APPENDIX A \ COMPILATION OF RECOMMENDATIONS

Below, for ease of reference, is a compilation of all of the Recommendations made in this Report.

1) Club Medical Personnel

Recommendation 1-A:

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

The CFL requires pre-season physicals for the purpose of evaluating a player's prior injuries to be performed by a neutral doctor. The NFL should adopt the same rule. The use of neutral doctors ensures that players' medical history is being recorded in an accurate manner, *i.e.*, in a manner that correctly details a player's injury history and the ways in which those prior injuries are manifesting themselves today. Clubs—and thus club doctors—have an incentive to minimize players' injuries and declare them fit to play in order to avoid further financial liability. For example, if an NFL player is injured during one season, and fails the pre-season physical the next season, the player is entitled to an Injury Protection benefit, an amount equal to 50% of his Paragraph 5 Salary (*i.e.,* base) for the season following the season of injury, up to a maximum payment of $1,150,000 (in 2016).[1] If the player is still injured during the next pre-season, he can obtain Extended Injury Protection, a benefit that permits a player to earn 50% of his salary up to $500,000 for the *second* season after suffering an injury that prevented the player from continuing to play. Additionally, similar to the CFL, if the club doctor finds that a player is healthy enough to play, a player's potential Injury Grievance[a] is undermined. In these situations, the club doctor, acting in the interests of the club, might be motivated to find that the player is healthy enough to play during the pre-season physical, preventing the player from receiving benefits and compensation to which he is entitled. While we do not know if such practices are common or widespread, in our Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, we provided examples from players attesting that such situations do occur.[2] Whatever the frequency, a structural conflict still exists and needs to be addressed. A neutral doctor avoids the potential for bias, and ensures players are receiving their just compensation and care.

As discussed in the Introduction, the NFL declined to review this Report. However, MLB did provide comments on the Report which may provide insight into the viewpoints of the other professional leagues. In reviewing a draft of this Report, MLB expressed its disagreement with this recommendation, stating:

The recommendation (1-A) that preseason physical examinations be performed by a neutral doctor misses the point of the PPE [preparticipation physical evaluation]. Continuity of care is an important aspect of player health care and it is the view of our medical experts that having a separate physician for the preseason exam would result in worse care during the season. The recent Consensus Monograph on PPE, which was prepared by several national physician groups and is viewed as the governing document on these types of exams, does **not** include a recommendation for independent physicians.

While we generally agree with MLB that continuity of care is important, we disagree with MLB's comment for several reasons.

First, it is important to understand we believe there is a structural conflict of interest whereby NFL club doctors provide care to players while also providing services for the club.[b] As a result, players have business reasons to be concerned about the outcome of the pre-season physical. As explained above, club doctors may not accurately record a

a An Injury Grievance is "a claim or complaint that, at the time a player's NFL Player Contract or Practice Squad Player Contract was terminated by a Club, the player was physically unable to perform the services required of him by that contract because of an injury incurred in the performance of his services under that contract." 2011 NFL CBA, Art. 45, § 1.

b In our Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations* we set forth a comprehensive recommendation to address this issue. We propose restructuring NFL club medical staff in such a way that the doctor treating the players has as his or her only concern the well-being of the player-patient and has no advisory role to the club.

player's condition, which can negatively affect his contract status and benefits to which he is entitled.

Second, our recommendation would not affect continuity of care as MLB's comment seems to suggest. Assuming doctors working for the club continue to treat players (which is not what we recommend as explained in footnote b), the club doctor would have full access to the results of the pre-season physical and is also permitted to re-examine the player at any time, including during the pre-season. However, a physical performed by a neutral doctor should be used to establish the player's pre-existing conditions in order to better protect the player's business interests.

Third, MLB's reference to the consensus monograph[c] is misplaced. The monograph specifically states that it "is intended to provide a state-of-the-art, practical, and effective screening tool for physicians who perform PPEs for athletes in *middle school, high school, and college*."[3] Thus, the monograph does not apply to *professional sports*, and does not speak to the issues raised above.

2) Injury Rates and Policies

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.

