

## FREQUENTLY ASKED QUESTIONS

Below are responses to Frequently Asked Questions about The Football Players Health Study at Harvard University and our Report, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, the principal component of the Study’s Law and Ethics Initiative.

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The Football Players Health Study?

## 1. What is The Football Players Health Study at Harvard University? Is it “just another concussion study?”

Drawing on expertise from across Harvard University, The Football Players Health Study is dedicated to understanding the causes of conditions former NFL players face, with the goal of improving their health and wellbeing.

The “Law and Ethics Initiative,” led by the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, encompasses a variety of distinct projects with the primary goal of understanding the legal and ethical issues that may promote or impede player health, and developing recommendations to promote player health through structural change.

The existence of the Law and Ethics Initiative helps to differentiate The Football Players Health Study from other studies concerning NFL player health. While there have been many important studies concerning the medical aspects of player health, we are not aware of any that have conducted a comprehensive analysis of the relevant legal and ethical environment.

The present Report, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, is the principal component of the Law and Ethics Initiative.

For all project components, it is important to recognize that The Football Players Health Study is not “just another concussion study.” We are investigating all aspects of player health, including concussions, but also other conditions and health concerns including cardiac, musculoskeletal, chronic pain, psychological, and more. We are interested in the whole player, over his whole life.

For more information on The Football Players Health Study, see its [Frequently Asked Questions page](#).

## 2. What does this Report cover?

*Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations* identifies stakeholders in player health, analyzes their legal and ethical obligations, and evaluates the current successes as well as gaps and opportunities for each stakeholder in protecting and promoting player health. Finally, it applies a series of legal and ethical principles in order to arrive at recommendations for positive change where needed.

Chapters are organized by stakeholder (listed in Question 6), and each 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.

Brief summaries are available for each chapter, highlighting all of the Report’s recommendations. We have also developed a list of our Top 10 Recommendations, including a recommendation to restructure the club medical staff to address the structural conflict of interest that arises from serving both players and clubs.

## 3. What is the purpose of the Report?

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.

We recognize that our recommendations are only useful to the extent they are actually implemented. For this reason, we recommend that the NFL, NFLPA, and other stakeholders actively engage with and publicly respond to this Report. We also recommend that the stakeholders identified in this Report, including the media, academics, and others, actively advocate, encourage, and monitor the promotion of player health.

#### 4. Who is the intended audience for this Report?

The Report is intended for several key audiences. First, there are the major change agents: current players (recognizing various constraints they may face), 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, 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 can evolve to best protect and promote player health. We hope that a broad spectrum of stakeholders will read the Report and work to implement its recommendations.

#### 5. What's the best way to read this Report?

The Report is available in full, in parts or chapters, and also in summary form.

The Report begins by providing preliminary information about the authors, the Report's independence, and the background of The Football Players Health Study and Report. The Report then provides an Introduction chapter, explaining the motivation and methodology of the Report, before turning to a chapter on the Guiding Ethical Principles for the Report. This introductory material provides important context for understanding the content of our Report and Recommendations; thus, we recommend it to all readers.

After the introductory material, the Report is separated into parts based on the stakeholders' relationships to NFL players and other stakeholders:

- Part 1. Players.
- Part 2. The Medical Team: Club Doctors; Athletic Trainers; Second Opinion Doctors; Neutral Doctors; and, Personal Doctors.
- Part 3. The NFL; NFLPA; and, NFL Clubs.
- Part 4. Club Employees: Coaches; Club Employees; and, Equipment Managers.
- Part 5. Player Advisors: Contract Advisors; Financial Advisors; and, Family Members.
- Part 6. Other Stakeholders: Officials; Equipment Manufacturers; The Media; Fans; and, NFL Business Partners.

In addition, Part 7 examines the role of Other Interested Parties that did not meet our criteria for stakeholders (see Question 6): The NCAA; Youth Leagues; Governments; Workers' Compensation Attorneys; and, Health-Related Companies.

While we have tried to make the chapters (dedicated to each individual stakeholder) accessible for stand-alone reading, some background or relevant information may be contained in other parts or chapters, specifically: the introductory material discussing scope, methodology, and ethical principles; Part 1 discussing Players; and, Chapter 7 discussing the NFL and NFLPA. Thus, we encourage the reader to review other parts as needed for important context.

We have also developed a number of summary documents, including an Executive Summary of the entire Report, as well as brief summaries of each chapter.

Lastly, we have created two other documents to help readers access the Report: (1) a list of our Top 10 Recommendations; and, (2) a Patient Bill of Rights for NFL Players.

#### 6. Who are the stakeholders discussed in the Report, and how were they selected?

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.

The key criterion for inclusion in this list was simple: who 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.

