

Mind Over Matter: Collective Bargaining for Mental Health Services in Professional Sports

By: Janie Pierson

Spring 2024

I. Introduction

The importance of athlete physical health has long been a goal of professional sports leagues in America. However, there is an increasing awareness surrounding the welfare of players off the field, court, and ice. Mental health issues pose significant challenges for athletes across the four major professional sports leagues in the United States, necessitating the development of support systems and resources to effectively address these complex issues.

Historically, the discussions surrounding mental health in sports were considered taboo, with athletes expected to endure any “personal” challenges quietly. However, a societal shift in the conversation surrounding mental health, alongside a growing recognition of the importance of mental health’s impact on physical health, has propelled leagues and players associations to develop and advocate for more robust programming to support professional athletes.

This paper will discuss the current state of mental health resources in Major League Baseball (MLB), the National Basketball Association (NBA), National Football League (NFL), and National Hockey League (NHL). This paper also examines the historical context which shaped the field of sports psychology, a discipline dedicated to optimizing athlete mental health. Additionally, this paper explores how antitrust and labor laws impact the collective bargaining process in professional sports in general, before analyzing the current collectively bargained for mental health resources available for professional athletes today.

This paper concludes by providing a comprehensive list of the best practices that leagues and players associations should consider when drafting or modifying mental health resources in the future. Analyzing the historical, legal, and societal dimensions of the mental health side of sports, this paper seeks to contribute insights into how professional athletes and their mental health journeys can be best supported by their leagues.

II. Background

A. Mental Health Generally

More than one in five American adults live with a mental illness, totaling more than 60 million people.¹ In addition, the COVID-19 pandemic attributed to a 25% increase in anxiety and depression rates globally, and events of civil unrest both in America and worldwide have also negatively impacted the mental and emotional health of millions of people.²

Successful athletes, though widely celebrated for their physical strengths, speeds, and skills, are not immune to these same mental health challenges. Rather, a heightened sense of pressure to compete at the best possible level, constant exposure to scrutiny from the media and fans, and a fear of failure can take a considerable toll on an athlete's mental health.³ In particular, in recent years, world-famous athletes like Naomi Osaka, Simone Biles, and Michael Phelps have propelled the conversation surrounding athlete mental health into a new direction, both speaking frankly about their struggles and taking time away from competing at the highest levels to focus on their mental health.⁴

¹ See *Mental Illness*, National Institute of Mental Health (Mar. 2023), <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited Apr. 14, 2024).

² *COVID-19 pandemic triggers 25% increase in prevalence of anxiety and depression worldwide*, World Health Organization (Mar. 2, 2022), <https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide> (last visited Apr. 14, 2024); see Wai Kai Hou et al., *Trends of Depression and Anxiety During Massive Civil Unrest and COVID-19 in Hong Kong, 2019-2020*, 145 *Journal of Psychiatric Research* 77-84 (2021); see also Isis Claire Z.Y Lim et al., *Prevalence of Depression, Anxiety and Post-Traumatic Stress in War- And Conflict-Afflicted Areas: A Meta-Analysis*, 145 *Frontiers in Psychiatry* 13 (2022); see also Dan Witters, *U.S. Depression Rates Reach New Highs*, Gallup (May 17, 2023), <https://news.gallup.com/poll/505745/depression-rates-reach-new-highs.aspx>.

³ See Nyden Kovatchev, *The Rise of Mental Health Awareness in Sports: Breaking the Stigma*, LinkedIn (Mar. 5, 2024), <https://www.linkedin.com/pulse/rise-mental-health-awareness-sports-breaking-stigma-nyden-kovatchev-inp1c/>.

⁴ See generally Naomi Osaka, Naomi Osaka: 'It's O.K. to Not be O.K.', *New York Times* (July 8, 2021), <https://time.com/6077128/naomi-osaka-essay-tokyo-olympics/>; See generally Daniella Silva, 'We're Human Too': Simone Biles Highlights Importance of Mental Health in Olympics Withdrawal (July 27, 2021), <https://www.nbcnews.com/news/olympics/we-re-human-too-simone-bileshighlights-importance-mental-health-n1275224>; See generally Cathy Cassatta, Michael Phelps: 'My Depression and Anxiety Is Never Going to Just Disappear', *HealthLine* (May 17, 2021), <https://www.healthline.com/health-news/michael-phelps-my-depression-and-anxiety-is-never-going-to-just-disappear>.

B. History of Sports Psychology

While the conversation surrounding athlete mental health has grown considerably in the last ten years, the concept of researching how an athlete's mindset may affect athletic performance dates back to the late nineteenth century.⁵ In 1921, psychologists at Columbia University conducted tests on Babe Ruth, attempting to understand why he was such a prolific hitter.⁶ The tests gained significant media attention and *The New York Times* printed Ruth's results on the front page.⁷

In 1938, P.K. Wrigley, owner of the Chicago Cubs, was the first American professional sports team owner to hire a psychologist to help improve his team's performance.⁸ Wrigley hired Coleman Griffith, a psychologist and professor at the University of Illinois, who first began studying athletics and psychology in 1918 by researching athlete reaction times.⁹ He also taught the first American college course on psychology and athletics in 1921, and published two textbooks, *The Psychology of Coaching* in 1926 and *The Psychology of Athletics* in 1928.¹⁰ Griffith is now referred to as the father of sports psychology.¹¹

Eager to improve team performance so much to be able to return to the World Series, Wrigley hoped hiring Griffith to the staff would be "something extra to push [the Cubs] over the

⁵ See Saul Mcleod, PhD, *Social Facilitation Theory In Psychology*, SIMPLY PSYCHOLOGY (Oct. 5, 2023), <https://www.simplypsychology.org/social-facilitation.html> (discussing Norman Triplett's 1898 research on the speed records of cyclists, "notic[ing] that racing against each other rather than against a clock increased cyclists' speeds").

⁶ See Hugh S. Fullerton, *Why Babe Ruth is Greatest Home-Run Hitter*, POPULAR SCIENCE MONTHLY, (1921), retrieved from *Classics in the History of Psychology*, <https://psychclassics.yorku.ca/Fullerton/> (noting psychologists tested Ruth's reaction times, attention span, memory, learning, and coordination).

⁷ Alfred H. Fuches, *Babe Ruth sees a psychologist*, AMERICAN PSYCHOLOGICAL ASSOCIATION, (November 2009), <https://www.apa.org/monitor/2009/11/babe-ruth> (last visited Apr. 14, 2024).

⁸ Green, C. D. (2009). Coleman Roberts Griffith: "Father" of North American sport psychology. In C. D. Green & L. T. Benjamin, Jr. (Eds.), *Psychology gets in the game: Sport, mind, and behavior, 1880–1960* (pp. 202–229). University of Nebraska Press.

⁹ See Christopher D Green, *The Chicago Cubs and 'The Headshrinker': An Early Foray into Sports Psychology*, Spring 2011, THE BASEBALL RESEARCH JOURNAL (2011), <https://sabr.org/journal/article/the-chicago-cubs-and-the-headshrinker-an-early-foray-into-sports-psychology/>.

¹⁰ *Id.*

¹¹ *Id.*

top.”¹² Analyzing each player using filming and laboratory equipment, Griffith wrote more than 600 pages of reports about the Cubs between 1938 and 1940, including advice about how players, managers, and teams can learn to work better together as a unit to be a more effective baseball club.¹³ Though Griffith’s stint with the Cubs ended after the 1940 season, his tenure marked the first time that a “sports psychologist” worked directly on the staff within a professional sports organization.¹⁴

Scientific and ownership interests in how athletes’ minds affected athletic performance would only continue to grow in the twentieth century. In 1949, MLB’s St. Louis Browns owners hired David Tracy, a hypnotist, in an attempt to help to improve team performance by hypnotizing players before and during games.¹⁵ Tracy left after the 1949 baseball season to join the staff for the NHL’s New York Rangers, where on game days, “he put the whole team under hypnosis before the matchup and between periods.”¹⁶ While there is no evidence that Tracy was ever trained or schooled as a psychologist, reports indicate that he had an overwhelmingly positive effect on players using hypnosis and relaxation techniques.¹⁷ Hypnotists continued to work with professional athletes throughout the 1950s, 1960s, and 1970s, providing services to calm athletes down before and during games.¹⁸

¹² *Id.*

¹³ See Christopher D Green, *Psychology Strikes Out: Coleman R. Griffith and the Chicago Cubs*, 6 *History of Psychology* 267-283 (2003) (summarizing Griffith’s works and stating the baseball manager by default essentially uses psychology when he “handle[s] men” whether he knows it or not, and that players are psychologists too in that they must interact with the manager, the coaches, and each other as well. The only question Griffith posed is whether coaches and players use psychology effectively).

¹⁴ See Green, *supra* note 9.

¹⁵ See Julie Kliegman, *He Had Them Mesmerized*, *Sports Illustrated* (Mar. 4, 2024), <https://www.si.com/mlb/2024/03/04/julie-kliegman-mind-game-book-excerpt>.

¹⁶ *Id.*

¹⁷ See Vincent J Granito, *History of Sport, Exercise, and Performance Psychology in North America*, Lorain County Community College (May 24, 2017), retrieved from <https://oxfordre.com/psychology/display/10.1093/acrefore/9780190236557.001.0001/acrefore-9780190236557-e-133;jsessionid=78FB036509D891CE346C0490946C84F8?result=1&rskey=mqjnPy>.

¹⁸ See Alan S Kornspan & Andrew D Knapp, *The Work of Harvey Dorfman: A Professional Baseball Mental Training Consultant*, 2015 *Baseball Research Journal* (2015), retrieved from <https://sabr.org/journal/article/the->

Likely due to the Cold War, the space race, and an increased emphasis on success at the Olympic Games, interest in many fields of science (including sports psychology) grew rapidly in the 1950s and 1960s.¹⁹ Prior to this increased overall interest in the subject, the research in sports psychology was “mainly dedicated to social psychology in the context of physical activity,” but the conversation began to shift in the 1960s to research related to “psychological knowledge to help athletes in their sport environment.”²⁰

In 1965, the First World Congress of Sport Psychology was hosted in Rome, “mark[ing] the beginning of worldwide interest and institutionalization of the field.”²¹ At the World Congress, the International Society of Sport Psychology launched, and the International Journal of Sport Psychology published its inaugural issue in 1970.²² The conversation and research related to sports psychology continued to evolve throughout the 1970s, with a continued emphasis on the mental side of sports and the cognitive explanations of behaviors and thought processes of athletes.²³ In 1980, the United States Olympic Committee created a sport psychology advisory board and hired its first sports psychologist in 1985, who traveled to the Olympic Games with Team USA.²⁴

[work-of-harvey-dorfman-a-professional-baseball-mental-training-consultant/#sdendnote8anc](#) (citing Alan S. Kornspan and Mary J. MacCracken, “The Use of Psychology in Professional Baseball: The Pioneering Work of David F. Tracy,” “State Psychologist Given Baseball Job”, *The Progress*, May 27, 1957, 12. ; “Whitey Ford Quits Smoking, Finds That His Stamina Has Increased”, *Post-Crescent*, D5, May 5, 1963, D5 ; “Perry Wins 5th,” May 12, 1966, *The Lima News*, D1 ; Dennis Morabito, “Kirkpatrick Hit Sparks 2-1 edge”, *Valley Independent*, May 31, 1975, 6).

