PLENARY: ALTERNATIVE DISPUTE RESOLUTION IN THE SPORTS AND ENTERTAINMENT INDUSTRIES

October 7, 2023 10:45-12:15

The panel will address alternative dispute resolution (arbitration and mediation – "ADR") in the sports and entertainment industries. Arbitration has been baked into the relationship of professional athletes to their teams and leagues for decades via collective bargaining agreements; the rules for those arbitrations have a long provenance and can appear byzantine to those unfamiliar with them. Increasingly, however, institutional players and talent in the traditional entertainment sectors have turned to ADR to resolve their disputes. For example, following the U.S. Supreme Court's 2008 decision in Preston v. Ferrer and later decisional law broadly construing the Federal Arbitration Act, talent agency agreements often include binding arbitration provisions; nonetheless, here and elsewhere, a party will occasionally resist these provisions and attempt to launch a case in a public forum. During these ADR proceedings, and in particular in mediation, there's often an important interplay between transactional lawyers (especially those representing talent) and management, on the one hand, and the parties' litigators, on the other. The panelists will consider the pros and cons of ADR of common disputes arising in the entertainment industry (including understanding the role of the neutral), identify the key issues in enforcing mandatory arbitration provisions, and offer a primer on as well as insight into the fundamental rules of practice and procedure for professional sports arbitration under the leagues' collective bargaining agreements and in matters before the Court of Arbitration of Sport.

MODERATOR

David M. Given, Partner, Phillips Erlewine Given & Carlin LLP, San Francisco, CA

SPEAKERS

Greg D. Derin, Mediator/Arbitrator, Signature Resolution, Los Angeles, CA

Aaron Gothelf, Vice President, American Arbitration Association, San Francisco, CA

Kevin Manara, Special Counsel, Arizona Cardinals

Katherine (Kate) Porter, Partner, Vela | Wood, Dallas, TX

David M. Given

Managing Partner, Phillips Erlewine Given & Carlin LLP, San Francisco, CA

David is the managing partner and general counsel as well as a co-founder of Phillips, Erlewine, Given & Carlin LLP. His law practice spans both commercial and class action litigation as well as transactional matters, the latter with a special emphasis on entertainment, technology and intellectual property law. David has served in several leadership roles in complex class action litigation, many of which were mediated to successful conclusion. He also has a wide-ranging entertainment law practice, encompassing both litigation and arbitration of disputes. He has served as chairman of this Forum, has been a panelist and featured speaker at numerous entertainment, technology and video game industry events and was a featured speaker for years at the South by Southwest Interactive/Music Conference in Austin. David has lectured in law at numerous institutions including the University of California at Berkeley, University of San Francisco, Pepperdine, and Stanford.

Aaron Gothelf

Vice President, American Arbitration Association, San Francisco, CA

Aaron Gothelf is Vice President of the American Arbitration Association's Commercial Division for the Pacific Region, overseeing California, Oregon, Washington and Alaska. He serves as the National Chair of AAA's Entertainment Dispute Resolution Advisory Council, the Western U.S. Chair for AAA's Healthcare Dispute Resolution Advisory Council, and as an Ambassador for the AAA-ICDR Foundation.

Aaron is a Council Member for the ABA's Dispute Resolution Section of which he formally served as Educational Programming Officer. He is Chair of the ABA's Forum on the Entertainment & Sports Industries, Motion Pictures, Television, Cable and Radio Division. Is a member of the ADR Committee for the Litigation Section of the California Lawyers Association, is a member of the Executive Committee for the Bar Association of San Francisco's Barristers Litigation Section, and is on the Advisory Board for the USC Gould School of Law Institute on Entertainment Law and Business. He holds a BA and MA from the University of Southern California, a J.D. from the City University of New York School of Law, and a Mediation Certificate from the Bar Association of San Francisco.

Greg D. Derin

Mediator/Arbitrator, Signature Resolution, Los Angeles, CA

Greg David Derin, Esq. brings more than 40 years in the legal industry to his practice at Signature Resolution as a mediator and arbitrator. For more than 20 years, Mr. Derin has successfully assisted parties in resolving more than a thousand complex matters. He is often called upon to resolve disputes after previous attempts have failed. In his role at Signature, he continues to concentrate on matters involving complex business matters, including, contract, fraud, entertainment, intellectual property (copyright, trademark, patent, idea submission), trade secret, right of publicity, unfair business practices, employment, class actions, partnership, real estate, and legal malpractice disputes.

