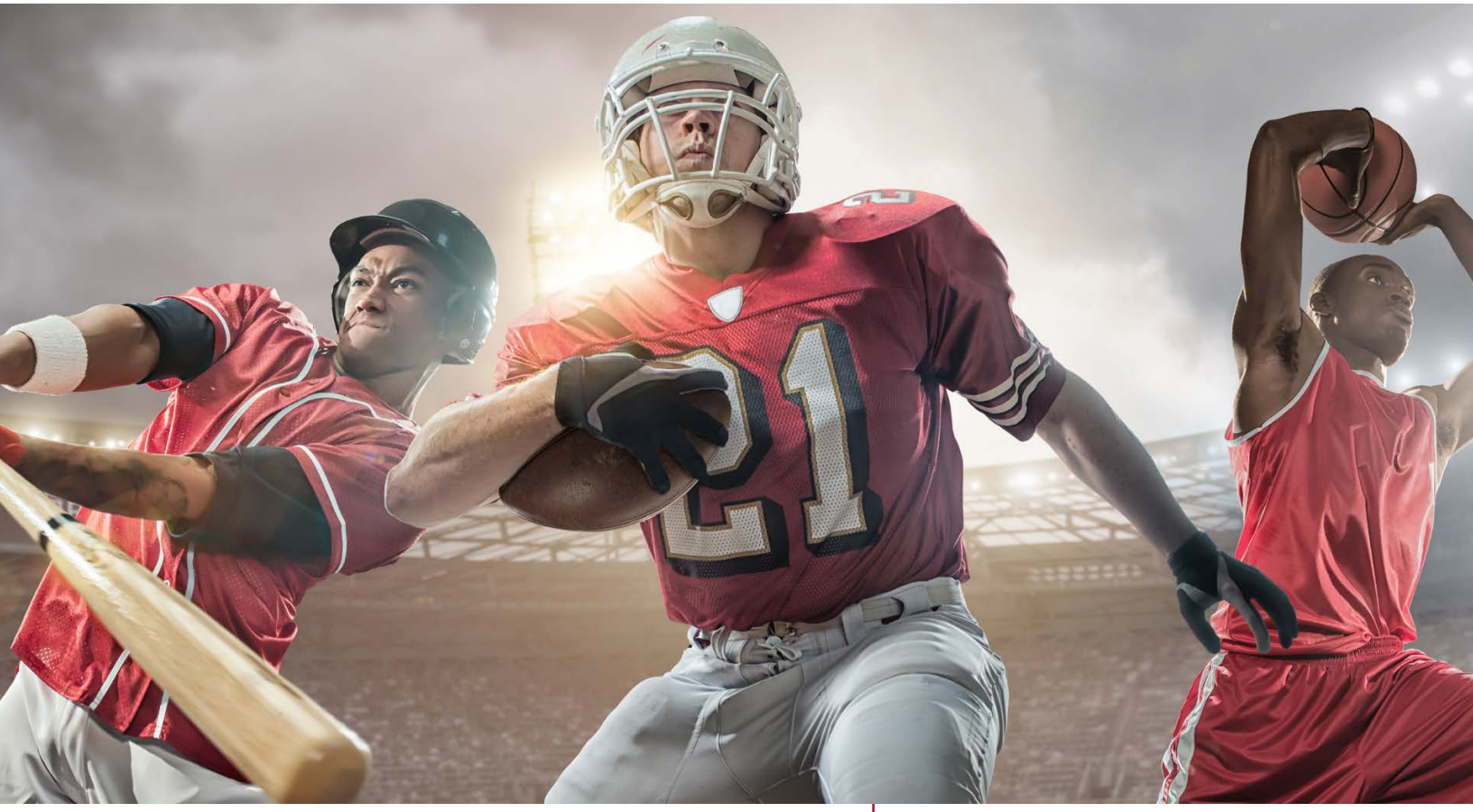
Comparing Health-Related Policies & Practices in Sports:

The NFL and Other Professional Leagues

Executive Summary



THE FOOTBALL PLAYERS HEALTH STUDY AT HARVARD UNIVERSITY

Christopher R. Deubert
I. Glenn Cohen
Holly Fernandez Lynch

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

May 2017

EXECUTIVE SUMMARY

1) INTRODUCTION

What can the NFL and NFLPA learn from the policies and practices of other elite professional sports leagues about protecting and promoting player health? This is the fundamental question motivating this Report, authored by members of the Law & Ethics Initiative of the Football Players Health Study at Harvard University.[a]

This Report, *Comparing Health-Related Policies and Practices in Sports: The NFL and Other Professional Leagues*, seeks to answer that question. The leagues share considerable similarities—at their core, they are organizations that coordinate elite-level athletic competitions for mass audiences. In this respect, the leagues are competitors within the professional sports industry, with each of them competing for fans' dollars and attention. The policies by which the leagues operate, and their practices, are thus often very similar. However, as in any industry, there are also differences between the leagues. This Report seeks to identify and understand those different policies and practices that have the possibility to affect player health such that the leagues may be able to learn from one another.

While leagues and their games are different in many important respects, making it impractical and unfair to opine as a definitive matter on which of the leagues' policies and practices in their totality best protect player health, the Report generally concludes that the NFL's policies concerning player health appear superior to the other leagues. Nevertheless, through the nine recommendations contained in this Report, we hope to elucidate several ways in which the NFL can learn from other leagues and further improve player health.