¹⁹ See Sidónio O Serpa, *The Cold War, the International Sport Psychology and the ISSP*, 51 *International Journal of Sport Psychology* 409-435 (2021).

²⁰ Lauren Becker, *Where It All Began: The History of Sport Psychology Research*, Carolina Performance for Excellence in Sports, Life and Business (Nov. 18, 2015), <https://www.carolinaperformance.net/new-blog/2015/6/24/where-it-all-began-the-history-of-sport-psychology-research>.

²¹ *The first 20 years*, International Society of Sport Psychology (2024), <https://issponline.org/about/history/>.

²² *Id.*

²³ See Kornspan, *supra* note 18 (citing Alan S. Kornspan, “History of Sport and Performance Psychology” in *The Handbook of Sport and Performance Psychology*, edited by Shane M. Murphy, 3-21. New York: Oxford Press); see also Emily Ann Roper, *Women Working in Sport Psychology: A Feminist Examination of Women’s Career Experiences*, 2001, https://trace.tennessee.edu/cgi/viewcontent.cgi?article=8402&context=utk_graddiss (last visited Apr. 14, 2024) at 4.

²⁴ See Roper, *supra* note 23.

During the 1980s, MLB's Oakland Athletics, Baltimore Orioles, Chicago White Sox, St. Louis Cardinals, and Texas Rangers all reportedly had "full-time mental training consultants" hired on staff, to assist players and teams with the "mental game of baseball" by developing mental skills "for the purpose of enhancing performance."²⁵ Helpful skills included "develop[ing] a routine before each pitch or each at bat," separating emotions from the tasks at hand, and an emphasis on focus.²⁶

Since the 1980s, the field of sports psychology has only continued to grow alongside advances in technology and general understanding of human psychology, with athletes and coaches throughout America's professional sports leagues and Olympic teams seeking performance and mental health services both on and off the field. Sport psychology's rise and expansion in the last forty years in particular has led to the creation of several career opportunities within the industry, with a variety of educational standards required.

C. Sports Psychologists, CMPCs, and Mental Performance and Skills Coaches

Today, there are several career options and certification levels available to people working within the "sports psychology" landscape. To begin generally, the terms "therapist" and "psychologist" are often used interchangeably, and these practitioners may also be referred to as counselors, social workers, or clinicians.²⁷ And "[w]hile the term therapist encompasses various professions in the field of psychotherapy, it's important to note that all psychologists can be considered therapists. However, not all therapists are psychologists. Psychologists, with their

²⁵ Kornspan, *supra* note 18.

²⁶ *Id.*

²⁷ Brad Brenner, *Therapist v. Psychologist: What's the Difference?*, Therapy Group of DC (2020), <https://therapygroupdc.com/therapist-dc-blog/therapist-vs-psychologist-whats-the-difference/> (last visited Apr. 17, 2024).

specialized education and expertise in understanding human behavior and mental processes, often provide therapy as a fundamental aspect of their practice.”²⁸

For sports psychology specifically, according to the American Psychological Association, “[s]ports psychology is a proficiency that uses psychological knowledge and skills to address optimal performance and well-being of athletes, development and social aspects of sports participation, and systemic issues associated with sports setting and organizations.”²⁹ Sports psychologists assist athletes in building cognitive and behavioral skills for performance enhancement, including conducting exercises to help develop concentration, self-confidence, emotion management, and leadership.³⁰ Additionally, sports psychologists “help [athletes] manage mental health challenges affecting their athletic performance. If athletes struggle with anxiety, depression, eating disorders, anger management, motivation or communication with coaches or teammates, they may not perform at their best levels. Sport psychologists help athletes address these issues and, in turn, improve their performance.”³¹

There are rigorous educational requirements necessary to become a licensed sports psychologist. A sports psychologist must earn at least a bachelor’s and master’s degree in sports psychology (or a related field for the bachelor’s degree).³² A doctorate in sports psychology is necessary for some positions, while a master’s degree qualifies for others.³³ In addition to completing the necessary degrees, a sports psychologist must also meet specific state licensing

²⁸ *Therapist vs. psychologist: Are they different?*, All Psychology Schools (2023),

<https://www.allpsychologyschools.com/blog/differences-therapist-psychologist/> (last visited Apr. 17, 2024).

²⁹ *Sport Psychology*, American Psychological Association (2008), <https://www.apa.org/ed/graduate/specialize/sports>.

³⁰ *See id.*

³¹ Sheryl Grey, *How To Become A Sport Psychologist: Salary, Education Requirements And Job Growth*, Forbes Advisor (Dec. 8, 2023), <https://www.forbes.com/advisor/education/psychology-and-counseling/become-a-sports-psychologist/>.

³² *See How to Become A Sports Psychologist*, National University (2024), <https://www.nu.edu/blog/how-to-become-a-sports-psychologist/>.

³³ *Id.*

requirements for clinical psychologists, including typically two years of supervised practice and passing an exam.³⁴ A sports psychologist may also obtain board certification through the American Board of Sport Psychology upon completion of a recognized master's or doctorate level program.³⁵

Another related career option requiring certification is a Certified Mental Performance Coach ("CMPC").³⁶ CMPCs must complete a combination of educational and work requirements, pass a certification exam, and adhere to ethical principles and standards.³⁷ CMPCs must have master's or doctoral degrees "in sport science, psychology or a clearly related field," meet specific course requirements, and "complete[] an extensive, mentored applied experience."³⁸ A CMPC designation "signifies the highest standard of education and training in the psychological aspects of sport science," but "it does not designate the individual as a 'sport psychologist.'"³⁹

In contrast to sports psychologists and CMPCs, there are now many other roles within the sports industry which have minimal or no formal academic requirements. Examples include "performance coaches," "mental skills coaches," and "life coaches." While some people in these roles are licensed sports psychologists or CMPCs, many are not. Accordingly, a sports psychologist is clinically licensed to diagnose and treat mental health issues, while CMPCs, performance coaches, mental skills coaches, etc. are not. And while CMPCs and other non-sports psychologist practitioners may still be able to offer athletes mental health services and may be trained to observe the warning signs of more significant mental health issues, sports

³⁴ See Grey, *supra* note 31.

³⁵ *Id.*

³⁶ See *Certification*, Association for Applied Sport Psychology (2024), <https://appliedsportpsych.org/certification/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

psychologists are unique in their ability to be able to diagnose and help an athlete move forward with treatment plans and options.

III. Antitrust, Labor Law, and Collective Bargaining

In the United States, federal antitrust and labor laws provide the regulatory backdrop for collective bargaining in professional sports leagues. Within this framework, American professional sports leagues and players associations engage in collective bargaining, mainly to (1) shape various aspects of league operations and (2) to establish policies aimed at safeguarding the interests and well-being of players, including mental health resources. This collaborative negotiation process encompasses a broad spectrum of issues, including player safety, revenue sharing, and other critical facets of league governance. Through these negotiations, stakeholders from both the league-side and player-side work to ensure a balanced and equitable framework that promotes the long-term sustainability and financial success of the sport while prioritizing the protection and fair treatment of athletes.

A. Antitrust Law

Antitrust law protects American citizens by fostering competition and prohibiting activities that restrict interstate commerce and competition in the marketplace.⁴⁰ A fundamental statute within antitrust law is the Sherman Antitrust Act of 1890 (“Sherman Act”), the first federal statute to restrict monopolistic behaviors and practices in order promote fair competition.⁴¹ The Sherman Act states “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”⁴² Today, the Sherman Act seeks to “promote consumer

⁴⁰ See Legal Information Institute, *Sherman Antitrust Act*, Cornell Law School, https://www.law.cornell.edu/wex/sherman_antitrust_act (last retrieved Apr. 14, 2024).

⁴¹ *Id.*

⁴² Sherman Antitrust Act, 15 U.S.C. §§ 1-7 (1890).

welfare by enhancing economic efficiency in commerce.”⁴³ Violations of the Sherman Act range from civil punishments to criminal prosecutions.⁴⁴

Courts use two main standards of review when analyzing agreements under the Sherman Act to determine violations: (1) the *per se* standard and (2) the Rule of Reason.⁴⁵ The *per se* standard allows a court to find a Sherman Act violation when the “agreement between competitors is so obviously anticompetitive that there is no further analysis needed.”⁴⁶ The Rule of Reason is used for non-*per se* agreement analysis.⁴⁷ Using the Rule of Reason, courts will balance the anticompetitive effects of an agreement to “determine if the commercial benefits outweigh any competitive harm.”⁴⁸

Except for MLB (granted an antitrust exemption by the Supreme Court in 1922), professional American sports leagues and teams are generally subject to the Sherman Act and its provisions because they engage in interstate commerce.⁴⁹ Accordingly, “[a]nyone harmed by the actions of a sports team or league ... can challenge that team or league’s anticompetitive

⁴³ Christian Dennie, *Is Claret Correct? A Glance at the Purview of the Antitrust Labor Exemption*, 6 TEX. REV. ENT. & SPORTS L. 1, 10 (2005) (citing Sherman Antitrust Act, 15 U.S.C. §§ 1-2 (2004)).

⁴⁴ See Legal Information Institute, *supra* note 40.

⁴⁵ *Antitrust law basics – Section 1 of the Sherman Act*, Thomas Reuters, Corporate Legal (May 2, 2023), <https://legal.thomsonreuters.com/blog/antitrust-law-basics-section-1-of-the-sherman-act/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Leah Farzin, *On the Antitrust Exemption for Professional Sports in the United States and Europe*, 22 Jeffrey S. Moorad Sports Law Journal 75-108 (2015).