He is experienced in all phases of litigation and has handled matters before federal and state trial or appellate courts in California, New York, Illinois, Pennsylvania, and other jurisdictions. He has appeared before the California Labor Commissioner, the tribunals of the Screen Actors Guild, American Federation of Television and Radio Artists, Directors Guild of America, Writers Guild of America, Major League Baseball Players Association, California Regional Water Quality Control Board, California State Water Resources Control Board, and the National Association of Securities Dealers. Mr. Derin has tried cases as varied as a four-month construction defect jury trial, talent agency disputes, and a Los Angeles Superior Court class action jury trial.

Mr. Derin is a member of the dispute resolution sections of the Beverly Hills, Los Angeles County and American Bar Associations. He is a past chair of the California State Bar Standing Committee on Alternative Dispute Resolution.

Kevin Manara

Special Counsel, Arizona Cardinals

Kevin Manara currently serves as Special Counsel for the Arizona Cardinals. In that capacity, he provides legal advice and strategic guidance to the executive staff, football staff, and ownership, and represents the club in arbitration and litigation matters.

From 2008 to 2021, Manara was a senior attorney in the NFL Management Council, most recently as Vice President of Labor Relations & Policy. In that capacity, Manara administered the NFL CBA, provided legal advice to all 32 clubs on issues involving player employment, and enforced the League's policies on performance-enhancing substances, personal conduct and substances of abuse, including prosecuting appeals of discipline. He was a member of the NFL's bargaining team during negotiations that resulted in the 2011 and 2020 Collective Bargaining Agreements. Manara also served as a board member and officer of the Partnership for Clean Competition.

More recently, Manara spent a year as Senior Vice President & General Counsel of the Las Vegas Raiders. In that capacity, he provided strategic advice and direction on all legal matters and crisis management to Raiders' management, ownership and employees. Among other responsibilities, Manara oversaw all litigation matters; ensured compliance with NFL rules, regulations and policies, including those related to the CBA, NFL player contracts and league hiring guidelines; participated in the hiring process for the new Head Coach and General Manager; advised the Club regarding corporate matters, including the operation of Allegiant Stadium; and advised the Club on all employment and human resources matters.

Manara began his legal career as an associate in the Labor & Employment department at Proskauer. He also has experience working in licensing and marketing for the NBA. Manara graduated from Johns Hopkins University, where he played varsity football, and earned his law degree with honors from New York Law School.

Katherine (Kate) Porter

Partner, Vela | Wood, Dallas, TX

Kate Porter is a partner at Vela Wood where she represents sports leagues and organizations in internal investigations and disputes, including in arbitration before the Court of Arbitration for Sport ("CAS"). Kate also routinely counsels sports organizations on the interpretation and application of league and international federation rules and regulations. Kate is a member of the Investigatory Body of the Aquatics Integrity Unit of World Aquatics, and a member of the Board of Directors of the Dallas Cup, one of the most prominent youth soccer tournaments in the United States.

Prior to joining Vela Wood, Kate spent nearly a dozen years as an attorney at Skadden, Arps, Slate, Meagher & Flom LLP in New York where she represented clients in sports related disputes. During her time at Skadden, Kate served as clerk and ad hoc clerk to arbitration panels in sports-related arbitrations before CAS, under both the ordinary and appeal arbitration procedures. Her work on CAS matters includes disputes relating to the international transfer of players, the interpretation and application of an international federation's rules, and anti-doping matters. Kate also has represented large corporations in international commercial arbitration proceedings before the International Chamber of Commerce (ICC), International Centre for Dispute Resolution (ICDR) and International Centre for Settlement of Investment Disputes (ICSID).

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Alternative Dispute Resolution in The Sports & Entertainment Industries

Saturday, October 7, 2023 | 10:45 pm Pacific

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Arbitration Features

- Unlike a court where you cannot select your judge or members of the jury pool, arbitrators are selected by the parties either by agreement or by ranking and striking a list of candidates.
- Unlike judges or jurors, arbitrators are subject matter experts in the type of dispute over which they preside.
- Unlike court, arbitration is CONFIDENTIAL (with some caveats).
- Unlike court, arbitration is more informal than court, more user friendly, and arbitrators are usually more accessible than judges.
- **MOST IMPORTANTLY**, research shows that arbitration is faster, more efficient and more economical than court.