This Report has four functions. First, to **identify** the various policies that do or could influence the health of players in the various leagues. Second, to **describe** the policies and their relation to protecting and promoting player health. Third, to **evaluate** the capacity of these policies to protect and promote player health, in particular, by comparing policies on similar issues. And fourth, to **recommend** changes to policies that affect NFL players grounded in our evaluation of certain approaches taken by other leagues that appear to be more favorable. Where possible, we perform the same analysis concerning the leagues' practices related to player health.

In this Executive Summary, we provide only summaries of the key issues discussed in the Report, while the Report covers more issues and provides more complexity, nuance, and all relevant citations. Appendix A of the Report is a compilation of the Report's recommendations with explanatory text and Appendix B is a compilation of tables summarizing and comparing the leagues' policies and practices.

In the remainder of this summary Introduction, we identify the leagues and player unions relevant to our analysis and summarize the areas of potential improvement we found when comparing the policies and practices of the NFL to the other leagues. Then, we provide a summary of each of the issues analyzed in the Report: (1) Club Medical Personnel; (2) Injury Rates and Policies; (3) Health-Related Benefits; (4) Drug and Performance-Enhancing Substance Policies; (5) Compensation; and, (6) Eligibility Rules.

a This Report is part of Law and Ethics Initiative of the Football Players Health Study at Harvard University. The 2011 Collective Bargaining Agreement (CBA) between the NFL and NFLPA allocated funds for research, and 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 contract governing this project protects our academic integrity as researchers; no external party has any editorial control over our work. A version of this Report was shared with the NFLPA prior to publication. We also invited the NFL and the other leagues and unions discussed in this Report to review the Report prior to its publication and to provide comments. As detailed in the Report, some of the leagues and unions accepted our invitation while others did not. The NFLPA was treated the same as other stakeholders, with the exception of a contractually guaranteed 30-day review to ensure that we did not use any confidential information. We considered all feedback provided to us from all stakeholders but retained final editorial control. The content is solely the responsibility of the authors and does not necessarily represent the official views of the NFLPA or Harvard University.

A) The Leagues

This Report analyzes the policies and practices of the following professional sports leagues:

- **The National Football League ("NFL"):** The world's premier professional football league, consisting of 32 member clubs. The NFL's 2017 revenues are estimated to reach $14 billion.
- **Major League Baseball ("MLB"):** The world's premier professional baseball organization, consisting of 30 member clubs. MLB's 2016 revenues were an estimated $10 billion.
- **National Basketball Association ("NBA"):** The world's premier professional basketball league, consisting of 30 member clubs. The NBA's 2016–17 revenues are projected to be approximately $8 billion.
- **National Hockey League ("NHL"):** The world's premier professional hockey league, consisting of 30 member clubs. The NHL's 2015–16 revenues were an estimated $4.1 billion.
- **Canadian Football League ("CFL"):** A professional football league consisting of 9 member clubs, all of which are located in Canada. The CFL's revenues are an estimated $200 million annually.
- **Major League Soccer ("MLS"):** A professional soccer league consisting of 20 clubs. As is explained in further detail in the Report, MLS is uniquely organized — rather than having each club owned and controlled by a different person or entity (like in the other sports leagues), all of the clubs in the MLS are owned and controlled by Major League Soccer, LLC. MLS' 2016 revenues were an estimated $600 million.

We chose these leagues because of their similarity to the NFL, both structurally and legally. The NFL, MLB, NBA, and NHL are particularly similar. Each of these leagues has been operating for nearly a century (or more in the case of MLB) and is an entrenched part of the American sports and cultural landscape. Their revenue streams also dwarf those of any other professional sports leagues, including the CFL and MLS. For these reasons, the NFL, MLB, NBA, and NHL are commonly referred to collectively as the "Big Four" sports leagues. We nevertheless acknowledge that other sports and sports leagues can provide lessons for the NFL and the other sports leagues concerning player health. The CFL was included in our analysis because it is the only other long-standing and continuous professional football league. Finally, the MLS was included because it is a major North American professional sports league.

B) The Unions

Each of the leagues discussed in this Report has an important counterpart. The leagues are the constructs of the individual clubs (or operator-investors in MLS) and thus are principally interested in protecting and advancing the rights of the clubs. To protect and advance their rights and interests, the players in each of the leagues have formed a players association, a labor union empowered with certain rights and responsibilities under federal labor laws. The players associations are:

- **National Football League Players Association ("NFLPA")**
- **Major League Baseball Players Association ("MLBPA")**
- **National Basketball Players Association ("NBPA")**
- **National Hockey League Players Association ("NHLPA")**
- **Canadian Football League Players Association ("CFLPA")**
- **Major League Soccer Players Union ("MLSPU")**

C) Areas for Improvement

As stated earlier, the NFL's player health provisions are generally the most protective of player health among the relevant comparators. Nevertheless, we also identified many areas in which the policies and practices of the NFL concerning player health could potentially be improved by comparison to the other leagues:

1. The CFL CBA, unlike the NFL CBA, requires that pre-season physicals "to determine the status of any pre-existing condition" be performed by a neutral physician.
2. The standard of care articulated in the NHL and MLS CBAs, unlike the NFL CBA, seemingly requires club doctors to subjugate their duties to the club to their duties to the player *at all times.*
3. MLB, unlike the NFL, has a concussion-specific short-term injury list.
4. The MLB, NHL, and CFL injury reporting policies, unlike the NFL, do not require the disclosure of the location on the body of a player's injury.
5. MLB, the NBA, and the NHL, unlike the NFL, generally offer health insurance to players for life.
6. Among the Big Four leagues, the retirement plan payments offered by the NFL are the lowest.