⁴⁹ See Dennie, *supra* note 43; see also Karen M Lent & Anthony J Dreyer, *The current state of Major League Baseball’s antitrust exemption*, Reuters (July 20, 2023), <https://www.reuters.com/legal/legalindustry/current-state-major-league-baseballs-antitrust-exemption-2023-07-20/> (explaining Supreme Court’s 1922 decision in *Federal Baseball Club of Baltimore v. National League of Professional Base Ball Clubs* 259 U.S. 200 (1922), wherein the unanimous majority decision written by Justice Holmes held “baseball was not interstate commerce because games are played within the individual states and thus, not under the jurisdiction of the Sherman Act.” The Supreme court upheld the *Federal Baseball* decision in 1953 in *Toolson v. New York Yankees, Inc.* and in 1972 in *Flood v. Kuhn*. Following the *Flood* decision, Congress “partially repealed MLB’s antitrust immunity with the Curt Flood Act of 1998, but only to allow current MLB players to file antitrust suits against MLB”).

behavior under the Sherman Act as an illegal restraint of interstate trade.”⁵⁰ A court will then use the Rule of Reason standard of review to determine if there was a violation of the Sherman Act.⁵¹

Under this model, the Sherman Act prevents sports leagues from unreasonable restraints on trade and provides professional athletes with the right to bring a claim against their respective leagues if they believe that the league has illegally restricted their rights.⁵² This right of action dramatically impacts the American sports landscape, as evidenced by several decades of increasing players’ rights through collective bargaining and through various court cases.⁵³ The Sherman Act and antitrust law will continue to serve as an important guardrail in the sports industry, discouraging anticompetitive behavior from leagues and preventing management from including language in CBAs which unreasonably restricts trade by or harming players’ rights.

However, one carve-out from antitrust law that exists thanks to the product of unions and collective bargaining is the “non-statutory labor exemption.”⁵⁴ The non-statutory labor exemption “removes from antitrust scrutiny restraints on trade that are the product of a collective bargaining agreement between labor and management.”⁵⁵ Put simply, this exemption recognizes that certain agreements and actions that would otherwise be considered anticompetitive may be

⁵⁰ Farzin, *supra* note 48 at 76; *See generally* Sports Broadcasting Act of 1961, 15 U.S.C. §§ 1291-95 (1961) (noting professional sports leagues are statutorily exempt from antitrust laws “for the purpose of collectively selling the rights to television broadcasts of games”). Broadcasting rights and exemptions for professional sports leagues are beyond the scope of this paper.

⁵¹ *Id.*

⁵² *See* Farzin, *supra* note 48 at 78-79.

⁵³ *See* Andrew Brandt, Executive Director, Jeffrey S. Moorad Center for the Study of Sports Law, Sports Law Advanced Legal Business Practices Lecture and Presentation at Villanova University Charles Widger School of Law (Fall 2022); *see also* Tymber W. Long, *Nice Try, NCAA—The Sherman Antitrust Act Applies to You, Too*, 61 Washburn L.J. Online 71 (2022), <https://washburnlaw.edu/wljonline/long-nice-try> (describing how in *NCAA v. Alston*, the Supreme Court upheld the decision that the NCAA’s limits on student-athlete compensation were in violation of the Sherman Act, leading to a dramatic shift in the operation of the NCAA and paving the way to the introduction of Name, Image, and Likeness rights for student-athletes); *see also generally* *NCAA v. Alston*, 141 S. Ct. 2141 (2021).

⁵⁴ Kieran M. Corcoran, *When Does the Buzzer Sound?: The Nonstatutory Labor Exemption in Professional Sports*, 94 No. 3 Columbia L. Rev. 1045 (Apr., 1994).

⁵⁵ *Id.*

necessary for effective labor-management negotiation and the preservation of labor rights.⁵⁶ In the context of professional sports, the non-statutory labor exemption applies in the collective bargaining negotiations and agreements between America’s professional sports leagues and their respective certified players’ unions.

B. Labor Law

Labor law works alongside antitrust law to guide the operation of professional sports leagues and the collective bargaining negotiations between MLB, the NBA, NFL, and NHL and their respective players’ associations. The National Labor Relations Act (“NLRA”), a federal labor law statute originally passed in 1935, encourages collective bargaining and protects the rights of employees (whether unionized or not) by promoting workplace democracy and the right for employees “to seek better working conditions and designation of representation without fear of retaliation.”⁵⁷ The NLRA details five main “unfair labor practices” for employers, including: (1) interfering with, restraining, or coercing employees, (2) dominating or interfering with the formation or administration of any labor organization, (3) discriminating against employees in an effort to either encourage or discourage membership in a labor organization, (4) discharging or discriminating against any employee who has filed or testified in a NLRA action, and (5) refusing to collectively bargain with labor representatives for employees.⁵⁸

The NLRA establishes the National Labor Relations Board (“NLRB”), which oversees the enforcement and regulation of the NLRA’s provisions.⁵⁹ In general, to create a new union, an election petition must be filed with the nearest NLRB Regional Office, “showing support for the

⁵⁶ *See generally id.*

⁵⁷ *The Law*, National Labor Relations Board, <https://www.nlr.gov/about-nlr/rights-we-protect/the-law> (last retrieved Apr. 24, 2024).

⁵⁸ *See* National Labor Relations Act, 29 U.S.C. §158.

⁵⁹ *See id.* at § 3; *see also generally The NLRB Process*, National Labor Relations Board, <https://www.nlr.gov/resources/nlr-process> (last retrieved Apr. 24, 2024).

petition from at least 30% of employees.”⁶⁰ After the NLRB makes a determination the “union is qualified, and there are no existing labor contracts or recent elections that would bar an election,” the NLRB “will seek an election agreement between the employer, union, and other parties” to certify the “union as the bargaining representative of a unit of employees,” achieved by securing a majority vote.⁶¹ If a union receives a majority of the votes cast, it becomes “certified as the employees’ bargaining representative and is entitled to be recognized by the employer as the exclusive bargaining agent for the employees in the unit. Failure to bargain in good faith with the union at this point [by the employer] is an unfair labor practice.”⁶² MLB, the NBA, NFL, and NHL’s players’ associations currently serve as each respective league’s certified labor union.⁶³

The non-statutory labor exemption under antitrust law incentivizes professional sports leagues to engage in collective bargaining with each league’s certified players’ association. With the NLRA helping to balance the bargaining power between league management and labor (players), collective bargaining is encouraged and the resulting CBAs are shielded from antitrust scrutiny.

This framework, built upon both antitrust and labor laws, empowers players to actively participate in the bargaining process for CBAs, ensuring their voices are heard in matters affecting their employment conditions and rights.

IV. The Power of Sports Unionization

Despite the framework of antitrust and labor law, along with various unionization attempts throughout the twentieth century, it took until 1968 for the first CBA between an

⁶⁰ *Conduct Elections*, National Labor Relations Board, <https://www.nlr.gov/about-nlr/what-we-do/conduct-elections#:~:text=Elections%20to%20certify%20or%20decertify,present%20when%20ballots%20are%20counted>. (last retrieved Apr. 24, 2024).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Section IV of this paper provides more information about the history and operation of MLB, NBA, NFL, and NHL’s certified labor unions, referred to as players’ associations or players’ unions.

American professional sports league and a players' association to form, finally granting professional athletes "the same basic employment rights that people in other professions had long taken for granted."⁶⁴ Prior to the creation and implementation of CBAs, many "athletes were treated as pieces of property with no rights to pensions, healthcare benefits, or even lunch money for road games."⁶⁵ In the last half-century, each of the four major professional sports leagues in America have formed their own players' unions, and successfully negotiated several CBAs with league management. This section will provide a brief overview related to the history of each league's players' association and subsequent CBA negotiations with league management.

A. Major League Baseball Players Association

The history of unionization in American professional sports is almost as old as the sport of baseball itself. Beginning in the late 1800s, players unsuccessfully attempted several times to unionize in an effort to combat baseball's reserve clause and increase player rights.⁶⁶ In 1953, in the fifth attempt for MLB players to organize, the Major League Baseball Players Association (MLBPA) formed, uniting over frustrations derived from underfunded player pension funds.⁶⁷

In 1966, the MLBPA transformed from an association into a "bona fide labor union," hiring union organizer Marvin Miller as the MLBPA's executive director.⁶⁸ Miller, an economist who previously worked for unions such as the National War Labor Board, the United Auto

⁶⁴ *History*, Major League Baseball Players Association <https://www.mlbplayers.com/history> (last visited Apr. 14, 2024).

⁶⁵ Michael Macklon, *How Labor Unions Changed Pro Sports*, Investopedia (Jan. 11, 2023), <https://www.investopedia.com/financial-edge/0711/the-rise-of-labor-unions-in-pro-sports.aspx>.

⁶⁶ *History*, *supra* note 64; see also generally Stuart Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption, Chapter 1: The Reserve Clause*, Oxford Academic, 3-34 (2013), <https://academic.oup.com/book/11629/chapter-abstract/160521434?redirectedFrom=fulltext>.

⁶⁷ Michael Hauptert, *Marvin Miller and the Birth of the MLBPA*, Spring 2017 Baseball Research Journal (2017), retrieved from <https://sabr.org/journal/article/marvin-miller-and-the-birth-of-the-mlbpa/> (explaining player pension funds were "originally funded by player contributions and proceeds from the sale of World Series radio and television rights," but the fund became nearly insolvent and players demanded the league to know why)

⁶⁸ *Marvin Miller*, Major League Baseball Players Association (2024), <https://www.mlbplayers.com/marvin-miller>.

Workers, and the United Steelworkers of America, transformed the landscape of professional sports by using the strength of player solidarity to negotiate the first-ever CBA in professional sports with MLB in 1968.⁶⁹ Miller remained the executive director until his retirement in 1982, and in his time with the MLBPA, he earned players the rights to “arbitration for disciplinary issues and salaries, overturned the reserve rule, increased the size of [player] pensions,” while salaries grew “by nearly 2,000 percent.”⁷⁰

Most recently, the MLBPA and MLB agreed to the newest iteration of the CBA on March 10, 2022, ending a 99-day owner-imposed lockout, after the previous CBA expired on December 1, 2021.⁷¹ Following “weeks of frustrating negotiations,” the MLBPA and MLB reached an agreement for the 2022-2026 CBA, after battling largely over economics and players wanting “to be paid more at younger ages because that’s when they are in their prime.”⁷²

The 2022-2026 CBA features updates and changes such as expanding the postseason to twelve teams, the addition of a draft lottery (presumably to discourage “tanking”), approval of the use of advertising patches on jerseys, and the formation of a joint committee to make decisions about rule changes (such as the pitch clock, implemented in 2023).⁷³ The 2022-2026 CBA shall remain effective through December 1, 2026.⁷⁴

⁶⁹ Haupert, *supra* note 67.