As explained above, each of the Big Four leagues and MLS seems to have a quality injury tracking system, allowing for the accumulation of current information about the nature, duration, and cause of player injuries. As stated above, we rely on this data in this Report because it provides the best available data concerning player injuries, although we cannot independently verify the data's accuracy. Nevertheless, if accurately collected, this data has the potential to improve player health through analysis by qualified experts so long as it is made available to them. In particular, analysis potentially could be performed to determine, among other things, the effects of rule changes, practice habits, scheduling, new equipment, and certain treatments, while also identifying promising or discouraging trends and injury types in need of additional focus.[4] Notably, the NFL already conducts this type of analysis through Quintiles.

However, the NFL does not publicly release its aggregate injury data (nor does any other league).[5] The NFL does release some data at its annual Health & Safety Press Conference at the Super Bowl. However, the data released at the Press Conference is minimal compared to the data available and the analyses performed by Quintiles. For the data to have the potential meaningful applications mentioned above, it must be made available in a form as close to its entirety as possible. Such disclosure would permit academics, journalists, fans, and others to analyze the data in any number of ways, likely elucidating statistical events, trends, and statistics that have the opportunity to improve player health. To be clear we are recommending the release of more *aggregate* data, not data that could lead to identification of the injuries of any particular player or cause problems concerning gambling.

Publicly releasing injury data, nevertheless, comes with complications that we must acknowledge. While more transparency in injury reporting is necessary, the nuances of such data can easily be lost on those without proper training. Sports injury prevention priorities in public health can be swayed by public opinion and heavily influenced by those with the most media coverage. Making injury data publicly available may allow those with the media access to dictate the agenda regardless of the actual implications of the data. As a result, it may be harder for injury trends that may be more hazardous, but less visible in the media, to get the attention they need, even when the data clearly shows the importance of these issues. Thoughtful, balanced, peer-reviewed results may have difficulty competing against those statistics which garner the most media attention. For this and other reasons, in our report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, we recommended that "[t]he media . . . engage appropriate experts, including doctors, scientists, and lawyers, to ensure that its reporting on player health matters is accurate, balanced, and comprehensive."[6] The medical, scientific, and legal issues concerning player health are extremely complicated, which demands that the media take care to avoid making assertions that are not supported or that do not account for the intricacies and nuance of medicine, science, and the law.

c *See* Am. Acad. Pediatrics, Preparticipation Physical Evaluation (4th ed. 2010). This monograph was created through the coordination of the American Academy of Family Physicians, American Academy of Pediatrics, American College of Sports Medicine, American Medical Society for Sports Medicine, American Orthopaedic Society for Sports Medicine, and the American Osteopathic Academy of Sports Medicine.

In light of these concerns, one possible intermediate solution is to create a committee of experts that can review requests for data and determine whether or not the usage of the data is appropriate and will advance player health. Indeed, the Datalys Center for Sports Injury Research and Prevention performs this role concerning access to NCAA student-athlete injury data.[7] Moreover, such committees have also been formed in the clinical research setting.[8]

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.[d]

According to the leading experts, 80–90% of concussions are resolved within seven to ten days.[9] Thus, concussion symptoms persist for longer than ten days for approximately 10–20% of athletes. In addition, there are a variety of factors that can modify the concussion recovery period, such as the loss of consciousness, past concussion history, medications, and the player's style of play.[10] Consequently, a player's recovery time from a concussion can easily range from no games to several games. The uncertain recovery times create pressure on the player, club, and club doctor. Each roster spot is valuable and clubs constantly add and drop players to ensure they have the roster that gives them the greatest chance to win each game day. As a result of the uncertain recovery times for a concussion, clubs might debate whether they need to replace the player for that week or longer. The club doctor and player might also then feel pressure for the player to return to play as soon as possible. By exempting a concussed player from the 53 man roster, the club has the opportunity to sign a short-term replacement player in the event the concussed player is unable to play. At the same time, the player and club doctor would have some of the return-to-play pressure removed.

In fact, MLB already has such a policy. MLB has a seven-day Disabled List (as compared to its normal 10- and 60-day Disabled Lists) "solely for the placement of players who suffer a concussion."[11]

Why treat concussions differently than other injuries in this respect? This is a fair question to which there are a few plausible responses. First, in terms of the perception of the game by fans, concussions have clearly received more attention than any of the other injuries NFL players might experience and thus the future of the game depends more critically on adequately protecting players who suffer from them. Second, concussions are much harder to diagnose than other injuries, such that there may be a period of uncertainty in which it would be appropriate to err on the side of caution.[12] Third, both players and medical professionals have more difficulty anticipating the long-term effects of concussions as compared to other injuries, given current scientific uncertainties concerning brain injury.[13] Fourth, and perhaps most importantly, it is much harder to determine the appropriate recovery times for concussions as compared to other injuries.[14] These reasons all support a recommendation to exclude concussed players from a club's Active/Inactive roster, but we recognize that the key feature of players potentially feeling or facing pressure to return before full recovery may be shared across any injury a player may experience. Thus, it may also be reasonable to consider extending this recommendation to injuries beyond concussions.[e]