7 MLB and NHL players, unlike in those in the NFL, are vested in their pension plans on the first day they play in the league.

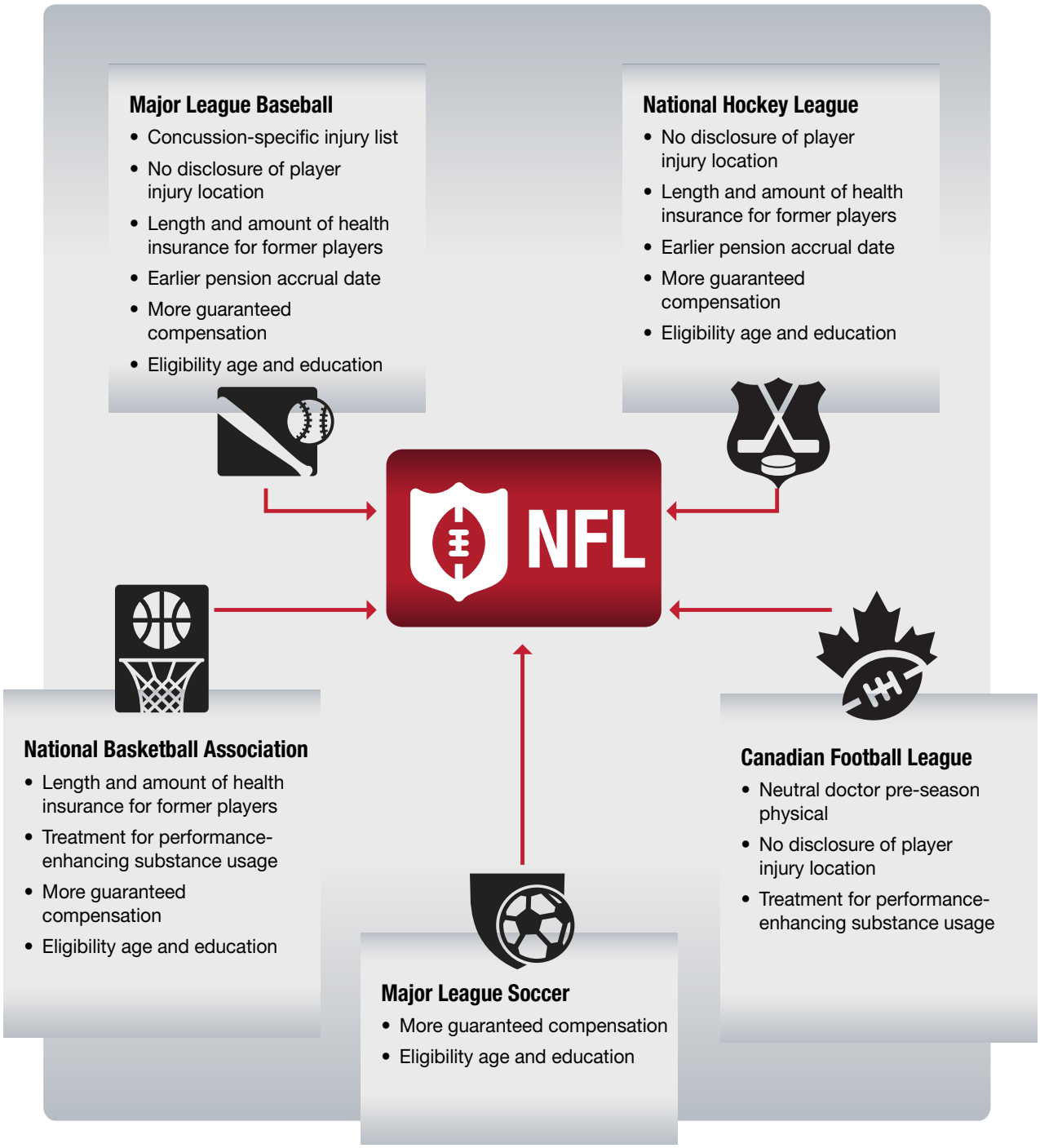
8 The NBA and CFL, unlike the NFL, offer treatment to players who have violated their performance-enhancing substance policies.

9 The amount of player compensation that is guaranteed in the NFL is substantially lower than in the other Big Four leagues.

10 The NFL has the most prohibitive eligibility rule of the leagues (except the CFL).

In the full Report, for each of these possible improvements we discuss whether the NFL's policies might be justifiably different than the other leagues'.

Learning from Other Leagues



CHAPTER 1: Club Medical Personnel

This Chapter discusses the role of club medical staff, including both doctors and athletic trainers, in each of the sports leagues as set forth in the leagues' various controlling policies, most principally, their CBAs. In particular, we focus on: (1) the types of medical personnel required, if any; (2) the medical personnel's obligations; (3) the obligations of the players concerning club medical personnel; (4) the relationship between the medical personnel and the clubs; and, (5) the existence of sponsorship arrangements between medical personnel and the clubs, if any.