⁷⁰ *Id.*

⁷¹ See Alden Gonzalez, *MLB commissioner Rob Manfred, union chief Tony Clark hail new CBA as lockout ends*, ESPN (Mar. 10, 2022), https://www.espn.com/mlb/story/_/id/33470321/sources-mlb-union-reach-tentative-agreement-new-cba-salvage-162-game-season.

⁷² Dan Gartland, *Here Are the Most Important Details in the New MLB CBA*, Sports Illustrated (Mar. 11, 2022), <https://www.si.com/mlb/2022/03/11/mlb-collective-bargaining-agreement-details-rule-changes>; see also Jesse Rogers, *Everything you need to know about MLB's lockout*, ESPN (Dec. 2, 2021), https://www.espn.com/mlb/story/_/id/32754352/everything-need-know-mlb-looming-lockout.

⁷³ *Id.*; see also *Pitch Timer (2023 rule change)*, MLB <https://www.mlb.com/glossary/rules/pitch-timer>.

⁷⁴ See *Collective Bargaining Agreement*, Major League Baseball Players Association <https://www.mlbplayers.com/cba>; see also *MLB, players finalize collective bargaining deal through '26*, Associated Press (May 9, 2023), <https://apnews.com/article/mlb-collective-bargaining-agreement-labor-contract-97a55f89a04910b159069a3ca8444b7d>.

B. National Basketball Players Association

Founded in 1954, the National Basketball Players Association (NBPA) is the current union for professional basketball players in the NBA.⁷⁵ Its mission is “to protect and support the rights and talents of [its] players, magnify the power of their collective will, and amplify their voices as leaders who will transcend sport and society globally.”⁷⁶ In the 1960s, the NBPA began to gain traction, with players becoming increasingly vocal about their rights, working conditions, and benefits.⁷⁷

In 1970, NBA superstar Oscar Robertson spearheaded a pivotal moment for the NBPA, filing an antitrust lawsuit against the league, which led to the end of the reserve clause in the NBA and creation of free agency.⁷⁸ Three years prior, the American Basketball Association (“ABA”) was formed, “and the new competition helped cause players’ salaries to rise,” amongst other benefits provided to the players.⁷⁹ Noticing this shift, the NBA began discussions with the ABA to possibly merge, and thereby end the increase in players’ salaries and competition for players from the two leagues.⁸⁰

Through his antitrust lawsuit (claiming the merger between the ABA and NBA was a violation of antitrust law), Robertson and the NBPA were able to block the merger and force the NBA owners to come to the negotiation table, resulting in an increase in player minimum salaries, a playoff pool for players, and a per diem allowance.⁸¹ When the NBA and ABA finally merged in 1976, the NBA and NBPA agreed to a six-year CBA, which further increased player

⁷⁵ See *Overview & History*, NBPA (2024), <https://nbpa.com/about>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See generally *Robertson v. National Basketball Assn.*, 389 F. Supp. 867 (1975).

⁷⁹ See *Overview & History*, *supra* note 75.

⁸⁰ *Id.*

⁸¹ *Id.*; see also Robert Bradley, *Labor Pains Nothing New to the NBA*, The Association for Professional Basketball Research, <https://www.apbr.org/labor.html> (last accessed Apr. 24, 2024).

minimum salaries, added benefits like medical and dental coverage, and incorporated player's shares for the All-Star Game.⁸²

The current CBA between the NBA and NBPA was ratified in April 2023, effective as of July 1, 2023.⁸³ New additions include several changes to the financial side of the league and its operation (luxury tax adjustments, limits on salary cap rises, etc.), “eligibility criteria for end-of-season awards,” the introduction of an in-season tournament for the 2023-24 season, and more.⁸⁴ The 2023 NBA-NBPA CBA shall remain effective until the end of the 2029-30 NBA season, with each side having the ability to opt out after the 2028-29 season.⁸⁵

C. National Football League Players Association

The National Football League Players Association (NFLPA) began in 1956, originally forming to “force owners to provide basics like clean uniforms and safer equipment,” with the first CBA signed in 1968.⁸⁶ Today, the NFLPA represents its “players’ interests during negotiations for the next CBA and to make sure players are well informed and prepared for them, ...[r]epresents all players in matters concerning wages, hours and working conditions,” and provides other services to players and their communities on and off the field.⁸⁷

The first CBA was relatively “underwhelming,” featuring minimum salaries (\$9,000 for rookies, \$10,000 for veterans), no neutral arbitration (the NFL commissioner is “the judge and

⁸² See Bradley, *supra* note 81.

⁸³ *Collective Bargaining Agreement (CBA)*, NBPA, <https://nbpa.com/cba>.

⁸⁴ Logan Reardon, *What are the CBA changes in the NBA? Full breakdown for 2023-24 season*, NBC Chicago (June 6, 2023), <https://www.nbcchicago.com/news/sports/what-are-the-cba-changes-in-the-nba-full-breakdown-for-2023-24-season/3155945/>; see also Mark Deeks, *A List Of More Changes In The New NBA Collective Bargaining Agreement*, Forbes (June 30, 2023), <https://www.forbes.com/sites/markdeeks/2023/06/30/a-list-of-more-changes-in-the-new-nba-collective-bargaining-agreement/?sh=3199c288581f>.

⁸⁵ See *Collective Bargaining Agreement*, *supra* note 83.

⁸⁶ *How the NFLPA Works*, NFLPA (2024), <https://nflpa.com/about>; see also *1960s: AFL vs. NFL*, NFLPA (2024), <https://nflpa.com/about/history/1960s-afl-vs-nfl>.

⁸⁷ *Id.*

jury,”) and owners contributing to the player pension fund.⁸⁸ The American Football League (“AFL”), a rival professional football league to the NFL, was founded in 1959 and competed in the marketplace for fan attention and viewership, but also diverged solidarity from a unionization standpoint, creating its own AFL Players Association (“AFLPA”).⁸⁹ The NFL’s first CBA was underwhelming because the “players on the ten AFL clubs accepted the owners’ terms without telling the NFLPA leaders.”⁹⁰

The AFL and NFL merged in 1970, uniting the AFLPA and NFLPA’s forces to continue to drive positive change and improve player rights in professional football.⁹¹ Throughout the 1970s, various lawsuits and CBA negotiations plagued the NFL and NFLPA, resulting in a strike and a three-year period of league operation without a CBA in place.⁹² However, all of the discontent in the 1970s between the league and players laid the foundation for the NFLPA to achieve wins for the players such as the creation of a free agency system, increased minimum salaries, additional benefits, and a more formalized negotiation system between the NFLPA and NFL.⁹³ Successful CBA negotiations continued throughout the 1980s, 1990s, and early 2000s, increasing players’ rights over time.⁹⁴

Following the first NFL lockout in almost twenty years in 2011, the NFL and NFLPA agreed to a historic ten-year CBA in August 2011, which was highlighted by improved player

⁸⁸ *Id.*

⁸⁹ *Id.*; see also Fred Frommer, *American Football League*, Britannica (Mar. 15, 2024), <https://www.britannica.com/topic/American-Football-League-American-gridiron-football-organization>.

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² *See 1970s: The NFLPA Becomes a Real Union*, NFLPA (2024), <https://nflpa.com/about/history/1970s-nflpa-becomes-real-union>.

⁹³ *See id.*

⁹⁴ *See id.*; see also *1980s: The Fight for Free Agency*, NFLPA (2024), <https://nflpa.com/about/history/1980s-fight-free-agency>; see also *1990s: Growth of the Union*, NFLPA (2024), <https://nflpa.com/about/history/1990s-growth-of-the-union>.

rights related to health and safety.⁹⁵ Upon its expiration, the NFL and NFLPA agreed to the 2020 CBA, which continues to build off the progress made for player rights in the 2011 CBA.⁹⁶ Changes to the 2020 CBA include a 14-team playoff, an increased number of active players on gameday rosters, and further improvements to player health and safety, including the establishment of a new Comprehensive Mental Health and Wellness Committee.⁹⁷ The 2020 CBA is set to expire at the end of the 2030 NFL season.⁹⁸

D. National Hockey League Players' Association

The National Hockey League officially began in 1917, but the National Hockey League Players' Association (NHLPA) did not exist formally until June 1967.⁹⁹ As the bargaining representative for NHL players today, the NHLPA's primary duty is "to act as the collective bargaining unit on behalf of the players," but it also assists with marketing, licensing, insurance, and other areas of support for NHL players.¹⁰⁰

Unionization efforts in the NHL were slow to begin, considering the highly competitive six-team makeup of the league, in which players rarely spoke to each other if they were on separate teams.¹⁰¹ Even though the NHL owners recognized the NHLPA in 1967, it took until 1975 for the parties to reach an agreement on the first CBA.¹⁰² Alan Eagleson, executive director

⁹⁵ See *2000s: A Landmark CBA*, NFLPA (2024), <https://nflpa.com/about/history/2000s-a-landmark-cba>.

⁹⁶ See *id.*; see also *2020 NFL-NFLPA CBA: Need to Know*, NFL Football Operations (2024), <https://operations.nfl.com/inside-football-ops/players-legends/2020-nfl-nflpa-cba-need-to-know/>.

⁹⁷ See *id.*; see Section V of this paper for more information about the Comprehensive Mental Health and Wellness Committee.

⁹⁸ See *id.*

⁹⁹ See *A (Brief) History of the League*, NHL (2024), <https://www.nhl.com/history/a-brief-history-of-the-league>; see also *Frequently Asked Questions*, NHLPA (2024) <https://www.nhlpa.com/the-pa/what-we-do/faq>.

¹⁰⁰ *What We Do*, NHLPA (2024), <https://www.nhlpa.com/the-pa/what-we-do>.

¹⁰¹ See Liz Mullen, *The making of a union: NHLPA celebrates a milestone of its own, as players' union turns 60*, *Sports Business Journal* (Jan. 23, 2017), <https://www.sportsbusinessjournal.com/Journal/Issues/2017/01/23/Labor-and-Agents/NHLPA.aspx> (according to Ted Lindsay, a Detroit Red Wings player, who both organized players from opposing teams to meet and met with lawyers to who had worked with MLB players in the 1950s regarding "getting rights for hockey players").