In reviewing a draft of our Report, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations,* the NFL argued that "[t]he current NFL roster rules actually provide greater flexibility" than is recommended here.[15] The NFL explained that because "[t]here is no limitation on how long a player may be carried on the 53-man roster throughout the season without being 'activated,' . . . a player who is concussed routinely is carried on his club's 53-man roster without being activated until he is cleared."[16] However, for the reasons explained above, we believe concussions should be treated differently. All 53 spots on the roster are precious to both the club and the players. The uncertainty surrounding recovery from a concussion presents unique pressures that can be lessened with the approach recommended here.

Indeed, the NFL's practice has been to treat concussions differently from other injuries. As part of its Concussion Protocol, players suspected of having suffered a concussion

d This recommendation also appears as Recommendation 7:1-E in our Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations.* Due to the fact that the recommendation was inspired by MLB's concussion-specific DL list, we include it here as well.

e We recognize that this new injured reserve list is subject to gaming by clubs, whereby a club might designate a player as concussed in order to add another player and effectively expand the roster. We do not view this this concern to be sufficient to outweigh the health benefits of the proposal. Moreover, all injury lists are subject to some risk of being gamed in this manner, and thus the issue is not unique to what we propose.

during a game are examined by doctors unaffiliated with the club, and to be cleared to play in the next game they must be cleared by doctors unaffiliated with the club. For all other injuries, club doctors are the only ones to examine and clear players to play. Additionally, in 2016, the NFL sent a memo to all clubs directing them not to comment on a player's progress in returning from a concussion.[17] Instead, the NFL directed clubs to state only "that the player is in the concussion protocol under the supervision of the medical team, and the club will monitor his status."[18] This is in contrast to the clubs' open discussion of players' other injuries.

The Washington football club essentially proposed our recommendation at the 2016 owners' meetings. Washington proposed amending the NFL bylaws to provide that a player who has suffered a concussion, and who has not been cleared to play, be placed on the club's Exempt List, and be replaced by a player on the club's Practice Squad on a game-by-game basis until the player is cleared to play. Unfortunately, the proposal was not adopted.

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.

In our Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, we recommend the NFL consider fining and/or suspending players if they discuss or encourage targeting another player's injury.[19] However, the need for this Recommendation would be reduced if the NFL's Injury Reporting Policy did not openly disclose the location on the body of players' injuries, a requirement imposed only by the NFL, NBA and MLS.

The gambling-related interests of full disclosure likely do not outweigh the risks of targeting by other players created by the Injury Reporting Policy.[20] While additional data—including from federal law enforcement authorities—could inform this analysis—it seems unlikely that the risks of injury information being sold on a black market are so high to justify a known risk of players intentionally aiming to hit a player in an area known to be injured because of the Injury Reporting Policy. Similarly, we see no inequity in clubs not knowing the full extent of an opposing club's player injuries. Consequently, we recommend that the NFL consider removing the requirement that clubs disclose the location of a player's injury from the Injury Reporting Policy.

3) Health-Related Benefits

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

As discussed above, we identified three potential areas of concern regarding the benefit plans offered by the NFL. Also as discussed above, the benefits available to NFL players must be viewed in the context of one another: increasing one benefit might mean a decrease in another benefit. Below, we identify and discuss possible changes to the benefit plans, the implementation of which must be weighed collectively.