Our focus here is on the structural issues that are generally governed by the CBA or other policies rather than how each individual club hires and supervises its medical personnel and how individual medical personnel interact with individual players, matters that are not the subject of extensive reporting or publicly available research. By understanding what is required or permitted pursuant to the CBA or other policies we can understand the scope of possible practices, including those that might be concerning as they relate to player health.

Our analysis suggests that the NFL's policies concerning club medical personnel are overall, by comparison to the other leagues, the most protective of player health in almost all cases by providing players with superior control and information about their healthcare. Nevertheless, there are four areas in which the NFL might appear deficient as compared to one or more of the other leagues. Two of these apparent deficiencies (access to medical records and prescription medication monitoring) are not a problem in practice. We believe that a third deficiency—the inherent conflict of interest in the structure of club medical staffs and related standard of care provisions—are not adequately addressed by any of the leagues. This issue and our proposed recommendation is discussed at length in our report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. Thus, here, we focus on the lone issue resulting in a recommendation for the NFL.

While the CFL Standard Player Contract requires players to submit to a pre-season physical by the club's doctors, the CFL CBA also requires that pre-season physicals "to determine the status of any pre-existing condition" be performed by a neutral physician. The stated purpose of this requirement is to help determine "in the future" whether there was "an aggravation of . . . [a] pre-existing condition." In contrast, NFL club doctors perform all pre-season physicals and would be the ones to opine about a player's prior injury history. We believe the CFL's approach is preferred, and thus recommend that the NFL consider adopting such an approach:

- **Recommendation 1-A:** Pre-season physicals for the purpose of evaluating a player's prior injuries should be performed by neutral doctors.

CHAPTER 2: Injury Rates and Policies

An important measurement of player health is the incidence and type of injuries players may sustain in the course of their work. Additionally, given the importance of player injuries, the manner in which player injuries are handled administratively and reported can indicate a league's approach to player health issues more generally. In this Chapter, we examine the leagues': (1) injury tracking systems; (2) injury rates; (3) injury-related lists; and, (4) policies concerning public reporting of injuries. In summarizing our analysis, it is important to note that there are important limitations in analyzing and comparing the leagues' injury data, described at length in the full Report, including but not limited to the underreporting of injuries (concussions in particular), and differences between the leagues, including scheduling, electronic medical record systems, and injury definitions.

Statistic	NFL	MLB	NBA	NHL	CFL[b]	UEFA[c]
Mean Injuries Per Game	5.90	0.45	0.16	0.59	N/A	0.53
Concussions Per Game	0.625	0.007	0.007	0.067	0.704	0.010
Rate of Concussion Per Player-Game[d]	0.00679	0.00026	0.00035	0.00180	0.00800	0.00072

This Table provides some of the key injury statistics in comparing the leagues, though we provide many more statistics and caveats in the Report itself. The NFL's injury rates are much higher than those of the other leagues. The mean number of injuries suffered per game in the NFL is approximately 3.4 times higher than the combined rates of MLB, the NBA, NHL, and UEFA combined. Similarly, the NFL's concussion per game rate is approximately 6.9 times higher than the combined rates of those same leagues. We excluded the CFL from this comparison because it is also a football league, but we note that the CFL's concussion per game rate is actually higher than the NFL's.

At the same time, the NFL's rate of concussions per player-season is 0.073, lower than the NHL's of 0.108. Thus, if one compared one NFL player and one NHL player, the NHL player would be *more likely* to suffer a concussion in his next regular season than the NFL player during his next season. However, this difference is due to the fact that the NHL plays substantially more regular season games than the NFL (82 versus 16). When comparing concussion statistics on a per game basis, an NFL player is approximately 3.8 times more likely to suffer a concussion in a regular season game as compared to an NHL player (0.00679/0.00180).

One other caveat is worth emphasizing. Due to data availability these statistics and those in the Report are limited to the leagues' regular season games, which underestimates injury rates. As we emphasize in the full Report, there are a significant number of injuries and concussions sustained during NFL practices and during the pre-season (90 concussions in 2015 practices and pre-season games).

Injury Tracking Systems

Each of the Big Four leagues and the MLS has an injury tracking system of some kind. Discussions with experts on this issue indicated that the injury tracking systems are generally comparable; each of them is a sophisticated and modern system that should enable accurate reporting and provide interesting and useful data. The differences may come in how the leagues use the data that is available to them.

The NFL and NBA employ Quintiles, a health information technology firm, to perform sophisticated data analysis concerning player injuries. While other leagues have occasionally made injury data available for analysis, our research has not revealed whether the other leagues perform an ongoing annual analysis like Quintiles does for the NFL and NBA.