¹⁰² *Frequently Asked Questions*, NHLPA (2024), <https://www.nhlpa.com/the-pa/what-we-do/faq>.

of the NHLPA from 1967 until 1991, who was known for his “warm relationship with management” compared to other sports union leaders, successfully negotiated four CBAs with the league without a lockout or a strike.¹⁰³

The first labor strike in the NHL occurred in 1992, after the “cozy relationship” between the NHL and NHLPA had vanished following Eagleson’s departure as executive director.¹⁰⁴ In 1993, the NHL hired its first commissioner, Gary Bettman, to assist with CBA negotiations.¹⁰⁵ Tensions between labor and management continued throughout much of the 1990s and early 2000s between the NHL and NHLPA, resulting in player strikes and owner lockouts.¹⁰⁶ However, due to the NHL’s rise in popularity and negotiation efforts from the NHLPA, despite the lockouts, average salaries for NHL players rose from \$271,000 in 1990 to more than \$1,400,000 after the end of the 2004-2005 lockout.¹⁰⁷

In January 2013, the NHL and NHLPA agreed to a ten-year CBA, ending a 113-day lockout, which shortened the 2012-13 NHL season to 48 games.¹⁰⁸ Changes in this CBA included limits on player contracts, adjusted players’ share of hockey-related revenue, and salary cap adjustments.¹⁰⁹ The NHL and NHLPA mutually agreed to extend the CBA in July 2020, “which will remain in effect until September 15, 2026.”¹¹⁰

¹⁰³ Mullen, *supra* note 101. Despite generally securing wins for the players during his time as executive director, Eagleson’s close relationships and conflicts of interest in his role ultimately led to an investigation by Canadian and American law enforcement, especially in how his conflicts related to “improprieties involving the players’ pension and disability insurance.” In 1994, Eagleson was charged “on more than 30 counts involving various alleged violations of the federal Racketeer Influenced and Corrupt Organizations law. Eagleson pleaded guilty, paid a \$700,000 fine, and served six months in jail.

¹⁰⁴ *Id.*

¹⁰⁵ *See id.*

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ *See* Patrick Rishe, *NHL Owners, Players Score New CBA Saving the 2012-13 Hockey Season*, *Forbes* (Jan 6, 2013), <https://www.forbes.com/sites/prishe/2013/01/06/nhl-owners-players-score-new-cba-saving-the-2012-13-hockey-season/?sh=1b76cd915385>.

¹⁰⁹ *See id.*

¹¹⁰ *Frequently Asked Questions*, *supra* note 102.

V. History of Professional Sports Leagues Mental Health Programming

Traditionally in American professional sports, the overall “macho” culture fostered an environment in which athletes were discouraged from talking about or seeking help related to mental health issues, with an overarching ideal that athletes should be both physically and mentally tough at all times.¹¹¹ Due to the topic’s taboo status, the conversation surrounding professional athletes’ mental health needs and the implementation of mental health services provided by the leagues (either through the collective bargaining process or otherwise) has been slow. However, as discussed, the conversation related to mental health has shifted considerably in recent decades, and the MLB, NBA, NFL, and NFL have each made efforts to implement and enhance mental health programming for athletes. Some of these league initiatives are the result of collective bargaining, while others have been independently established by the leagues or players’ associations. This next section establishes the history of these programs, some of the unique mental health challenges players generally face in each sport and league, and provides the framework in which current mental health programming operates for each league.

A. Major League Baseball

Despite being a team sport, “baseball is a game that fosters considerable pressure on individual performance.”¹¹² Players and coaches often describe baseball as a “game of failure,” where even the best hitters are failing seven out of ten times at the plate, for example.¹¹³ Former relief pitcher Ryan Buchter said in 2021, “Failure surrounds us. It engulfs us. We’re reminded of it by fans, scoreboards, websites, coaches, talent evaluators and seemingly everyone else. Even

¹¹¹ *Mental Health and Athletes*, Australia Wide First Aid (2023), <https://www.australiawidefirstaid.com.au/resources/mental-health-and-athletes>.

¹¹² Christine Armstrong, *Athletes And Mental Illness: Major League Baseball Steps Up To The Plate*, National Alliance on Mental Illness (Nov. 1, 2010), <https://www.nami.org/Blogs/NAMI-Blog/November-2010/Athletes-and-Mental-Illness-Major-League-Baseball>.

¹¹³ Christine Wong, *How sports taught Cal Ripken to get past failure*, CNBC (Apr. 1, 2016), <https://www.cnbc.com/2016/03/31/how-sports-taught-cal-ripken-to-get-past-failure.html>.

when we're really good. We're failing more than succeeding."¹¹⁴ Even the legendary Yogi Berra once asserted, "90 percent of the game is half mental."¹¹⁵

In addition to the high rate of failure associated with baseball, the MLB season is particularly grueling, with 81 away games per season where a player has "too much time to reflect on or obsess about shortcomings, and too little time in the company of family and friends who can offer perspective and support. Isolation from these support systems can also engender its own stresses and conflicted emotions."¹¹⁶ Moreover, baseball's "macho world" has traditionally "refused to recognize emotional weakness," according to former executive director of the MLBPA Marvin Miller.¹¹⁷ In his autobiography, he remarked, "Not only were baseball executives prejudiced against players with emotional problems, they pretended this didn't exist."¹¹⁸

From a publicity standpoint, over the last five decades no issue has plagued MLB more than its drug testing and enforcement policies. But importantly, the MLB's long history of developing its performance-enhancing drug policy influenced the creation and implementation of the league's official mental health programming for players. In 1971, MLB Commissioner Bowie Kuhn introduced the "first written drug policy" ahead of the 1971 MLB season, shortly after Congress had enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970.¹¹⁹

¹¹⁴ Tom Verducci, 'A Lot of Us Are F----- Up': Inside the Devastating Gig Economy of Relief Pitching, *Sports Illustrated* (May 10, 2021), <https://www.si.com/mlb/2021/05/10/relief-pitching-baseball-mental-health-daily-cover>.

¹¹⁵ See generally Yogi Berra, *The Yogi Book: I Really Didn't Say Everything I Said!* (1st ed. 1998).

¹¹⁶ Armstrong, *supra* note 112.

¹¹⁷ See generally Marvin Miller, *From A Whole Different Ball Game: The Inside Story of the Baseball Revolution* (1st ed. 2004).

¹¹⁸ *Id.*

¹¹⁹ GEORGE J. MITCHELL, REPORT TO THE COMMISSIONER OF BASEBALL OF AN INDEPENDENT INVESTIGATION INTO THE ILLEGAL USE OF STEROIDS AND OTHER PERFORMANCE ENHANCING SUBSTANCES BY PLAYERS IN MAJOR LEAGUE BASEBALL (Dec. 13, 2007), 26-27 [hereinafter MITCHELL REPORT], available at <https://files.mlb.com/mitchrpt.pdf>.

Each year between 1971 and 1985, “the Commissioner or his representatives issued memoranda to major league clubs reiterating the terms of the drug prevention and education program in substantially similar form.”¹²⁰ Amidst this period of change, MLB and its Commissioners office revised the policy in 1981 to “require each club to create an employee assistance program and permit any employee (including any player), under certain circumstances, to seek confidential alcohol or drug information and treatment ‘without disclosure to management of this fact.’”¹²¹

While the MLB initially mandated the creation of club employee assistance programs to focus on substance abuse issues, the programs’ scope broadened in recent decades, and are now “designed to help employees and their family members manage personal problems that may affect their work performance.”¹²² Employee Assistance Professional (“EAP”) programs now provide players with “support and guidance on a broad continuum of issues related to medical health. EAP consultations may involve a medical evaluation or counseling, or referrals for continued help.”¹²³ Each EAP program “is club-specific and generally includes a designated amount of free counseling sessions, most commonly 3-5, depending on the organization’s contract.”¹²⁴

However, many working within and playing for MLB feel that the league’s mandatory EAP program “alone is not enough” to support players’ mental health needs.¹²⁵ In November 2016, MLB and the MLBPA agreed to the 2017–2021 CBA, the first CBA for baseball to insert a

¹²⁰ *Id.* at 28.

¹²¹ *Id.* at 28-29.

¹²² Armstrong, *supra* note 112.

¹²³ *Id.*

¹²⁴ Brittany Ghiroli, ‘Way more common than people realize’: How some in MLB are bringing mental health into focus, *The Athletic* (May 12, 2023), <https://theathletic.com/4510054/2023/05/12/mlb-players-mental-health/>.

¹²⁵ *Id.*

provision specifically related to any sort of mental health programming.¹²⁶ In a new section titled “Sports Psychologists,” the CBA stated, “Each Club shall provide Players with access, on a voluntary basis, to confidential sports psychology resources in a private space.”¹²⁷ The 2017–2021 CBA further clarified that “[c]lubs that employ or provide Player access to a sports psychologist or psychologist under the Club’s Employee Assistance Program shall be deemed to have satisfied this requirement.”¹²⁸

Further in 2021, the league clarified “[e]very MLB team has at least one EAP trained to address a broad array of issues affecting mental and emotional well-being, such as alcohol or substance abuse, stress, grief, family issues or psychological disorders. The program has existed for more than 15 years and has been continually refined to meet the needs of a given moment, such as the COVID concerns that cropped up [in 2020].”¹²⁹ Moreover, the “club-centric EAPs coordinate with expert consultants from the Commissioner’s Office to obtain additional guidance in these confidential dealings. And this program operates in addition to – not in place of – the mental skills coaches and sports psychologists that most Major League teams hire.”¹³⁰

MLB and the MLBPA further adjusted the language regarding mental health in the most recent 2022–2026 CBA.¹³¹ The newest iteration adjusted the section title in the CBA from “Sports Psychologists,” to “Mental Health Resources,” and added a clause stating, “For Clubs

¹²⁶ 2017–2021 Basic Agreement between the 30 Major League Clubs and Major League Baseball Players Ass’n, 63, retrieved from https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/cba/2019/private_/30majorclubs_k9831_060122.pdf [hereinafter 2017–2021 MLB CBA].

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Anthony Castroince, *Mental well-being a focal point for MLB, clubs*, MLB (Apr. 27, 2021), <https://www.mlb.com/news/major-league-baseball-resources-for-mental-health>.