Examples of Entertainment Disputes Appropriate for Arbitration:

- Film, Television & Streaming Production and Distribution Agreements
- Film, Television & Streaming Financing Agreements
- License and Royalty Agreements
- Talent-Studio Agreements
- Actor-Agent Agreements
- Artist-Record Company Agreements
- Content Creator Agreements

Independent Film & Television Alliance (IFTA®)

- In January of 2022, the *ICDR International Arbitration Rules for IFTA Arbitrations* were incorporated into the Independent Film & Television Alliance's (IFTA®) model agreements. IFTA has designated the International Centre for Dispute Resolution® (ICDR) as the administering organization for all arbitrations arising out of agreements that provide for disputes to be resolved pursuant to the ICDR International Arbitration Rules for IFTA Arbitrations ("Rules").
- IFTA supports, protects, and advances the global independent film and TV industry, and its Membership includes more than 140 film and television companies from 23 countries. They provide a collective voice for independent production and distribution companies, and sales agents and financiers around the world. IFTA Arbitration™ was founded in 1984 to quickly resolve international production, distribution, financing, sales agency and other related disputes in the motion picture industry. IFTA established an administrative service, rules, and an arbitration panel composed of distinguished attorneys with entertainment, intellectual property, copyright, and entertainment transactional law expertise from jurisdictions worldwide.

AAA Arbitration Road Map

- Filing and Initiation
- Arbitrator Selection
- Preliminary Hearing
- Information Exchange (Discovery)
- Mediation Step
- Evidentiary Hearing
- Post-Hearing Submissions
- The Award
- Vacating the Award (very hard to do)

Avoid Standardized "One Size Fits All" Arbitration Provisions. Consider:

- Nature of the agreement.
- Relative strength/sophistication of the parties.
- Location/jurisdiction of the parties.
- Whether to require good faith negotiations/mediation prior to the arbitration.
- Types of disputes likely to arise (which party is likely to breach and how).
- Potential amount(s) in controversy.

Drafting Arbitration Clauses - Options

- Arbitration Rules to Apply and Arbitrator Selection Process.
- Arbitrator Qualifications.
- Single Arbitrator or Panel of Three Arbitrators.
- Governing Law.
- Locale of the Arbitration (location of evidentiary hearing).
- Confidentiality.
- Discovery.
- Remedies including Emergency Relief.
- Assessment of Attorneys' Fees and Other Costs of Arbitration. (Prevailing Party)
- Type of Arbitration Award. (Standard, Reasoned, etc.)

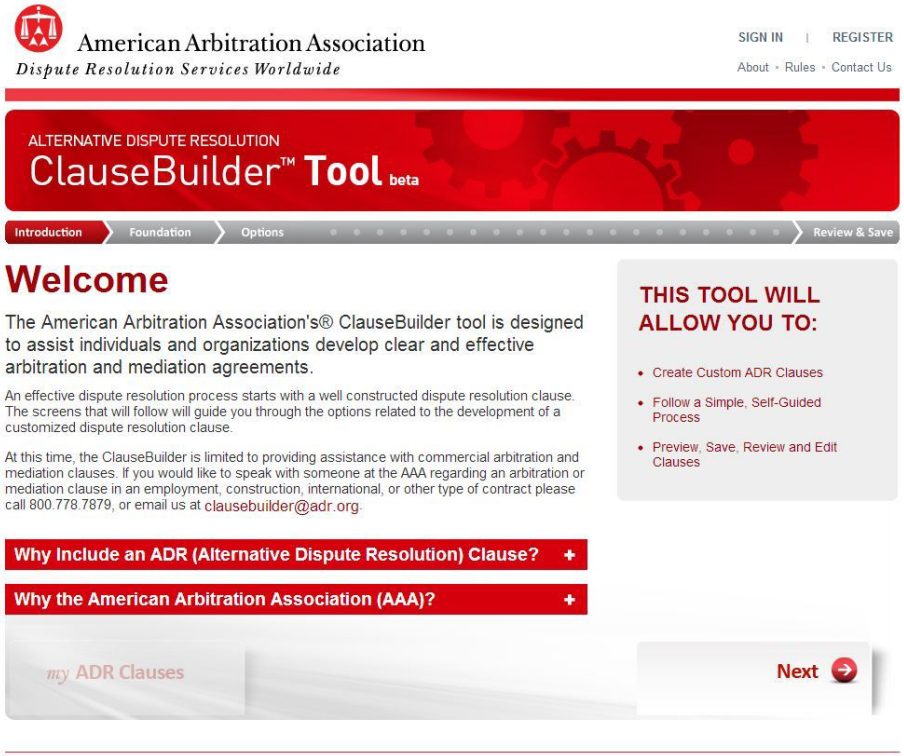
Poorly Drafted Arbitration Clauses Result In:

- Failure to meet the parties' expectations.
- Costs that quickly spiral out of control with the advantage going to the side that has more money to spend on the process.
- Less than desirable settlement agreements.
- Unnecessary court Intervention.
- The arbitral process itself being blamed for an unfortunate result, not the poorly drafted arbitration clause.