Injury-Related Lists

The NFL, NBA, and NHL all permit their clubs to declare players inactive one game at a time, which is generally advantageous to players. We use the NFL as an example. In the NFL, clubs have a 53-man Active/Inactive List, only 46 of whom can be active for the game each week. The remaining seven players are placed on the Inactive List for the game, *i.e.*, benched, either for injury or skill purposes, but are available to play in the next week's game. This arrangement permits players the opportunity to remain on the roster but to rest and treat an injury without immediately rushing back to play. At the same time, because clubs are constantly struggling with having the best players available as well as likely having multiple injured players, players will still likely feel pressure to return as soon as possible so that the club can deactivate other injured players and avoid seeking a replacement.

b As discussed in the full Report, there was no publicly available data on CFL injuries.

c As discussed in the full Report, there is no recent data concerning player injuries in MLS. However, there is injury data from the Union of European Football Associations ("UEFA"), a European soccer organization whose members generally include the best soccer clubs in the world. While UEFA and MLS are different soccer organizations, we nonetheless believe that data from UEFA, an elite soccer organization like the MLS, can be instructive of the injury rates in MLS. Indeed unless and until MLS makes its own data public, we think the UEFA data provides the best proxy estimate of the underlying injury rate in that league.

d We emphasize that this statistic is a mean of all player positions. As discussed in the full Report, we know that rates vary depending on a player's position. Unfortunately, we do not have sufficient data to do position-by-position analysis. Nevertheless, even in the absence of that data we think the comparison of means is useful.

The Active/Inactive List is also interrelated with the Injured Reserve list, designated for players with longer-term injuries. Generally, once a player is on Injured Reserve, he is no longer eligible to play that season. However, by placing the player on Injured Reserve, the club can replace the player on the 53-man Active/Inactive List. Thus, there are important implications in determining whether the player's injury is short-term and the club only has to declare him inactive for a game or two, or whether the player's injury is more severe and requires the player to be placed on Injured Reserve (which also allows the club to obtain a replacement player to join the 53-man roster).

The interplay between the short-term Inactive List and the longer term Injured Reserve list is particularly important concerning concussions. As discussed in the full Report, concussions present uncertain recovery times, are challenging to diagnose and treat, and present particularly acute long-term concerns. MLB is the only sport with a concussion-specific injured list. Because of these concussion-specific concerns, we recommend that the NFL also adopt a concussion-specific injured list.

Injury Reporting Policies

There are three variations in the leagues' injury reporting policies.

First, the NFL, NBA, NHL, and MLS require clubs to disclose publicly players' injury statuses.

Second, the NFL, NBA, and MLS require clubs to disclose publicly the nature of player injuries. While the NHL requires clubs to disclose whether a player will miss a game or not return to a game due to injury, the NFL and NBA (in practice) that the club identify the player's body part that is injured. Below, we make a recommendation concerning this issue.

Third, in MLB, the NBA, the NHL, and MLS, the CBAs specifically describe what type of information the clubs are permitted to disclose publicly. The NFL CBA is silent on this issue. Instead, NFL clubs seemingly rely on players' to execute waivers providing the clubs with permission to disclose publicly player health information.

In the full Report, we discuss in detail three concerns related to the NFL's Injury Reporting Policy: (1) a general concern about an individual's medical information being made publicly available; (2) the possibility that players will target other players' injuries that have been publicly disclosed; and, (3) the Injury Reporting Policy's role in preventing gamblers from receiving inside information about player health issues. Ultimately, we believe that it is debatable whether the NFL's gambling-related concerns are sufficiently substantial today to justify overriding a player's right to have his health information treated confidentially. We lack the relevant expertise, insight, and information, however, to recommend that the NFL no longer obligate clubs to report information on the status of players. Instead, we recommend the NFL consider the issue more closely, in addition to other injury-related issues:

- **Recommendation 2-A:** 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 the injury data analyzed by qualified professionals; and, (c) make the data publicly available for re-analysis.
- **Recommendation 2-B:** 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 NFL's Protocols Regarding Diagnosis and Management of Concussions.
- **Recommendation 2-C:** The NFL should consider removing the requirement that clubs disclose the location on the body of a player's injury from the Injury Reporting Policy.

CHAPTER 3: Health-Related Benefits

In this Chapter, we summarize the various health-related benefits available to the players in each of the leagues. Specifically, for each league, we examine: (1) retirement benefits; (2) insurance benefits; (3) disability benefits; (4) workers' compensation benefits; (5) education-related benefits; and, (6) the existence of health-specific committees jointly run by the league and players association. Each of these domains is relevant to protecting players should they experience negative health effects during and after their playing years, and also to promoting their ability to maintain their health and well-being over the longer term. Given that a decision to play or continue to play professional sports, like many other decisions, is a matter of weighing risks and benefits, those decisions must be made against a backdrop of available benefits. It is for this reason that we spend considerable space describing and evaluating the available benefits in each league.

According to the NFLPA, NFL players have "the very best benefits package in professional sports." This claim seems substantially true. First, the NFL offers every benefit that is provided by any of the other leagues. Second, the NFL offers several benefits that are not provided by any of the other leagues, including severance pay, long term care insurance, the Former Player Life Improvement Plan, and neurocognitive disability benefits for former players. Third, there are several benefits that only the NFL and a limited

number of the other leagues provide: (a) only the NFL, MLB, NBA, and NHL provide health insurance (beyond COBRA) for former players; (b) only the NFL, MLB, and NBA provide players with mental health and substance abuse treatment; (c) only the NFL and NBA offer a health reimbursement account; (d) only the NFL and MLB offer disability benefits to former players; (e) only the NFL and NBA offer education-related benefits for all players; and, (f) only the NFL, NBA, NHL, and MLS guarantee workers' compensation benefits to all of their players.[e]

While overall the NFL thus appears to be the best league for benefits, there are, however, three areas in which the NFL might appear deficient as compared to one or more of the other leagues.