¹³⁰ *Id.*

¹³¹ 2022–2026 Basic Agreement between the 30 Major League Clubs and Major League Baseball Players Ass’n, 63, retrieved from https://www.mlbplayers.com/files/ugd/4d23dc_d6dfc2344d2042de973e37de62484da5.pdf [hereinafter 2022–2026 MLB CBA].

that provide access to other sports psychology services, mental skills training, and/or other similar resources, such services shall be voluntary, provided on a confidential basis, and offered in a private space.”¹³²

Additionally, MLB “maintains mental wellness resources under its Player Programs initiative,” including programming related to domestic violence, sexual assault, and child abuse prevention, “mental skills building,” a tobacco cessation program, a players, partners, and family helpline, and more.¹³³ The Players Programs initiative “is a cooperative venture between MLB, its clubs, and the union,” and is run by “[Billy] Bean (MLB vice president and special assistant to the commissioner); club Employee Assistance Program personnel; club medical staff; Jon Coyles, vice president of drug, health and safety programs; Dr. Larry Westreich, MLB consultant, behavioral health and addiction; and Dr. John Mariani, MLBPA medical advisor.”¹³⁴

In July 2023, representatives from all MLB clubs and the MLBPA attended a biannual MLB Mental Health Meeting.¹³⁵ The meeting came after “more players than ever” spoke out about mental health struggles and included conversations with “mental health clinicians and mental skills coaches” about how “to collaborate on new initiatives” for players.¹³⁶ Representatives from the other three major professional leagues also attended the meeting.¹³⁷ And while “[e]ach league has its own unique challenges ... solutions can often be effective across leagues.”¹³⁸

¹³² *Id.*

¹³³ Verducci, *supra* note 114; see also *Wellness*, MLB (2024), <https://www.mlb.com/player-resource-center/wellness#unmind>.

¹³⁴ Verducci, *supra* note 114.

¹³⁵ Gabriela Carroll, *MLB hosts biannual Mental Health Meeting for league reps*, MLB (July 19, 2023), <https://www.mlb.com/news/mlb-hosts-mental-health-meeting-with-other-major-sports-leagues>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

B. National Basketball Association

For many years the NBA left its individual teams to make determinations about mental health services and support staff hirings without a league-wide policy in place.¹³⁹ The Dallas Mavericks were the first NBA team to employ a full-time psychologist in 2000 as the Director of Sport Psychology/Mental Skills.¹⁴⁰ In 2011, the Indiana Pacers hired a Team Performance Psychologist and included his office at the team’s practice facility, a first for the NBA.¹⁴¹ The Pacers’ Team Performance Psychologist would also frequently travel with the team, another first for the league.¹⁴² By 2015, nearly half of the NBA’s teams had psychologists working full time with or as a consultant on call, and the league “made a clinical psychologist available to speak with players and staff ‘regarding stress, pressure, healthy relationships and other wellness-related issues, and to provide crisis assistance and referrals to mental health-related services and information.’”¹⁴³

However, in early 2018, two NBA superstars, DeMar DeRozan and Kevin Love, pushed the conversation surrounding mental health in the NBA community even further by openly discussing their mental health struggles and journeys.¹⁴⁴ Nine years into his NBA career, DeRozan said he “felt comfortable enough” to post a tweet saying, “This depression get the best of me...” launching him to the forefront of the NBA’s mental health discussion and

¹³⁹ See *NBA & NBPA Announce Mental Wellness Program for Players*, Beyond Sport (Mar. 2018), <https://beyondbeyondsport.org/articles/nba-nbpa-announce-mental-wellness-program-for-players/>.

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

¹⁴² See David Aldridge, *NBA, NBPA taking steps to further address mental wellness issues for players*, NBA (Mar. 12, 2018), <https://www.nba.com/news/morning-tip-nba-nbpa-addressing-mental-wellness-issues>.

¹⁴³ Melissa Rohlin, *Psychologists have helped with the mental side of the NBA game*, Los Angeles Times (Dec. 26, 2015), <https://www.latimes.com/sports/nba/la-sp-nba-psychology-20151227-story.html>; see also Sam Amick, *NBA ramps up mental health program, setting new expectations for each team— details from a league memo*, The Athletic (Aug. 7, 2019), <https://theathletic.com/1120892/2019/08/07/nba-ramps-up-mental-health-program-setting-new-expectations-for-each-team/>.

¹⁴⁴ See Mike Vorkunov, *How NBA players are leading the way in mental health: ‘It’s OK to seek help and want help’*, The Athletic (Sep. 15, 2023), <https://theathletic.com/4865256/2023/09/15/how-nba-players-are-leading-the-way-in-mental-health-its-ok-to-seek-help-and-want-help/>.

movement.¹⁴⁵ One month later, Love published “Everyone Is Going Through Something” in *The Players’ Tribune*, sharing that he had a panic attack during a game in November of the 2017-18 NBA season and was seeing a therapist.¹⁴⁶ In the article Love shared, “In the NBA, you have trained professionals to fine-tune your life in so many areas. Coaches, trainers and nutritionists have had a presence in my life for years. But none of those people could help me in the way I needed when I was lying on the floor struggling to breathe.”¹⁴⁷ In response to two of its superstars coming forward, the NBA and NBPA revamped the mental health services provided to players.

From a collective bargaining standpoint, the 2017 CBA between the NBA and NBPA agreed to “establish a mental wellness program for current players,” and that the “specific benefits to be provided under the mental wellness program” were subject to both the agreement of the NBA and NBPA.¹⁴⁸ This program was to be “governed by a definitive written amendment to the Health and Welfare Benefit Plan implementing such program.”¹⁴⁹ Likely fueled by DeRozan and Love’s experiences in the 2017-18 NBA season, in the summer of 2018, after “almost a year of discussions between the league and union that began as the sides were working out the new Collective Bargaining Agreement,” the NBA and NBPA announced the launch of the

¹⁴⁵ Jamal Collier, *DeMar DeRozan isn't done talking about mental health*, ESPN (Mar. 8, 2024), https://www.espn.com/nba/story/_/id/39666341/demar-derozan-nba-mental-health-dinners-demar-chicago-bulls; see also DeMar DeRozan (@DeMar_DeRozan), X (Feb. 17, 2018, 6:06 AM), https://twitter.com/DeMar_DeRozan/status/964818383303688197?lang=en.

¹⁴⁶ See Kevin Love, *Everyone Is Going Through Something*, *The Players' Tribune* (Mar. 6, 2018), <https://www.theplayerstribune.com/articles/kevin-love-everyone-is-going-through-something>.

¹⁴⁷ *Id.*

¹⁴⁸ 2017 Collective Bargaining Agreement between the NBA and NBPA, Art. IV, § 3(a)(3)(9), retrieved from <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf> [hereinafter 2017 NBA CBA].

¹⁴⁹ *Id.*

Mental Health & Wellness Department, an independent mental wellness program jointly funded by the league and union.¹⁵⁰

To emphasize, while jointly funded by the NBA and NBPA, the Mental Health & Wellness Department operates *independently* from the league and players' union.¹⁵¹ In an interview shortly after the program's launch, then-Executive Director of the NBPA Michele Roberts emphasized, "We don't want players to be discouraged from getting help when they need it because they're concerned that it will get back to the team, or it may affect their play, or it may affect their next contract."¹⁵²

Further, she highlighted the program's commitment to confidentiality, stating "[t]he league and the [NBPA] agreed that in order for this thing to work, it needed to be operating on its own. And that no one, absolutely no one, would have access to any information. Strict confidentiality to the extent that it can be protected."¹⁵³ This program "connects players with licensed mental health professionals in every city where there's an NBA team," and provides "a players-only website with a focus on mental health that features up to 90 links about issues including depression and all kinds of phobias."¹⁵⁴

Ahead of the 2019-20 season, the NBA issued an internal memorandum in August 2019 to all thirty teams explaining new changes related to mental health services required for the upcoming season.¹⁵⁵ Specifically, the memorandum outlined that all teams would be expected to (1) "retain and make available to players on a voluntary basis one to two mental health

¹⁵⁰ Aldridge, *supra* note 142.

¹⁵¹ *Id.*

¹⁵² Paul Flannery, *Q&A with NBPA executive director Michele Roberts*, SB Nation (Feb. 19, 2018), <https://www.sbnation.com/nba/2018/2/19/17027238/michele-roberts-interview-lebron-james-nba-all-star-game>.

¹⁵³ *Id.*

¹⁵⁴ Elijah Shama, *NBA adopts new rules requiring teams to add full-time mental health staff for 2019-2020 season*, CNBC (Sep. 19, 2019), <https://www.cnbc.com/2019/09/19/nba-now-requires-teams-to-add-full-time-mental-health-staff.html>.

¹⁵⁵ *See* Amick, *supra* note 143.

professionals,” (2) “identify a licensed psychiatrist (M.D. or D.O.) to be available to assist in managing player mental health issues,” (3) “enact a written action plan for mental health emergencies,” (4) “put in place procedures for communicating to players and team staff the team’s practices with respect to privacy and confidentiality,” and (5) attend a mandatory “health and wellness meeting” before the season to discuss these matters further.¹⁵⁶

At the mandatory meeting in September 2019, the rules were formally adopted and implemented for the upcoming 2019-20 season and beyond.¹⁵⁷ The memorandum and subsequent requirements from the NBA related to mental health were in connection with the NBPA.¹⁵⁸ The goal of the changes “was to provide a wide range of resources for all sorts of scenarios – from the players who simply needed to talk to the ones who might be experiencing something far more serious and challenging.”¹⁵⁹

In July 2023, the NBA and NBPA agreed to the 2023 CBA, with some additional minor changes surrounding mental health support services and programs included.¹⁶⁰ In Article VI, Player Conduct, the CBA lists new “Mandatory Programs” which “NBA players shall be required to attend and participate in.”¹⁶¹ The Mandatory Programs are determined jointly by the NBA and NBPA, and include “Team Awareness Meetings,” covering topics surrounding substance abuse awareness, gambling awareness, healthy relationships, and mental health and

¹⁵⁶ *Id.*

¹⁵⁷ *See* Shama, *supra* note 154.

¹⁵⁸ *See* Amick, *supra* note 143.

¹⁵⁹ *Id.*

¹⁶⁰ *NBA Collective Bargaining Agreement signed*, NBA (June 28, 2023), <https://www.nba.com/news/nba-collective-bargaining-agreement-signed>.

