynch

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

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.