## 7. Is the Report focused on current players or former 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 confuse an already complicated picture. We recognize that what happens at the professional level can have a trickle-down effect on the culture of football across the board, and also that some amateur players may be taking health risks in hopes of eventually reaching the NFL, even when that may be highly unlikely. Nonetheless, our goal with this Report, prompted by the limited scope of the request for proposals for this project and in part by the fact that further analysis will be possible by others, is to address the already complicated set of factors influencing the health of NFL players: current, future, and former. Moreover, 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 professional 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 benefit them. For example, no matter what improvements we recommend related to club doctors, these 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 largely on current players in this Report, the health benefits available to players after their career are an important component of player health. We have summarized these benefits in Appendix C. In addition, in our forthcoming Report, *Comparing the Health-Related Policies and Practices of the NFL to Other Professional Sports Leagues*, we provide an in-depth analysis of these benefits, and compare them to those available in other professional sports leagues.

## 8. How was the Report funded?

The 2011 Collective Bargaining Agreement (CBA) between the NFL and NFLPA allocated funds for research. In 2014, the NFLPA and Harvard University entered into an agreement to create and support The Football Players Health Study using a portion of these funds. The Law and Ethics Initiative's budget is a total of \$1,257,045 over three years, which funds not only the present Report, but also several other projects described on [The Football Players Health Study website](#). The contract governing this project protects our academic integrity as researchers; no external party (including the NFLPA and NFL) has any editorial control over our work.

## 9. Who are the authors of the Report?

### The authors of the Report are:

**Christopher R. Deubert** is the Senior Law and Ethics Associate for the Law and Ethics Initiative of The Football Players Health Study at Harvard University. Previously, Deubert practiced commercial litigation, sports law, securities litigation, and labor/employment litigation at Peter R. Ginsberg Law, LLC f/k/a Ginsberg & Burgos, PLLC in New York City. His sports practice focused primarily on representing NFL players in League matters, including appeals for Commissioner Discipline, under the NFL's Policy and Program on Substances of Abuse and under the NFL's Policy on Anabolic Steroids and Related Substances (now known as the Policy on Performance-Enhancing Substances), and related litigation. Deubert also previously worked for Sportstars, Inc., one of the largest NFL-player representation firms, performing contract, statistical, and legal analysis, and he performed similar work during an internship with the New York Jets. Deubert graduated with a joint J.D./M.B.A. degree from Fordham University School of Law and Graduate School of Business in 2010, and a B.S. in Sport Management from the University of Massachusetts in 2006.

**Disclosure:** *Deubert's salary is fully supported by The Football Players Health Study at Harvard University. From August 2010 to May 2014, Deubert was an associate at the law firm of Peter R. Ginsberg Law, LLC f/k/a Ginsberg & Burgos, PLLC. During the course of his practice at that firm, Deubert was involved in several legal matters in which the NFL was an opposing party, including several discussed in this Report. The matters discussed in this Report include the representation of: a former NFL player interested in seeking benefits pursuant to the proposed settlement in the Concussion Litigation, discussed at length in Chapter 7: The NFL and NFLPA; players disciplined pursuant to the NFL's Policy and Program on Substances of Abuse and the Policy on Anabolic Steroids and Related Substances (now known as the Policy on Performance-Enhancing Substances), discussed in Chapter 7: The NFL and NFLPA; Kevin Williams and Pat Williams in the "StarCaps" case, discussed in Chapter 7: The NFL and NFLPA; and, Jonathan Vilma in the "Bounty"-related legal proceedings, discussed at length in Chapter 9: Coaches. Deubert also was involved in the representation of former Miami Dolphins offensive line coach Jim Turner in the Jonathan Martin-"bullying" situation, discussed at length in Chapter 9: Coaches, which was the result of an NFL investigation but did not involve litigation with the NFL. Additionally, Deubert was also involved in the representation of both Contract Advisors and players in litigation and arbitrations under the NFLPA's Regulations Governing Contract Advisors, discussed at length in Chapter 12: Contract Advisors. Lastly, since 2007, Deubert has provided research assistance to the Sports Lawyers Association, whose Board of Directors includes many individuals with interests related to this work.*

**I. Glenn Cohen** is a professor at Harvard Law School, Faculty Director of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, and Co-Lead of the Law and Ethics Initiative of The Football Players Health Study. His award-winning work at the intersection of law, medicine, and ethics – in particular, medical tourism and assisted reproduction – has been published in leading journals, such as the Harvard Law Review, Stanford Law Review, New England Journal of Medicine, Journal of the American Medical Association, American Journal of Bioethics, and American Journal of Public Health. He was previously a fellow at the Radcliffe Institute for Advanced Study and a faculty scholar in bioethics with the Greenwall Foundation. He is the author, editor, and/or co-editor of several books from Oxford, Columbia, John Hopkins, and MIT University Presses. Prior to joining the Harvard faculty, Cohen served as a clerk to Chief Judge Michael Boudin, United States Court of Appeals for the First Circuit, and as an appellate lawyer in the Civil Division of the Department of Justice. He graduated from the University of Toronto with a B.A. (with distinction) in Bioethics (Philosophy) and Psychology and earned his J.D. from Harvard Law School.