- The NFL and NFLPA should consider providing former players with health insurance options that meet the needs of the former player population for life: While the NFL provides significant benefits to former players, players likely do not take full advantage of those benefits due to the associated administrative burdens.[21] Additionally, a consistent and reliable health insurance plan seems preferable to ad hoc and uncertain benefits. The NFL and NFLPA should consider whether it would be more appropriate to shift some of the value of benefits away from the unplanned benefits (*e.g.,* disability benefits and the health reimbursement account) to more stable health insurance options.[f] Where players have only played one or two seasons (and perhaps games), there might be questions as to whether it is appropriate to provide lifetime health insurance to someone who was employed for such a short period of time. On the other hand, only a few games or seasons can have life-lasting effects on a player. One option worth considering is tiering health insurance benefits and allowing those with less Credited Seasons to qualify for some but not full benefits.
- The NFL and NFLPA should consider increasing the amounts available to former players under the Retirement Plan: The monthly retirement benefits represent a more stable benefit than the other valuable but still uncertain benefits. Consequently, the NFL and NFLPA should consider whether it would be more beneficial to shift some of the value of benefits away from the unplanned benefits to the more stable Retirement Plan monthly payments.

f According to columnist Mike Freeman, the NFLPA did analyze the potential costs of providing NFL players with health insurance for life and found the cost to be approximately $2 billion. Mike Freeman, *Two Minute Warning: How Concussions, Crime, and Controversy Could Kill the NFL (and What the League Can Do to Survive)*, xxv (2015).

- The NFL and NFLPA should consider reducing the vesting requirement for the Retirement Plan: The purpose of the NFL's three-year vesting requirement is unclear. The vesting requirement results in a considerable portion of former players being unable to collect any retirement benefits. We acknowledge that there may be appropriate policy reasons for such a limitation, such as a determination as to when a player has sufficiently contributed to the NFL. Indeed, many employers require a certain number of years of service before accruing certain benefits.[g] If the vesting requirement is instead principally motivated by cost, then the distribution of benefits among former players should be reconsidered to determine what is maximally beneficial for player health. In other words, is the current distribution of benefits among former players, which largely excludes players with less than three years of experience, preferred by the NFL, NFLPA, and players, or would it be preferable to reduce the benefits to players with more than three years of experience to provide some benefits to those with less than three years of experience? While these considerations are not easy and require a delicate balance, the exclusion of a significant portion of former players from the Retirement Plan requires an examination of the vesting requirement. As with health insurance benefits, one option worth considering is tiering Retirement Plan benefits and allowing those who have played less than three Credited Seasons to qualify for some if not full benefits.

4) Drug and Performance-Enhancing Drug Policies

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.

The NFL and the other leagues recognize that substance abuse is a serious medical issue and, as a result, provide players with robust counseling and treatment. As discussed above, PES usage has been shown to be associated with a variety of serious physical and mental ailments. However, only the NBA and CFL offer treatment for players who have used PES. In light of the potential negative health consequences associated with PES usage and the treatment provided by the NBA and CFL for PES usage, it seems prudent for the NFL to consider providing treatment to PES users similar to that provided for by the Substance Abuse Policy's Intervention Program.

There is an important clarification to this Recommendation. As stated earlier in this Chapter, we are not focused on the competitive advantage concerns associated with PES use or the discipline imposed by the leagues for drug or PES usage. We are focused on the health implications of drug and PES policies. Thus, our Recommendation should not be read to suggest that because players might need treatment for PES usage that they should not be disciplined—as is the case for first time offenders of the Substance Abuse Policy.

As discussed in the Introduction, the NFL declined to review this Report. However, MLB did provide comments on the Report which may provide insight into the viewpoints of the other professional leagues. MLB did not agree with this Recommendation, stating:

> There are no established treatment programs for PEDs, and since the recidivism rate for PEDs is fairly low, there is no support for the position that this class of prohibited substances warrants a response based on treatment. It is also an established practice of not just MLB, but all other professional leagues and international anti-doping organizations that the use of PEDs affects the integrity of play and should be responded with a disciplinary perspective as opposed to a clinical one. Our experts advise not including "PED treatment programs" as a recommendation in the report.

As a preliminary matter, we note that the NBA and CFL do provide treatment to PES users. Thus, there is a disagreement among the leagues (and potentially also the unions) on this issue, suggesting further research is needed.

We further reply to MLB with a clarification and with a disagreement. We understand sports organizations' need to discipline players who have violated PES policies. Our recommendation does not seek the elimination or reduction of discipline for PES violations in any way. Instead, we believe it is appropriate to consider providing players who have violated the PES Policy with counseling, regardless of any discipline imposed. This is where we and MLB disagree.

MLB rejects counseling for PES use on the grounds that "[t]here are no established treatment programs for PEDs." As discussed above, experts in the field recommend and do provide treatment for PES usage and its associated problems. Whether these programs are sufficiently "established," is beyond our expertise, but it nonetheless is an issue worth further consideration.

g The principal distinction would be that employers require a certain number of years of service to, in part, encourage employees to continue working for them rather than obtaining employment elsewhere. This incentive structure is not needed in the NFL—where the vast majority of players play in the NFL for as long as they are able.