First, the NFL's health insurance options for former players appear to be less favorable than those offered by MLB, the NBA and the NHL. Currently, for players who have vested under the Retirement Plan (which requires at least three years of Credited Service for players after 1992), the NFL provides the same health insurance as available to current players for five additional years or the former player can also obtain health insurance via COBRA. However, COBRA is designed to be a temporary solution and is generally regarded as expensive relative to other health insurance plans. In contrast, MLB's Benefit Plan provides former players the option to continue (or obtain) the same health insurance benefits as current players *for life*. While former MLB players have to pay more for their health insurance than current MLB players, presumably the plans offered are cheaper than COBRA coverage or players would select that option. Similarly, the NBA's Retiree Medical Plan is available to former players for life (at varying rates) and the NHL allows former players who played at least 160 games to continue with the NHL's insurance plan for life.

The NFL does offer a variety of health benefits that might partially fill the gap for former players, including health reimbursement accounts, long term care insurance, benefits for uninsured former players, and disability benefits. Nevertheless, players often have to go through a difficult process to obtain some of these benefits after they have already had to pay for the care, or care is delayed until they can obtain the benefits. We suggest that there may be advantages to allowing former players to continue to obtain some form of the health insurance that they were able to receive while playing.

Second, as shown in the full Report (Tables 3-J and 3-K) the monthly payments to former NFL players under the Retirement Plan are seemingly the smallest in the Big Four leagues. Nevertheless, when all of the benefits available to former players are packaged together, it is likely that the NFL's benefits are the most valuable due to the number of benefits that are available. Consequently, lower Retirement Plan payments might simply reflect the NFLPA's preferred allocation of total benefits, *i.e.*, a shifting of the value of benefits away from the Retirement Plan and to other benefits instead. As with health insurance benefits, the NFL's Retirement Plan payments require players to undertake relatively little administrative work to receive benefits and they are a more secure and stable income source and benefit than some of the other benefits made available by the NFL. Nevertheless, some might believe it is a better use of player benefit money to fund benefits and programs for former players who are disabled or impaired in some way as opposed to providing larger Retirement Plan payments to all eligible former players. All of the benefits available to NFL players must be viewed collectively. For these reasons, we recommend the NFL and NFLPA consider whether the current allocation of player benefits is the preferred, most just, and most effective allocation.

Third, MLB and NHL players are vested in their pension plans on the first day they play in those leagues. By comparison, the NFL requires players to accrue three years of experience (or more depending on when they played), before they are eligible for retirement benefits (as well as many other benefits). The mean career of NFL and MLB players are both around five years long. Yet, the NFL's Retirement Plan likely excludes and has excluded thousands of former players who did not earn three Credited Seasons. It is unclear why the NFL and NFLPA require three years of service (the NBA does as well). The minimum service time clearly reduces costs for the Retirement Plan, but might also reflect a policy decision as to when an NFL player has sufficiently contributed to the NFL to deserve pay under the Retirement Plan. Below, we make a recommendation concerning the vesting requirement for the NFL's Retirement Plan:

- **Recommendation 3-A:** The NFL and NFLPA should consider whether change is necessary concerning player benefit plans.
  - The NFL and NFLPA should consider providing former players with health insurance options that meet the needs of the former player population for life.

e While NFL clubs do provide workers' compensation benefits, as discussed in the full Report, the NFL and its clubs have sponsored legislation in several states to restrict players' workers' compensation benefits.

– The NFL and NFLPA should consider increasing the amounts available to former players under the Retirement Plan.

– The NFL and NFLPA should consider reducing the vesting requirement for the Retirement Plan.

CHAPTER 4: Drug and Performance-Enhancing Substance Policies

This Chapter summarizes the policies of each of the leagues concerning performance-enhancing substances ("PES") and drugs of abuse. As explained below, the leagues differ at times in their categorizations and treatments of different drugs and substances. Where appropriate, we will separate our analysis of the leagues' policies by PES and drugs of abuse (collectively "drug policies.") The leagues' definitions are discussed at length in the full Report.

With the possible exception of how marijuana is regulated, the Big Four's drug policies do not vary substantially. Leagues and unions balance multiple factors in creating drug policies, including but not limited to deterrence, treatment, privacy, and integrity of the game, and rely on difficult value judgments. The three features of the policies we view as most important to player health and those which we analyze are: (1) the availability of Therapeutic Use Exemptions ("TUEs"); (2) the availability of treatment; and, (3) the opportunity to receive treatment without being subject to initial discipline. With these issues in mind, we turn to our analysis of how the NFL compares to the other leagues.

Concerning TUEs, the NFL, MLB and the NBA all offer TUEs for both their PES and drugs of abuse policies. In contrast, the CFL offers TUEs for its PES policy but does not have a drugs of abuse policy. We also found no evidence that the NHL offers a TUE for its Substance Abuse Program or that the MLS offers any TUEs. Thus, the NFL's use of TUEs is at least as good as the other leagues.

All of the leagues, including the NFL, have robust treatment programs for drugs of abuse. However, the NBA, CFL, and potentially MLS are the only leagues that offer treatment for a player who has violated a PES Policy. On this issue, the NFL might appear deficient compared to the NBA and CFL. However, there are other relevant considerations concerning the treatment programs offered to players, discussed next.