¹⁶¹ 2023 Collective Bargaining Agreement between the NBA and NBPA, Art. IV, § 4(a), retrieved from <https://imgix.cosmicjs.com/25da5eb0-15eb-11ee-b5b3-fbd321202bdf-Final-2023-NBA-Collective-Bargaining-Agreement-6-28-23.pdf> [hereinafter 2023 NBA CBA].

wellness programming, amongst others.¹⁶² If a player refuses to attend a mandatory program, he will be fined \$20,000 by the league.¹⁶³

In connection with its mental health programming, “NBA Mind Health” is a website “guided by the central idea of humanizing mental health. [Its] mission is to engage, educate, and serve the NBA community and to position mental health as an essential element of wellness & excellence – both on and off the court.”¹⁶⁴ Mind Health’s resources, which are available to NBA players and the general public, include tips for building mental skills, meditating, and crisis text line information.¹⁶⁵ Dr. Kensa Gunter, a licensed psychologist, was hired in 2020 to lead the Mind Health program.¹⁶⁶ Under her guidance, the program “call[s] for humanizing mental health to focus on people holistically rather than addressing only signs and symptoms, elevat[es] performance to help players and staff achieve personal and professional goals, and honor[s] their lived experiences by acknowledging the diversity within the NBA community and tailoring mental-health support to their unique needs.”¹⁶⁷

C. National Football League

While some NFL teams had previously implemented mental health support systems of their own, it took until 2019 for any progress to be made leaguewide.¹⁶⁸ The NFLPA “pushed hard” for the creation of the Comprehensive Mental Health and Wellness Committee during the negotiations for the most recent NFL/NFLPA CBA, which was ratified in February 2020.¹⁶⁹ The

¹⁶² *Id.*

¹⁶³ *Id.* at § 4(b).

¹⁶⁴ *The Power of Connection*, NBA Mind Health (2023) <https://mindhealth.nba.com/the-power-of-connection>.

¹⁶⁵ *See id.*

¹⁶⁶ *See* Brea Cubit, *Life on the road can be grueling for NBA players and staff. But Celtics center Al Horford says support from the league's Mind Health program is a game changer*, Business Insider (Jan. 9, 2024), <https://www.businessinsider.com/boston-celtics-players-staff-mental-health-support-resources-2024-1>.

¹⁶⁷ *Id.*

¹⁶⁸ *See* Mark Kreidler, *NFL has been slow to embrace mental health support for players*, USA Today (Jan. 20, 2023), <https://www.usatoday.com/story/news/health/2023/01/20/nfl-slow-embrace-mental-health-players/11082135002/>.

¹⁶⁹ *Id.*

committee was designed to “develop educational programs on mental health for players, teams and players’ family members and will ‘collaborate with local and national mental health and suicide prevention organizations to reduce stigma related to mental health and promote suicide prevention and awareness.’”¹⁷⁰

Section 19 of the 2020 NFL CBA codifies the new “Behavioral Health Program” for the NFL and its players.¹⁷¹ Spanning nearly six pages, the Behavioral Health Program establishes the Comprehensive Mental Health and Wellness Committee, consisting of six members, “including the NFL Chief Medical Officer, the NFLPA Medical Director, the NFLPA Director of Wellness and the NFL Vice President of Wellness and Clinical Services.”¹⁷² The Committee is responsible for developing educational programs for players, coaches, and club personnel surrounding various mental health topics, developing programming for parents and family members of players to “ensure they are aware of signs and symptoms that may be indicative of mental health concerns,” collaborating with mental health organizations nationally to reduce stigma and promote awareness, and developing models for player programs addressing transitional stress, social connectedness, navigating injury, and family involvement.^{173 174}

Further, the Behavior Health Program mandates that each NFL team must “identify and retain a Team Clinician,” who must be a board-certified psychiatrist, doctoral level clinical or counseling psychologist, or professional counselor with a master’s degree in counseling or social

¹⁷⁰ Dan Graziano, *NFL, NFLPA announce mental health initiative*, EPSN (May 20, 2019), https://www.espn.com/nfl/story/_/id/26788730/nfl-nflpa-announce-mental-health-initiative.

¹⁷¹ 2020 Collective Bargaining Agreement between the NFL and NFLPA, § 19, retrieved from https://nflpaweb.blob.core.windows.net/media/Default/NFLPA/CBA2020/NFL-NFLPA_CBA_March_5_2020.pdf [hereinafter 2020 NFL CBA].

¹⁷² *Id.* at § 19(a).

¹⁷³ *Id.*

¹⁷⁴ *Comprehensive Mental Health and Wellness Committee*, NFL (2024), <https://www.nfl.com/playerhealthandsafety/health-and-wellness/nfl-medical-committees/comprehensive-mental-health-and-wellness-committee>.

work,” with at least seven years of relevant experience.¹⁷⁵ A representative from both the NFL and NFLPA must approve the appointees for each Team Clinician, taking into consideration six different skills categories such as “effective player engagement” and “working effectively with a diverse, multicultural player and staff popular, with an awareness and understanding of the culture of football at an elite level.”¹⁷⁶

The 2020 NFL CBA also establishes each NFL team shall also have a “Club Mental Health and Wellness Team,” led by the Team Clinician, consisting of (at minimum) the Head Team Primary Care Sports Medicine Physician, Director of Player Engagement, Head Athletic Trainer, Head Strength and Conditioning Coach and Team Chaplain.¹⁷⁷ This Club Mental Health and Wellness Team is required to meet at least once a month during the regular season and quarterly during the offseason “to discuss ongoing mental health education and identify potential issues or concerns.”¹⁷⁸

The appointed Team Clinician is responsible for maintaining confidentiality of player mental health records, developing a referral network for mental health care, conducting educational programs for players and coaching staff, being available to players for consultations at least twice a week (totaling eight to twelve hours each week), and participating in continuing education and case consultation programming.¹⁷⁹ Any player mental health records created by a Team Clinician are considered “protected health information,” and must be maintained confidentially in compliance with applicable laws, including HIPAA.¹⁸⁰ An unauthorized disclosure of mental health records by a Team Clinician may result in disciplinary action

¹⁷⁵ NFL 2020 CBA § 19(b).

¹⁷⁶ *Id.* at § 19(b)(ii).

¹⁷⁷ *Id.* at § 19(b)(i).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* § 19(b)(iii).

¹⁸⁰ *Id.* at § 19(c).

(including termination), a minimum fine against the team of \$500,000, and other “such measures the Commissioner deems necessary as a deterrent for future violations (*e.g.*, loss of Draft Picks).”¹⁸¹

Today, “[e]ach NFL team works with its clinician to determine what might work best for that organization, deciding whether to hire separate employees for performance-focused training and mental wellness or to have a clinician ... serve in an all-encompassing role.”¹⁸² In addition, the league offers services to players and their families in the NFL Total Wellness (“provides resources to all members of NFL family” and includes the Rookie Success Program and team mental health trainings), NFL Player Care Foundation (“staffs licensed clinical social workers who provide expert consultation and serve as liaisons between former players and services providers”), and NFL Life Line (free, confidential, and independently operated resource that connects current and former players with trained counselors who can help individuals work through any personal or emotional crisis 24 hours a day, seven days a week, 365 days a year”) programs.¹⁸³

D. National Hockey League

After incorporating it into the 1995 CBA, in 1996, the NHL and NHLPA jointly launched the NHL/NHLPA Substance Abuse and Behavioral Health (“SABH”) Program, “designed to be confidential, supporting players and their families struggling with drug and alcohol dependency or mental health issues.”¹⁸⁴ Prior to the SABH Program, the NHL would typically suspend

¹⁸¹ *Id.* at § 19(c)(iii).

¹⁸² Anna Katherine Clemmons, *Pushed by Players, the N.F.L. Works to Embrace Mental Health*, *The New York Times* (Nov. 30, 2021), <https://www.nytimes.com/2021/11/26/sports/football/nfl-mental-health.html>.

¹⁸³ *Player Health and Wellness: Mental Health*, NFL (2024) <https://www.nfl.com/playerhealthandsafety/health-and-wellness/mental-health/#:~:text=NFL%20Life%20Line%20is%20a,week%2C%20365%20days%20a%20year>.

¹⁸⁴ Emily Kaplan, *The NHL's struggles with mental health this season: How players are confronting anxiety and isolation*, *ESPN* (Mar. 9, 2021), https://www.espn.com/nhl/story/_/id/31026751/the-nhl-struggles-mental-health-season-how-players-confronting-anxiety-isolation.

players who admitted to drug or alcohol use or addictions, rather than offer support.¹⁸⁵ The program launched to “allow[] players (and their families) to seek first-time help without fear of punishment,” and provided “players access to a confidential phone line and counselors in each city in the league.”¹⁸⁶

Today, the most recent version of the SABH Program is incorporated in Article 47 of the CBA between the NHL and NHLPA.¹⁸⁷ Around 2020, the NHLPA started referring to the program as simply the “Players’ Assistance Program” or the “Program,” better reflecting the nature of the program and its mission.¹⁸⁸ The Program utilizes “education, counseling, treatment, follow-up care, and where appropriate, sanctions in the form of Player discipline” to comprehensively address player matters related to player substance abuse and behavioral health.¹⁸⁹ The Program is administered by jointly selected and retained “Program Doctors,” and services are made “available to all NHL players and their families, as necessary.”¹⁹⁰ Program Doctors are “available on a 24-hour basis throughout the year to provide confidential assistance to players who may be experiencing personal or family crises.”¹⁹¹ Participation in the program is

¹⁸⁵ *NHL substance-abuse history*, ESPN (Oct. 8, 2001), <https://www.espn.com/nhl/s/2001/0228/1116704.html>.

¹⁸⁶ Kostya Kennedy, *A Devil And His Demon When New Jersey Defenseman Ken Daneyko Quit Drinking, He Regained His Life*, Sports Illustrated (Feb. 8, 1999) <https://vault.si.com/vault/1999/02/08/a-devil-and-his-demon-when-new-jersey-defenseman-ken-daneyko-quit-drinking-he-regained-his-life>; see also Associated Press, *Panthers’ Knight to get care from player assistance program*, AP News (Feb. 24, 2023), <https://apnews.com/article/nhl-sports-spencer-knight-anthony-duclair-2849a32d3a5b74dc7c7ef4af231069c2>.

¹⁸⁷ 2012-2022 NHL-NHLPA Collective Bargaining Agreement (Feb. 5, 2013), available at https://cdn.nhlpa.com/img/assets/file/NHL_NHLPA_2013_CBA.pdf and ratified through 2025-2026 by NHL-NHLPA 2020 Memo. of Understanding (July 10, 2020), available at https://cdn.nhlpa.com/img/assets/file/NHLPA_NHL_MOU.pdf [hereinafter, collectively 2020 NHL CBA].

¹⁸⁸ Kaplan, *supra* note 184.

¹⁸⁹ *Addressing Domestic Violence in Professional Sports: Hearing Before the Committee on Commerce, Science, and Transportation*, 113th Cong. 1-7 (2014) (Statement of Jessica Berman), retrieved from <https://www.commerce.senate.gov/services/files/b181853b-636d-45ce-9697-4cc7f5ca39a2>.