All arbitration provisions must have these 5 items:

- The rules to be used. Ex. AAA Commercial Rules, AAA Construction Rules, AAA Consumer Rules, AAA Employment Rules, ICDR Rules, etc.
- The location of the Evidentiary Hearing, sometimes referred to as the "Seat" of the arbitration.
- Will the arbitration be heard by a single arbitrator or a panel of three arbitrators? Do not rely on the word arbitrator in the singular or arbitrators in the plural to convey this. Courts have ruled the word "arbitrator" can mean a three arbitrator panel.
- The state whose laws will govern the arbitration. Ex. "The arbitration shall be governed by the laws of the State of California." Very important if dealing with parties in two different states.
- Does the arbitrator have the authority to award attorneys fees and arbitration costs to the prevailing party?

Clausebuilder.org



Example of Standard Arbitration Clause

- *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.*

Arbitration Clause with: Rules, Location, Number of Arbitrators, Choice of Law, Arbitrator Qualifications, Prevailing Party Cost Instructions

- *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The arbitrator shall be an attorney with at least 15 years of entertainment, copyright, and/or trademark experience. The place of arbitration shall be Los Angeles, CA. The arbitration shall be governed by the laws of the State of California. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of their costs and fees. 'Costs and fees' mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.*

Dispute over Net Profits for Motion Picture between Production Company and Distributor

- APPLICABLE LAW/ARBITRATION,
- (1) This Agreement shall be construed under and governed by the laws of the State of California of the United States, applicable to agreements entered into, executed, and performed entirely within said State. Subject to subparagraph 2 below, and unless Licensor elects to take legal proceedings against Distributor in the Territory, Licensor and Distributor hereby consent and submit to the jurisdiction and venue of the courts of the State of California (state and federal) for the adjudication of any dispute between Licensor and Distributor arising out of or relating to this Agreement or the alleged breach of any provision hereof, and further agree that the mailing to either party of any court process or other papers in connection with the adjudication of any such dispute, by courier, hand delivery or by certified or registered mail, return receipt requested, at such party's address set forth herein, shall be good and sufficient service of such papers, of the same force and effect as if such papers had been personally served on such party in the applicable jurisdiction. Distributor waives any right to trial by jury.

Dispute over Net Profits for Motion Picture between Production Company and Distributor continued…

- (2) If either party hereto shall elect, any controversy or claim arising out of or relating to this Agreement or the validity, construction, performance or breach thereof, shall be resolved by arbitration in Los Angeles County, California in accordance with the rules and procedures of the American Arbitration Association as said rules may be amended from time to time. The international arbitration rules and procedures of the American Arbitration Association are incorporated herein and made a part of this contract by reference. The parties hereto agree that they will abide by and perform any award rendered in any arbitration conducted under said rules and that any court having jurisdiction thereof may issue a judgment based upon such award.

Dispute between a TV Producer and a Production Company/Distributor over Modified Adjusted Gross Receipts derived from a television series.

- All disputes which may arise between Company and Artist under or with respect to this Agreement will be determined solely by arbitration in accordance with the rules of the American Arbitration Association pursuant to the procedures hereinafter set forth: In the event of a dispute, the aggrieved party shall serve upon the other party a notice in writing requiring arbitration and designating the first arbitrator. Within ten (10) business days thereafter the other party shall designate a second arbitrator by notice in writing duly given to the aggrieved party. The two arbitrators thus chosen shall appoint a third arbitrator within five (5) business days thereafter. If the third arbitrator is not appointed within such five (5) business day period, then either party may secure the appointment of a third arbitrator by application to the American Arbitration Association. When appointed, the three arbitrators shall determine the controversy by majority vote, except that if only one arbitrator has been appointed by the end of the first ten (10) business day period mentioned above, then the first arbitrator shall be the sole arbitrator. The arbitration shall be held in Los Angeles, California and the cost thereof, including reasonable outside attorneys' fees, shall be borne by the party which does not prevail therein. Such determination by the arbitrators or by the sole arbitrator, whatever the case may be, shall be final, binding and conclusive upon the parties hereto and shall be rendered in such form that it may be judicially confirmed under the laws of the State of California.