The NFL, NBA, NHL, MLS and maybe MLB provide a safe-harbor for players who voluntarily refer themselves for treatment for drugs of abuse. These provisions importantly allow players to seek help they might recognize they need without the fear of immediate adverse employment action.

In contrast, no Big Four league offers a safe-harbor for players who have used PES. It is possible that these leagues view PES users as players intentionally looking to cheat the game and their competitors, whereas those using drugs of abuse are in need of medical care. However, there is robust scientific evidence supporting the need to provide treatment to PES users, as well. PES usage has shown to be addictive, and has been associated with the use of drugs of abuse (opioids in particular), body dysmorphic disorder, depression, antisocial traits, mood and personality disorders, other psychological disorders, and cognitive deficits in impulsivity, risk-taking, and decision-making. As a result, PES users may experience withdrawal symptoms, and may be at an increased risk of suicide. Consequently, many experts recommend and provide treatment and counseling for PES users. We adopt that recommendation for purposes of this Report:

- **Recommendation 4-A:** The NFL should consider amending the PES Policy to provide treatment to any NFL player found to have violated the PES Policy.

CHAPTER 5: Compensation

This Chapter examines the form and nature of player compensation in the leagues. In reviewing this Chapter, it is important to understand that the structures, operations and finances of the "Big Four" are considerably different from those of the CFL and MLS due to, among other things, their long histories and the amount of their revenues (billions versus millions).

Compensation is an important component of player health. First, the different compensation structures and systems in the leagues can influence players' decisions about their physical and mental health, for example when to play through injury and when to retire. In their efforts to maximize their earnings (and sometimes, eligibility for various benefits), some players might sacrifice their short- and/or long-term physical and mental health. The compensation structures dictate when or if a player faces such a trade-off.

Compensation may also be related to health in a second way. Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs, especially in the event of crisis. In addition, as we discussed in greater detail in Chapter 3, crises in physical and mental health are closely tied to bankruptcy, home foreclosure, and other serious financial setbacks. NFL players suffer these outcomes as well, despite their relatively high (but short-lived) compensation.

We are most concerned with how compensation and compensation structures affect player behavior and decision-making concerning their health, *i.e.*, what are the consequences of the current compensation regimes on players' short- and long-term health. Unfortunately, these are questions that we cannot fully answer at the present.

To effectively and rigorously compare how the different leagues' compensation structures affect player health decisions would require the ability to control for a range of variables, including but not limited to free agency rules, salary and contract limitations, salary cap structure, the level of guaranteed compensation, career length, career earnings, and injury outcomes. This is a challenging analysis that requires more data than is currently available and thus we cannot fairly assess which leagues' overall compensation structures among the Big Four are best for players.

Some have suggested that NFL player health could be improved through guaranteeing more of their compensation, which would potentially mitigate pressure to play through injuries in order to protect a player's status on the club. On this and related issues, many would argue that MLB's system is the most player-friendly, because compensation is almost entirely guaranteed, there is no hard Salary Cap, there is no maximum salary, and, there is no maximum contract length. It is thus not surprising that, as of February 2017, the 23 largest contracts among these sports leagues are all for MLB players. However, MLB players are not guaranteed a share of the revenue like in other leagues and must wait six years before becoming an Unrestricted Free Agent, the longest wait of the Big Four; thus, it is not clear that their compensation arrangement is preferable.

The NFL and NFLPA are frequently criticized—by players, the media and academics, among others—for what is perceived as the lack of guaranteed contracts as compared to the other leagues. However, the issue is complicated, as discussed in detail in the Report, including the effect of guaranteed compensation on opportunities for less proven players, and the possibility of reduced compensation and roster sizes. As a preliminary matter, when discussing the compensation paid to players, one must also consider the other benefits the players receive. As is discussed in Chapter 3 of this Report, the NFL provides a benefits package superior to those offered in all of the other leagues. We nonetheless make the following recommendation:

- **Recommendation 5-A:** The NFL and NFLPA should research the consequences and feasibility of guaranteeing more of players' compensation as a way to protect player health.

CHAPTER 6: Eligibility Rules

Each of the leagues has rules governing when individuals become eligible to play in their leagues. While we fully acknowledge the unique nature and needs of the leagues and their athletes, we believe the leagues can learn from the other leagues' policies.

Leagues' eligibility rules affect player health in two somewhat opposite directions: (1) by potentially forcing some players who might be ready to begin a career playing for the leagues to instead continue playing in amateur or lesser professional leagues with less (or no) compensation and at the risk of being injured; and, (2) by protecting other players from entering the leagues before they might be physically, intellectually, or emotionally ready. As discussed in the full Report and recommendation, the NCAA's Bylaws are an important factor in considering the eligibility rules and their effects on player health.

The leagues' eligibility policies vary. MLS has the most liberal eligibility policy, with no minimum age requirement, while, by requiring several years of college, the NFL and CFL are the most restrictive.

All of the eligibility rules seemingly are at least partially concerned with when a player is "ready" to enter a professional league. Readiness is an important concept, but difficult to define. In our view, a player is ready when he is able to enter the league safely, in terms of protecting his health, and maximize his success across various domains, including physically, mentally, and emotionally. Each of the leagues, often through negotiations with the unions, has made a judgment as to when they think the typical player is ready, or at least ready enough. In so doing, the leagues have helped protect clubs from drafting and investing in players who are not ready, and also potentially helped to protect players who need more time to prepare for a successful and healthy career. However, without more empirical analysis, we cannot say for certain when players—individually or collectively—are ready and thus whether the eligibility rule is fair or successful. No such data currently exists and would be challenging to gather.