¹⁹⁰ *Id.*

¹⁹¹ *Addressing Domestic Violence in Professional Sports: Hearing Before the Committee on Commerce, Science, and Transportation*, 113th Cong. 1-7 (2014) (Statement of Steven Fehr), retrieved from <https://www.commerce.senate.gov/services/files/F58FA58F-10CA-4C94-9F66-31FA7B9A749F>.

“strictly voluntary” and players “continue to get paid while receiving counseling, treatment, and other services.”¹⁹²

When a player enters the Program, he receives “access to multiple resources ... including a hotline, counselors and mental health professionals.”¹⁹³ Furthermore, “[c]onfidentiality and privacy are vital parts of the program,” and neither the NHL nor NHLPA will disclose if a player has entered or the reason why a player has entered, unless the player chooses to speak about the reason on his own.¹⁹⁴ While receiving support in the Program, “players will continue to get paid, and there are no salary cap implications” for their respective teams, but they do not count against the 23-man roster limit.¹⁹⁵ There is no time limit or requirements about how long a player is in the Program, as it depends case-by-case based on the player’s needs.¹⁹⁶ To exit the Program, before returning to both practice with his team and playing in games, a player “must receive clearance from the program counselors.”¹⁹⁷

One of the first NHL players to come forward publicly about his mental health journey was Swedish goaltender Robin Lehner in 2018, penning an article published in *The Athletic* about his addiction and bipolar diagnosis.¹⁹⁸ Lehner opined, “I cannot say enough about the NHLPA/NHL substance abuse program. I don’t think I would be alive without them,” after

¹⁹² ESPN Staff, *What is the NHL player assistance program?*, ESPN (Jan. 29, 2024)

https://www.espn.com/nhl/story/_/id/39415843/what-nhl-player-assistance-program.

¹⁹³ Sammi Sibler, *What Is The NHL/NHLPA Player Assistance Program? What The Program Entails As Capitals' Kuznetsov Joins*, The Hockey News (Feb. 5, 2024), <https://thehockeynews.com/nhl/washington-capitals/news/washington-capitals-evgeny-kuznetsov-what-is-nhl-nhlpa-player-assistance-program>.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*; see also Sammi Silber, *Capitals' Ethan Bear Enters NHL/NHLPA Player Assistance Program, Out Indefinitely*, The Hockey News (Mar. 27, 2024), <https://thehockeynews.com/nhl/washington-capitals/news/washington-capitals-ethan-bear-nhl-nhlpa-player-assistance-program>.

¹⁹⁶ *See id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See generally* Robin Lehner, *'I could not stand being alone in my brain': Islanders goalie Robin Lehner opens up about his addiction and bipolar diagnosis*, The Athletic (Sept. 13, 2018), <https://theathletic.com/522117/2018/09/13/islanders-goalie-robin-lehner-opens-up-about-his-addiction-and-bipolar-diagnosis-i-could-not-stand-being-alone-in-my-brain/>.

discussing his rehabilitation treatment received through the Program related to his mental health struggles and substance abuse issues with alcohol and pills.¹⁹⁹ Lehner’s story inspired additional NHL players to come forward and speak publicly about their own mental health experiences over the next few years.²⁰⁰

While the total numbers of players receiving support from the Program is unknown to the public (due to the Program’s strict confidentiality requirements), more players during the 2023-24 season entered the Program publicly than in previous NHL seasons.²⁰¹ One example is Colorado Avalanche defenseman Samuel Girard, who spent about a month in the Program between November and December 2023, citing “severe anxiety and depression that has gone untreated for too long and led to alcohol abuse.”²⁰² After his month away from the team, Girard received clearance to return to play, and stated, “I am a new person. I found myself again ... It feels good to talk about it. If you need some help, it’s OK to reach out for some help. That’s something I learned over there.” Success stories like Girard’s continue to push the conversation forward about the availability of the Program’s resources and the successes of players who enter when faced with an off-ice personal issue.²⁰³

¹⁹⁹ *Id.*

²⁰⁰ See generally Colin Wilson, *The Things You Can’t See*, *The Players’ Tribune* (Oct. 29, 2020), <https://www.theplayertribune.com/posts/colin-wilson-nhl-hockey-mental-health> (Wilson, an 11-year NHL player discussing his experience living with untreated obsessive-compulsive disorder and drug addiction, and crediting the Program for helping him receive support and treatment); see also Canucks, *Tyler Motte Speaks on Mental Health - Hockey Talks*, YouTube (Jan. 27, 2021), https://www.youtube.com/watch?v=PsZa-lw8WTY&ab_channel=Canucks.

²⁰¹ See Kyle Fredrickson, *How NHLPA player’s assistance program helps Valeri Nichushkin, others get back on the ice*, *Denver Gazette* (Mar. 2, 2024), https://denvergazette.com/sports/colorado-avalanche/how-nhlpa-player-s-assistance-program-helps-valeri-nichushkin-others-get-back-on-the-ice/article_8bf4af56-d8d3-11ee-929c-77a39ce46d2c.html.

²⁰² Kyle Fredrickson, *Samuel Girard to make Avalanche return against Sharks on New Year’s Eve*, *Denver Gazette* (Dec. 30, 2023), https://denvergazette.com/sports/colorado-avalanche/sam-girard-avalanche-return-lineup-sharks/article_22b0a34e-a762-11ee-9f43-f3381e73218a.html.

²⁰³ *Id.*

In addition to the Program, the NHLPA launched its “First Line” peer-to-peer training program in January 2024, partnering with the Mental Health Commission of Canada.²⁰⁴ First Line is “designed to be a preventative measure, offering players the tools to understand mental health and recognize potential warning signs in themselves, teammates and family members.”²⁰⁵ Players can voluntarily choose to attend a First Line class, and while “it is not therapy or counseling,” it helps to “educate players and arm them with the knowledge and skills so that they can take the first step.”²⁰⁶ The increased number of players publicly entering the Program, along with participation in First Line demonstrates a shift in culture in hockey related to mental health, showing players are “willing to invest and learn. It’s important to them.”²⁰⁷

VI. Best Practices to Consider for Mental Health Resources in Professional Sports

While the mission of each program is the same, the resources and programming offered by the MLB, NBA, NFL, and NHL vary significantly based on each league’s timeline and development of the various mental health resources for players. Even though there is no “one size fits all” approach to providing mental health resources for any group of people (much less professional athletes competing at the highest levels in their respective sports), the following features should be included in all programming now and moving forward.

A. Collectively Bargained

As evidenced by the long history of increasing players’ rights through the collective bargaining process in each professional sports league, current and future mental health resources should be included in all CBAs. The collective bargaining process grants athletes a voice,

²⁰⁴ Stephen Whyno, *NHLPA unveils mental health initiative to help hockey players learn more, watch for warning signs*, Associated Press (Jan. 10, 2024) <https://apnews.com/article/nhlpa-mental-health-program-fba91dc14a1aadccd188cfbab7fd3ee0>.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

allowing for the continued advocacy for programming that best fits the needs of the collective. To date, the NFL has the most comprehensive mental health programming outlined in its CBA, taking up multiple pages in the agreement to outline the program's guidelines, which the MLB, NBA, and NHL should take into consideration when drafting future CBAs.

Incorporating mental health resources and programming fosters accountability among the players and league and emphasizes that mental health services are just as important as other collectively bargained for items like salaries, player benefits, and league management. Mental health resources being collectively bargained for also establishes that the programs will continue to be reevaluated and refined based on the evolving needs of players and best practices available to support players' needs.

B. Access to Sports Psychologists

In addition to being collectively bargained for, each league's mental health resources should mandate access to licensed sports psychologists in order to provide each league's athletes with the best possible care for diagnosis and treatment purposes. Sports psychologists, trained to identify and address the unique mental health challenges faced by athletes, including but not limited to performance anxiety and stress management, should be available for any professional player to access if necessary.

In addition to league-wide resources, the mental health program for each league should mandate each team has its own licensed sports psychologist on staff, who can develop relationships with the players. These relationships can be helpful in identifying player mental health issues sooner, and providing athletes with more comfort if asking for help from someone they already know. Each team's sports psychologist should work cooperatively alongside any

other team mental skills or performance coaches, to create a holistic approach to fostering the best overall environment for players to continue to grow and succeed.

C. Confidentiality

Each of the four programs discussed includes an element of confidentiality. Maintaining strict confidentiality is crucial for the continued success of each of the programs. First, players will not trust or use the services offered in the programs if they believe that their struggles may impact either their public perception or perception on their respective teams. Each CBA should clearly outline the confidentiality standards of for each program, and these standards should be strictly enforced.

In addition to player privacy, players should feel that they can access the mental health resources and speak with a sports psychologist without fear of repercussions from coaches or management. Athletes should be protected by language the CBA when accessing their league's mental health services, and neither coaches should make determinations regarding playing time nor management make decisions about a future contract decision based on a player's private access and use of mental health resources. Accordingly, athlete privacy should be managed both externally (to the public) and internally (within a team and/or league) to best serve an athlete's mental health needs.

D. Continued Education and Awareness

To continue to drive positive change and reduce the stigma associated with mental health issues, each league should either implement or continue to implement mandatory mental health education programming for its players, coaches, and staff members on an annual (or more frequent) basis. Education should focus on raising awareness about the common mental health challenges that athletes face, along with providing strategies for self-care and stress management.

Additionally, athletes should be trained on how to recognize signs of mental health distress in teammates and themselves and be knowledgeable about where and how to access help when needed.

Integrating education into team culture and identity helps to foster a safe and communicative space for players to come forth if any issues arise. In addition to services available for active players, leagues and players associations should also continue to partner with their communities to bring similar resources and information to retired players and the local communities of the organization in general.

VII. Conclusion

The evolution and recognition of mental health resources for players across the MLB, NBA, NFL, and NHL reflects a broader societal shift towards prioritizing holistic well-being and seeking help and support when necessary. To continue making progress and develop the best possible mental health resources, leagues and players associations must continue to collaborate with each other in the collective bargaining process to address evolving player needs.

Moreover, a unified effort to destigmatize mental health discussions by the MLB, NBA, NFL, and NHL will promote equitable access and use of mental health resources for professional athletes, while simultaneously encouraging fans of sports and society in general to do the same. Ultimately, the journey towards comprehensive mental health support in professional sports underscores the profound impact of prioritizing athlete well-being in shaping the future of sports culture and beyond.