5) Compensation

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.

As discussed above, guaranteed compensation in the NFL is a complicated issue. While many people—and players in particular—have expressed a desire for increased guaranteed compensation, it is not clear that fully guaranteed compensation would be beneficial to players *collectively* such that it ought to be preferred to the status quo.

As a preliminary matter, the NFLPA itself has expressed mixed views about the guaranteed contracts. In a 2002 editorial in *The Washington Post*, then-NFLPA Executive Director Gene Upshaw acknowledged that the possibility of guaranteed contracts "is severely undermined by the risk of a career-ending injury" and touted the benefits available to players as an alternative.[22] Then, in two reports issued by the NFLPA in or around 2002 and 2007 respectively, the NFLPA asserted that NFL player compensation is, in fact, largely guaranteed by explaining that more than half of all compensation *paid* to players is guaranteed.[23] However, importantly, this statistic does not mean that half of all compensation *contracted* was guaranteed—indeed, as discussed above, approximately 44% of all contracted compensation is guaranteed. Players are often paid guaranteed money (*e.g.*, a signing bonus or roster bonus) in the first or second year of the contract only to have the base salaries (the unguaranteed portions) in the later years of the contract go unpaid because the player's contract was terminated.

With this background in mind, there are several reasons why fully guaranteed compensation might not be beneficial to players *collectively*. First, while fully guaranteed contracts might be good for the players who receive them, it could result in many players not receiving any contract at all. If clubs were forced to retain a player of diminishing skill because his contract was guaranteed, a younger or less proven player might never get the opportunity to sign with the club.[24] Relatedly, clubs might continue to provide playing opportunities to the players with larger contracts in order to justify those contracts, preventing younger players from establishing themselves as starting or star players and earning higher salaries. It is also likely that under a system of guaranteed compensation, player salaries would decrease (at least in the short-term)—particularly the salaries of the highest paid players and players who are less certain to add value to a roster—as clubs would be more cautious about taking on the financial liabilities, especially given the Salary Cap in place in the NFL. Similarly, clubs also may seek to minimize their financial liabilities by reducing roster sizes, which might cost marginal players their jobs, while again reducing opportunities for young or unproven players to join a club.

There are also logistical challenges to implementing fully guaranteed contracts. The finances and operations of the NFL and its clubs are greatly intertwined with the fact that NFL contracts have never been fully guaranteed. Since 1993, NFL clubs have had to comply with a strict Salary Cap that necessarily influences the types of contracts clubs are willing to offer, including the possibility of guaranteed compensation. Fully guaranteed contracts would be a fundamental and monumental alteration to the current business of the NFL that, at a minimum, would require a gradual phasing in process.[h]

It is possible that a rate of guaranteed contracts less than 100% but more than the current 44% is also optimal. Given the varying factors to be weighed and considered, it is not clear what percentage of guaranteed compensation would maximize player health for the most NFL players.

Clearly this is a complex issue, with the potential for substantial unintended consequences. Thus, we recognize the likely health value of guaranteed contracts, while simultaneously recognizing that it may not be the right solution for all players. Importantly, as discussed above, players who value a contractual guarantee over potentially higher but uncertain compensation may negotiate for that protection individually, as many currently do. Moreover, we expect that other recommendations made in this Report and, more importantly, our other Report, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, including key recommendations related to the medical professionals who care for players,[25] if adopted, would make great strides toward protecting and promoting player health such that guaranteed compensation would be less critical for that purpose.

h For example, one rule that would likely have to be removed is the NFL's requirement that clubs deposit into a separate account the present value, less $2 million, of guaranteed compensation to be paid in future years. 2011 CBA, Art. 26 § 9. Former NFL club executive Andrew Brandt believes clubs "hide behind" the funding rule to avoid guaranteeing player compensation, and have been largely successful in doing so. Andrew Brandt, Supplemental Peer Review Response (Nov. 6, 2015).

Ultimately, we recommend further research into this question, including player and club perspectives, economic and actuarial analysis, and comprehensive consideration of the relevant trade-offs, ramifications, and potential externalities. In the meantime, we note that the trend toward greater use of contractual guarantees can help promote individual player health and allow individual negotiation by players based on their own goals and priorities.