Dispute regarding Breach of Partnership Agreement over Film formed as an LLC

- This Agreement shall be governed by and construed under the laws of the State of Nevada excluding any conflicts of laws, rules, or principles, that might refer the governance or construction of his Agreement to the laws of another jurisdiction. Any dispute arising hereunder shall be resolved solely through binding arbitration conducted in Los Angeles, California under and pursuant to the commercial arbitration rules of the American Arbitration Association ("AAA Rules"), as said rules may be amended from time to time with rights of discovery if requested by the arbitrator. Such rules and procedures are incorporated and made part of this agreement by reference. It is agreed that the arbitration shall be before a single arbitrator familiar with entertainment law. The prevailing party in such arbitration shall be entitled to recover his or attorneys' fees and costs incurred in connection with such arbitration. Any award shall be final, binding, and non-appealable. The parties hereby expressly waive any and all rights to appeal, or to petition to vacate or modify, any arbitration award issued in a dispute arising out of this Agreement. Each party hereby irrevocably submits to the jurisdiction of the state and federal courts for the City and County of Los Angeles in connection with any petition to confirm an arbitration award obtained pursuant to this Section. The parties agree to accept service of process in accordance with AAA Rules. The arbitration will be confidential, conducted in private, and will not be open to the public or media. No matter relating to the arbitration (including but not limited to, the testimony, evidence, or result) may be (i) made public in any manner or form; (ii) reported to any news agency or publisher, or (iii) disclosed to any third party not involved in the arbitration.

Dispute between Music Distributor and Recording Artist over Recording Artist backing out of Exclusive Recording Contract.

- If a dispute arises out of or relates to this Agreement, or if there is a breach of this Agreement, and the dispute cannot be settled or resolved, then the dispute or breach shall be settled by arbitration administered by the American Arbitration Association under its' Commercial Arbitration Rules. The controversy or claim shall be settled by three (3) arbitrators, and all hearings shall be held in San Francisco, California. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. In rendering the award, the arbitrators shall interpret this Agreement in accordance with the substantive laws of California without regard to its conflict of laws rule. Notwithstanding the foregoing, if a third party claim is brought against Distributor for copyright infringement, violation of rights of publicity, rights of privacy, or other unauthorized use of Content which is contrary to the rights granted by Artist to Distributor in this Agreement, Distributor shall not be bound by this Arbitration provision and may defend itself and make a claim against Artist in the appropriate court of law and/or equity.

Summary

- A properly drafted arbitration clause is an important component of any entertainment contract.
- Arbitration is confidential, faster, and more cost-efficient than traditional litigation.
- Arbitration can be designed to encourage parties to settle their disputes through mediation or other settlement methods early in the dispute resolution process.
- Arbitration can preserve the relationship between the parties.
- A poorly drafted arbitration clause can lead to disastrous results.
- Parties should take the time to customize their arbitration provisions and not rely on “cut and paste” arbitration provisions.

Mediation and Adjudication Of Talent Agency Disputes

Greg David Derin, Esq.

Mediator and Arbitrator

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The **Paradigm**

- Are entertainment disputes just troublesome commercial matters between titans?
- Analyze talent agency disputes as a paradigm for general commercial matters, with some twists.
  - California and New York splits.
  - Judicial and extrajudicial fora.
  - Note Guild jurisdiction, agreements, fora.
  - Unique industry knowledge affecting creative solutions.
  - Egos are egos, but some egos are bigger than others.
- **Note: Materials have outlines concerning mediation of entertainment and IP matters. Will not review these in detail now.**

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What Are Talent Agency Disputes?

- California
  - Disputes between “Artists” and “Talent Agents,” as defined in California Labor Code Sections 1700.4.
  - A one (1) year statute of limitations applies to the recovery of damages by claimants, but not necessarily the disgorgement of commissions for illegal acts.
  - Exclusive and mandatory jurisdiction of such disputes resides with the California Labor Commissioner, subject to appeal to the Superior Court for a *de novo* hearing. *Styne v. Stevens*, 26 Cal.4th 42 (2001); Labor Code Section 1700.44(a).
  - Motions to stay lawsuits to allow Labor Commission hearings to proceed. *Blanks v. Seyfarth Shaw LLP*, 171 Cal.App.4th 336 (2009).
  - Parties may stipulate to private arbitration instead. *Preston v. Ferrer*, 552 U.S. 346 (2008).
  - Oral contracts are enforceable if they meet specified criteria (i.e., employment must have been procured by the agent). Title 8, Section 12002. Labor Code Sections 1700.23, 1700.29.

