Team Doctors and the Duty of Care in the NFL
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Team Doctors: Dual Loyalties

- To the Athlete
- To the Club

- Structural Conflict of Interest Problem

- “Are the physicians looking out for the health of the players or are they just trying to keep them on the field?”
Roadmap

1) Doctor’s duty of due care to patient
2) Doctor’s responsibilities to the club
3) Calls for independent medical care in NFL
4) Practicality of proposals
Principles of Doctor’s Duty of Care

- Special relationship between doctor and patient
- Provide medical care that is in the patient’s best interest, including do no harm and not increase the risk of other, foreseeable injuries
  - Standard of care: conform to what other reasonable doctors would do given the same set of facts
  - Standard of care: higher for specialists
- Doctor must obtain consent to treat
- Duty to disclose medical information so patient can make an informed choice about treatment
Standard of Care

- This Duty of Care remains the same, regardless of who pays the doctor.

- Doctor also governed by ethical standards, including:
  - AMA Code of Medical Ethics (including sports-specific provision)
  - State licensing boards’ Codes of Ethics
  - Specialties may have own ethical codes and guidelines, but not one for NFLPS

- Under these codes, patient’s welfare takes priority
Lawsuits against team doctors

- Merrill Hoge (Illinois 1996): j/plaintiff. jury awarded $1.5 to athlete
- Gibson v. Digiglia (Louisiana 2008): j/defendant
Team Doctor as Employee of the Club

- 2011 CBA between NFL and NFLPA requires each club to “retain”:
  - An orthopedic surgeon
  - At least one physician certified in internal, family or emergency medicine
  - NFL has huge medical staff. Includes orthopedists, internists, family medicine, emergency medicine, neurologists, neurosurgeons, cardiologists, psychologists.
  - Each club has a “head” club doctor
  - About 175 doctors in NFL
  - Over 30 team doctors on call at each game
Team Doctor’s Obligations as Employee

- Advance the interests of the club
- Non-therapeutic role
- Assist in business decisions, including whether player can play at a sufficiently high level of performance
- Club has legitimate interest in monitoring player’s health
- Club has legitimate interest in access to medical information
Calls for Independent Medical Care in NFL

● Outgrowth of three forces:
  1) visible, high profile traumatic head injuries in sport
  2) increased science studies on repetitive concussive injury and long term neurological problems (CTE)
  3) Large, class action litigation. NFL settlement 2015

● Currently, “unaffiliated” neuro-trauma specialist at each NFL game
Football Players Health Study at Harvard University

- “How can we ensure that players receive excellent health care they can trust from providers who are as free from conflicts of interest as realistically as possible?

- Recommends strong division of responsibilities of medical staff
  1) Players’ Medical Staff: player care and treatment
  2) Club Evaluation Doctor: evaluate players for business purposes
Harvard Proposal

- Based on unaffiliated neuro-trauma model
- NFL would absorb costs
- Players’ Medical Staff chosen and supervised by Committee of medical experts, jointly selected by NFL and NFLPA.
- Not complete bifurcation: medical information flow between the doctors and the clubs, including **Player Health Report**. Report provided before and after each practice and game, to both Club and Player.
- Report should take player’s desires into account.
- Report recommendation controls player’s level of participation.
Where do we go from here?

- NFL has not adopted Harvard Proposal

- NFL unique among US professional sports clubs
  - Wealthiest
  - Strong bargaining position with player’s association
  - Cost, ability of players to seek outside doctors, need for coaches to speak directly to players about health, inherent bias