**Disclosure:** *20 percent of Cohen's salary is supported by The Football Players Health Study at Harvard University. Cohen has no other conflicting interests to report.*

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The Challenges of Regulating Drugs and New Technologies (Columbia University Press 2015). Lynch practiced pharmaceuticals law at Hogan & Hartson, LLP (now Hogan Lovells), in Washington, D.C., and worked as a bioethicist in the Human Subjects Protection Branch at the National Institutes of Health's Division of AIDS. She served as senior policy and research analyst for President Obama's Commission for the Study of Bioethical Issues. Lynch is currently a member of the Secretary's Advisory Committee on Human Research Protections at the U.S. Department of Health and Human Services. She graduated Order of the Coif from the University of Pennsylvania Law School, where she was a Levy Scholar in Law and Bioethics. She earned her master's degree in bioethics from the University of Pennsylvania's School of Medicine, and her B.A. with a concentration in bioethics, also from the University of Pennsylvania.

**Disclosure:** 30 percent of Lynch's salary is supported by The Football Players Health Study at Harvard University. Lynch has no other conflicting interests to report.

## 10. Did the NFL or NFLPA control the content of the Report?

No. The contents of this Report have not been directed by the NFL, NFLPA, or any other stakeholder. The Football Players Health Study is an independent research program led by investigators at Harvard University.

The Statement of Work agreed to between the NFLPA and Harvard included as one of the Law and Ethics Initiative's projects to "Develop Ethical Framework and Accountability Structure for Player Health and Welfare." More specifically, Harvard described the work to be done as follows:

We will conduct a research project regarding the relative primacy of players' health among potentially competing goals, and clarifying the roles of medical staff and healthcare providers, team owners, pre-professional schools and institutions (e.g., college, high school, Pop Warner, etc.), equipment manufacturers and suppliers, the media, and players themselves in protecting and advancing player health and welfare. More specifically, we will create recommendations applicable to each of these parties, supported for the first time by an overarching ethical framework and accountability structure for player health and welfare. We will also generate recommendations toward a preliminary baseline set of legally and ethically relevant protections that ought to be afforded to all players.

This project description was intended to be preliminary. The actual scope of this Report developed over time, as expected, as the result of considerable research, internal discussion and conversations with experts. Beyond agreeing to the Statement of Work, the NFLPA did not direct the scope or content of this Report.

As is typical with sponsored research, we provided periodic updates to the sponsor in several formats. Pursuant to the terms of the Harvard-NFLPA agreement, the NFLPA receives an annual report on the progress of The Football Players Health Study as well as one Quad Chart progress report each year. Additionally, on two occasions (August 22, 2014, and January 23, 2015), we presented a summary of the expected scope and content of the Report to The Football Players Health Study Executive Committee, comprised of both Harvard and NFLPA personnel. Those meetings did not alter our approach in constructing this Report, the conclusions reached, or the recommendations made. Indeed, the only comment from the Executive Committee meetings that resulted in a change to the content of this Report was the suggestion at the very beginning of the writing process to include business partners as a stakeholder, which we agreed to be important.

Additional information about our communications with the NFLPA and NFL is also relevant here. During the course of our research, we had multiple telephone and email communications with both NFLPA and NFL representatives to gain factual information. As indicated where relevant in the Report, sometimes the parties provided the requested information and sometimes they did not. These communications were not about the progress, scope, or structure of our Report.

The NFL, NFLPA, and other stakeholders did review the Report prior to its publication, as discussed in Question 11.

## 11. Who reviewed the Report prior to publication?

After this Report underwent review by The Football Players Health Study team at Harvard, we subjected it to review by numerous advisors, experts, readers, and stakeholders before publication.

First, we engaged a Law and Ethics Advisory Panel (LEAP) with expertise in health law, bioethics, and player issues to review our work. The LEAP is comprised of several academics, players, a player family member, and a retired NFL coach. Additional information about the LEAP, its members, and its role in reviewing this Report is included in Appendix N.

Second, we provided the Report (or certain portions of the Report) to additional expert readers for their comments. We reviewed the readers' comments and made the changes we believed were necessary and appropriate. However, each of them has a perceived or potential conflict of commitment that differentiates them from the peer reviewers discussed below (for example, affiliation with Harvard University). Additional information about these readers' is included in Appendix N.