6) Eligibility Rules

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

Currently, the NFL's eligibility rule appears to be the NFL's best guess as to when players, as a general rule, are ready to play in the NFL. However, we are unaware of any rigorous body of data to support the NFL's eligibility rule as it is currently written. While the NFL's eligibility rule seems reasonably protective of player health based on what is currently known, data could substantially buttress the rule—or prompt changes to it as necessary. For the sake of player health, the NFL should make efforts to gather this data.

Among the data that might be valuable in this context are: players' ages when they enter the league; players' height and weight; players' position; players' professional results; players' injury histories; players' financial health; players' education; players' psychological health; and, players' post-career activities. This and other data may need to be gathered before, during, and after the player's career, as relevant; there may also be questions related to the precise definition of player success for purposes of this analysis, although certain thresholds on either end of the spectrum will be evident. While some of this data does currently exist, the ideal comparison would be between players who entered the league under the current rule and those who entered earlier (or later) on an alternative rule. Because the current eligibility rule has been in place for decades, direct comparison is difficult. However, it is possible that the NFL—potentially with the help of others—could learn something from the data that is already available, for example, comparing the outcomes of players who enter the league at different ages beyond the eligibility threshold. Of course, this will not answer the question of how *individual* players might fare if they could enter the league even earlier than the current rule permits,[i] but it may nonetheless provide some helpful information for comparison between players who are younger or older at entry.

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.

The NFL's eligibility rule coupled with the realities of the NCAA's rules cause tremendous pressure on prospective and future NFL players. While these NCAA rules are not the NFL's creation, the NFL should nevertheless acknowledge that the football careers of prospective or future NFL players are substantially affected by the NCAA's rules and take steps within its power to address those problems. The combination of the two organizations' rules creates situations that many find inequitable and it is thus appropriate for the NFL to reconsider its eligibility rules' applicability in those situations and whether anything can be done to change them.[j]

7) Conclusion

Final Recommendation 1: The leagues and unions should continue to coordinate on player health issues and to consider each other's policies and practices.

Indications are that the leagues do communicate with each other concerning common issues on a regular basis. Similarly, the unions communicate on common issues. This coordination is assisted by the fact that many doctors, lawyers, and other professionals are advisors to multiple leagues or unions. It is important that the leagues and unions continue—and perhaps increase—their level of coordination on player health issues. As many of the leagues have increased

i Given more advances in health technology, it is theoretically possible that leagues could adopt an individualized approach, using specific metrics to determine whether a particular player was "ready." However, such an approach also raises concerns with the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, as discussed in our article, *Evaluating NFL Player Health and Performance: Legal and Ethical Issues*, 165 U. Penn. L. Rev. 227 (2017).

j Despite criticism on this issue, the NFL reportedly is not considering any changes to its eligibility rules. *See* Mike Florio, *NFL not considering a change to the three-year rule,* ProFootballTalk (Oct. 31, 2015, 10:38 PM), http://profootballtalk.nbcsports.com/2015/10/31/nfl-not-considering-a-change-to-the-three-year-rule/, *archived at* https://perma.cc/34JC-M66Y.

their interest in and funding of research—particularly medical research—concerning player health issues, valuable data is being created that can help inform other leagues' policies and practices. We urge the leagues to share this data—not just with each other but with all researchers. Moreover, by combining resources the leagues might be able to take on broader and better projects than they can alone. Finally, as leagues continue to make advancements in player health policies and practices, it is important that the other leagues and unions take note of those advancements, consider their possible application to their respective organizations, and make the necessary changes to protect and promote player health. The leagues are tremendously powerful and influential institutions—by working together, they can maximize their ability to be positive change agents in player health.

Final Recommendation 2: The media, academics, the leagues, and the unions should continue to police the advancement of player health.

Following this Report, we do not intend to be a passive voice in the process of improving player health. It is our hope to be able to periodically review progress on the issues discussed in this Report and provide additional reports. However, in addition to any progress reports from the authors of this Report or the Football Players Health Study at Harvard University, we urge and trust that others—in particular the leagues and unions—will heed the message of this Report and hold other stakeholders accountable.

Endnotes

1 NFL CBA, Art. 45, § 2.

2 *See* Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations,* Recommendation 1:1-F (2016).