The comparison of the leagues' policies highlights two clear issues with the NFL's eligibility rule, but, generally, neither is of the NFL's making.

First, the NFL's requirement that players effectively play at least three years of college football might ensure that only sufficiently physically mature players enter professional football, but it also requires players to risk their physical health longer without getting paid—and in a sport with higher injuries rates than that of the other leagues, as

discussed in Chapter 2: Injury Rates and Policies. While the NCAA's Exceptional Student-Athlete Disability Insurance program tries to alleviate some of these issues, players have legitimate concerns that they will suffer a career-altering or ending injury before they are able to reach the professional level and earn any money from their athletic skills. This is at least in part a result of the NCAA's prohibition on student-athletes being compensated. Whether the NCAA's rules are fair is beyond the scope of this Report, but it is clear that the rules create a problem for players who have the potential to reach the NFL but who are required—or might prefer—to continue playing college football.

Second, in light of the fact that players are not paid for playing in college, it is understandable that many want to enter the NFL as soon as possible. Specifically, players will want to enter the NFL after their junior year of college, the first time they are permitted under the NFL's eligibility rule. However, whether the player is ready to leave college for the NFL is a difficult question to answer and may not be resolved until many years later—if ever. If the player is undrafted, NCAA rules effectively prohibit the player from returning to college football, and the player's football future is in serious doubt. Once again, although this problem intersects with the NFL's eligibility rule, it is the primary result of the NCAA's rules, not the NFL's.

It is challenging to assess the reasonableness of the NFL's current eligibility rule. The rule seemingly prevents players from joining the NFL before they are ready, which both protects those players from injury in the NFL and protects the clubs from investing in players who are not yet ready to play at a professional level. While there are likely to occasionally be players who are ready to join the NFL before the end of their junior season, there are going to be outliers to any rule and, without data suggesting otherwise, we cannot say the NFL's eligibility rule is unreasonable or not sufficiently considerate of player health. For this reason our main recommendation is for the NFL to continue to gather data to permit a better evidence-based evaluation of its current policy, as well to consider the interplay of its rules with the NCAA's:

- **Recommendation 6-A:** The NFL should consider performing or funding research analyzing when a player might be "ready" for the NFL.
- **Recommendation 6-B:** The NFL should reconsider the interplay of its eligibility rules with the NCAA's rules as they concern player health and take appropriate action if necessary.

CONCLUSION

This Report begins by explaining the pressing need for research into the overall health of NFL players; the need to address player health from all angles, both clinical and structural; and the challenges presented in conducting such research and analysis. The issues and parties involved are numerous, complex, and interconnected. To address these issues—and ultimately, to protect and improve the health of NFL players—requires a diligent and comprehensive approach to create well-informed and meaningful recommendations for change.

We believe part of that comprehensive approach is for the NFL and NFLPA to learn from other professional sports leagues when possible. In many respects, the leagues and their games are very different and thus it can be challenging to draw comparisons. Nevertheless, the leagues face a series of common issues, such as labor negotiations, stadiums and arenas, fan interest, multimedia platforms, and many others. But perhaps the most important issue is player health. In recent years, each of the leagues has had to make a fresh and comprehensive examination of its player health policies and practices. We anticipate the leagues will continue to engage in this examination for many years to come.

As demonstrated by our Report's analysis and recommendations, the leagues have the opportunity to learn a great deal from one another in light of their shared interest in player health. Additionally, our Recommendations are only as useful as their implementation. For these reasons, we make the following final Recommendations.

- **Final Recommendation 1:** The leagues and unions should continue to coordinate on player health issues and to consider each other's policies and practices.
- **Final Recommendation 2:** The media, academics, the leagues, and the unions should continue to police the advancement 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 they will be met. We hope this Report furthers that cause.

Summary Table of Recommendations

1 Pre-season physicals for the purpose of evaluating a player's prior injuries should be performed by neutral doctors. (Recommendation 1-A).

2 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 the injury data analyzed by qualified professionals; and, (c) make the data publicly available for re-analysis. (Recommendation 2-A).

3 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 NFL's Protocols Regarding Diagnosis and Management of Concussions. (Recommendation 2-B).

4 The NFL should consider removing the requirement that clubs disclose the location on the body of a player's injury from the Injury Reporting Policy. (Recommendation 2-C).

5 The NFL and NFLPA should consider whether change is necessary concerning player benefit plans. (Recommendation 3-A).

6 The NFL should consider amending the Performance-Enhancing Substance Policy ("PES Policy") to provide treatment to any NFL player found to have violated the PES Policy. (Recommendation 4-A).

7 The NFL and NFLPA should research the consequences and feasibility of guaranteeing more of players' compensation as a way to protect player health. (Recommendation 5-A).

8 The NFL should consider performing or funding research analyzing when a player might be "ready" for the NFL. (Recommendation 6-A).

9 The NFL should reconsider the interplay of its eligibility rules with the NCAA's rules as they concern player health and take appropriate action if necessary. (Recommendation 6-B).