Third, we subjected the draft Report to a robust peer review by outside experts. We engaged six independent experts in fields relevant to this Report to review for accuracy, fairness, comprehension, and ability to positively impact the health of NFL players. Additional information about the reviewers and review process, including compensation paid for the peer reviewers' time, is included in Appendix N. None of these individuals had any declared conflicts of interest. To ensure that we carefully considered the comments of the reviewers and made appropriate changes, we also retained Gabriel Feldman, Associate Professor of Law and Director, Sport Law Program, Tulane University Law School to serve as a lead reviewer. Professor Feldman reviewed the Report and provided comments, in addition to reviewing the comments of the other reviewers and our responsive changes. Professor Feldman's role and approval of the review process is further described in Appendix O.

Fourth, we provided each stakeholder group that has a clearly identified representative the opportunity to review the parts of this Report applicable to them (in draft form), in order to identify errors and provide additional substantive feedback. The NFL and NFLPA were among the stakeholders that reviewed the Report prior to publication. A full list of the stakeholders that reviewed this Report is included in Appendix N.

Importantly, while the above reviewers had the opportunity to comment, and their comments in many instances did inform the content of this Report, we retained control over the final content of the Report; no reviewer had the authority to demand that any change be included. Thus, review should not be considered an individual endorsement of the final Report.

## 12. Why does the Report not provide an in-depth historical analysis or judgment of the past actions of the NFL or NFLPA?

The goal of this Report is to be forward-looking, offering a set of prospective analyses and recommendations. Analysis of the NFL and NFLPA's previous efforts, research, and reporting concerning player health is well-covered elsewhere. In seeking answers to our driving questions, we have reviewed the NFLPA, NFL, and every other stakeholder objectively and through an independent, academic lens with the exclusive goal of making the best recommendations possible to protect and promote the health of NFL players going forward.

That said, in order to fully understand the current responsibilities of various stakeholders to protect and promote player health, it is essential to understand their historical relationships with players and one another, as well as their actions, omissions, controversies, and changes over time. Thus, we necessarily took history into account in making our recommendations, and the Report does provide relevant historical context where needed to ensure that the reader can fully grasp the rationale for our suggested approaches. This choice to address the history only where essential for understanding the present and future is guided entirely by our focus on what is needed to protect and promote player health now, rather than any desire or pressure to protect either the NFL or NFLPA from scrutiny for past actions or omissions. Nevertheless, we do not hesitate in pointing out where stakeholders have inadequately addressed player health.

### 13. How does the Report address whether it is ethical to continue professional football?

Given our goal to promote and improve the health of NFL players, one approach might be to suggest that the sport simply be ended. We have rejected such an extreme approach for a number of reasons. As a preliminary matter, given the level of attention NFL player health is receiving at present – from Congressional hearings to daily media coverage – current and future professional-level players are at least aware of the possibility of significant risk from playing football, even if this has not always been the case in the past and even if the currently available data remains somewhat unclear. Given the range of risks we as a society allow competent adults to accept for themselves in a variety of contexts for a variety of reasons, we do not believe it is appropriate or necessary to suggest that the opportunity to play professional football ought to be withheld as an ethical matter. Of course, reasonable disagreement on this score is expected, and some may prefer a precautionary approach, suggesting that we ought to be convinced of the safety of professional football before recommending it proceed. We believe it is more appropriate to leave it to individual players to make their own decisions, while empowering them with as much information and assistance to understand what is currently known and not known about the health effects of playing football. It is our goal to have all stakeholders do their part to reduce risks of the professional game.

### 14. Why does the Report not recommend on-the-field rule changes?

As lawyers and bioethicists, we do not have sufficient expertise to recommend on-the-field rule changes. Which on-the-field changes would be desirable depends on a multi-factorial analysis of the benefits and drawbacks of the current version of the game (in regards to health and otherwise), the benefits and drawbacks of moving to a radically different game, and a method of weighing those benefits and drawbacks against the consequences of injuries to players, and players' own desires and goals as they define them. Thus, while we welcome recommendations for rule changes to improve player safety made by appropriate experts, evaluated in light of what players themselves want, we are not in a position to make these determinations as a definitive matter.

### 15. Does The Football Players Health Study have any relation to the Concussion Litigation?

No. The Football Players Health Study has no relation whatsoever to the lawsuit brought by former NFL players against the NFL, *In re National Football League Players' Concussion Injury Litigation*, 12-md-2323 (E.D. Pa.).

### 16. How does Harvard University benefit from conducting this Study? What's in it for the researchers?

Beyond the funds received to support the study and potential reputational or professional advancement, Harvard does not benefit from conducting The Football Players Health Study.

### 17. What are the other projects of the Law & Ethics Initiative of The Football Players Health Study?

Please see The Football Players Health Study [Active Projects](#) for details on our ongoing research and forthcoming reports on related topics.