3 Am. Acad. Pediatrics, Preparticipation Physical Evaluation 3 (4th ed. 2010).

4 For examples of such studies in high school and college sports, *see* Barry P. Boden et al., *Catastrophic Injuries in Pole Vaulters, A Prospective 9-Year Follow-up Study*, 40 Am. J. Sports Med. 1488 (2012); Frederick O. Mueller and Robert C. Cantu, *Catastrophic injuries and fatalities in high school and college sports, fall 1982–spring 1988*, 22 Med. & Sci. in Sports & Exercise 737 (1990).

5 Some of the studies discussed in this Report were the result of the leagues' willingness to provide some injury data upon request. While it is commendable that the leagues occasionally provide the data when requested, this does not entirely address the concerns outlined in Recommendation 1.

6 Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations,* Recommendation 17:1-B (2016).

7 *See The Datalys Center for Sports Injury Research and Prevention,* NCAA, http://www.ncaa.org/health-and-safety/medical-conditions/datalys-center-sports-injury-research-and-prevention (last visited Aug. 3, 2016), *archived at* https://perma.cc/2M75-B24L.

8 *See, e.g., Data transparency,* GlaxoSmithKline, http://www.gsk.com/en-gb/behind-the-science/innovation/data-transparency (last visited June 20, 2016), *archived at* https://perma.cc/M5HN-NLHN; *Frequently Asked Questions*, the YODA Project, http://yoda.yale.edu/frequently-asked-questions-faqs#Data (last visited June 20, 2016), *archived at* https://perma.cc/2Z98-R7HC.

9 *See* Paul McCrory et al., *Consensus statement on concussion in sport: the 4th Int'l Conference on Concussion in Sport held in Zurich, November 2012*, 47 Br. J. Sports Med. 250, 251 (2013).

10 *Id.* at 253.

11 MLB CBA, Att. 36, ¶ 2.

12 *See* Paul McCrory et al., *Consensus statement on concussion in sport: the 4th Int'l Conference on Concussion in Sport held in Zurich, November 2012*, 47 Br. J. Sports Med. 250, 250–58 (2013) (discussing the challenges of and best practices for diagnosing concussions).

13 *See id.*

14 *See id.* at 252-58 (discussing generally the challenges of determining when an athlete has recovered from a concussion).

15 Letter from Larry Ferazani, NFL, to authors (July 18, 2016).

16 *Id.*

17 Mike Florio, *NFL tells teams to stop commenting about concussed players,* ProFootballTalk (Nov. 11, 2016, 7:50 PM), http://profootballtalk.nbcsports.com/2016/11/11/nfl-tells-teams-to-stop-commenting-about-concussed-players/, *archived at* https://perma.cc/Z7ML-ZP7W.

18 *Id.*

19 Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations* Recommendation 7:4-B (2016).

20 Mike Florio, *Disclosure of injury information continues to put NFL players in a delicate spot*, ProFootballTalk (July 10, 2015, 12:34 PM), http://profootballtalk.nbcsports.com/2015/07/10/disclosure-of-injury-information-continues-to-put-nfl-players-in-a-delicate-spot/, *archived at* http://perma.cc/PYL4-KMRY ("many players would like to keep [injury information] secret, in order to keep an opponent from hitting, poking, and/or kicking the injured region.")

21 For more on this issue, *see* Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations,* Recommendation 7:3-B (2016).

22 Gene Upshaw, *NFLPA's Upshaw Responds*, Wash. Post, Dec. 22, 2002, *available at* 2002 WLNR 15865309.

23 NFLPA, *A New Look at Guaranteed Contracts in the NFL* (circa 2002) (on file with authors) ("Over half of all salary earned by NFL players now is guaranteed"); Nat'l Football League Players Ass'n, *Guaranteed Contracts in Professional Team Sports: How Does the NFL Compare?* (circa 2007) (on file with authors) ("at least 52% of all compensation in the NFL is, in fact, 'guaranteed' to players.'")

24 Mike Florio, *Fully-guaranteed contracts could cause problems for teams, players,* ProFootballTalk (May 29, 2015, 9:55 AM), http://profootballtalk.nbcsports.com/2015/05/29/fully-guaranteed-contracts-could-cause-problems-for-teams-players/, *archived at* http://perma.cc/GE9E-YSME (discussing potential problems with guaranteed contracts in the NFL).

25 *See* Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations,* Recommendation 2:1-A (2016).