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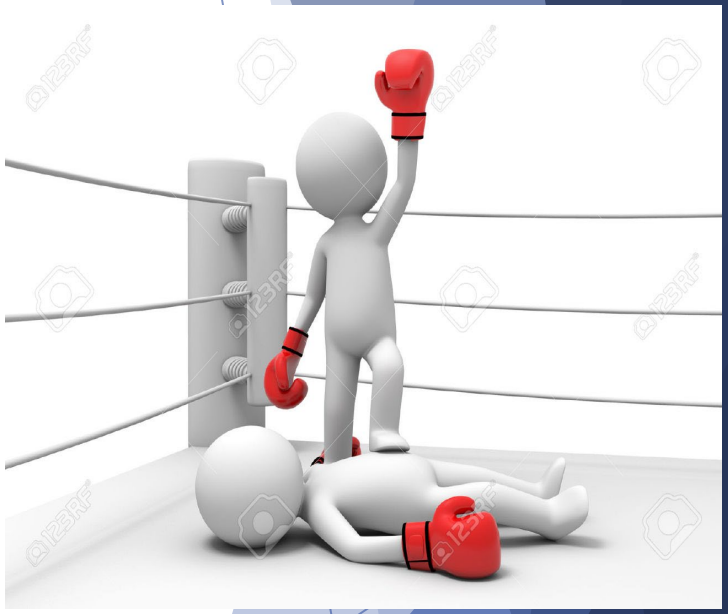
Typical California Talent Agency Disputes

- " Talent Agent" or "Manager"?
  - Agents must be licensed. Labor Code Section 1700.5. Not so managers.
  - Agents procure or offer, promise or attempt to procure employment for artists. Labor Code Section 1700.4(a).
  - Procurement includes soliciting employment, but also *negotiating* the terms of employment. *See*, *e.g., ICM v. James Bates*, TAC 24469 (2017); *Hall v. X Management*, TAC 19-90 (1992).
  - Attorneys who negotiate employment agreements for "artists," not working in conjunction with a licensed talent agent, violate the act if they do not have a license from the Labor Commission. *See*, *Solis v. Blancarte*, TAC 27089 (2013).
- "Managers" advise, counsel and direct the development of an artist's career.
  - Very often, managers are involved in procuring and/or negotiating employment. *Note higher commissions than agents who are regulated.*
  - When relationships go awry, artists seek to invalidate management agreements by asserting that managers have acted as unlicensed talent agents.
  - Where the Labor Commissioner has authority to void such a contract, s/he may also sever the void portions and partially enforce the agreement allowing a manager to recover fees for legally provided services. *See*, *Marathon Entertainment v. Blasi*, 42 Cal.4th 974 (2008).



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Talent Agency Disputes (cont'd.)

- New York has no distinct talent agency act. Instead, sections of Articles 11 (General Business Law), 37 (Arts and Cultural Affairs Law), and Title 6, Subchapter M regarding Employment Agencies of the Dept. of Consumer Affairs regulate *employment agencies* engaging in theatrical employment.
- Procurement or attempt to procure employment is critical to the definition of an employment agency. *See*, *People v. Davan Executive Services, Inc.*, 97 Misc.2d 437 (1978).
- An aggrieved claimant has *no private right of action* to enforce a violation of these provisions. *See*, *Rhodes v. Herz*, 84 A.D.3d 1 (2011).
- Oral contracts may be barred by the Statute of Frauds. *William Morris Endeavor Entertainment, LLC v. Geraldo Rivera*, 43 Misc.3d 1203(A) (2014).

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CA Labor Commission Proceedings

- No discovery.
- No requirement strictly to follow the rules of evidence.
- Experience with talent agency issues varies among Hearing Officers.
- Generally viewed as an advantageous forum for talent in disputes regarding unlicensed activity.
- Must be mindful of the short statute of limitations.
- Right to trial de novo in Superior Court. BUT, must pay attorneys' fees if do not prevail.

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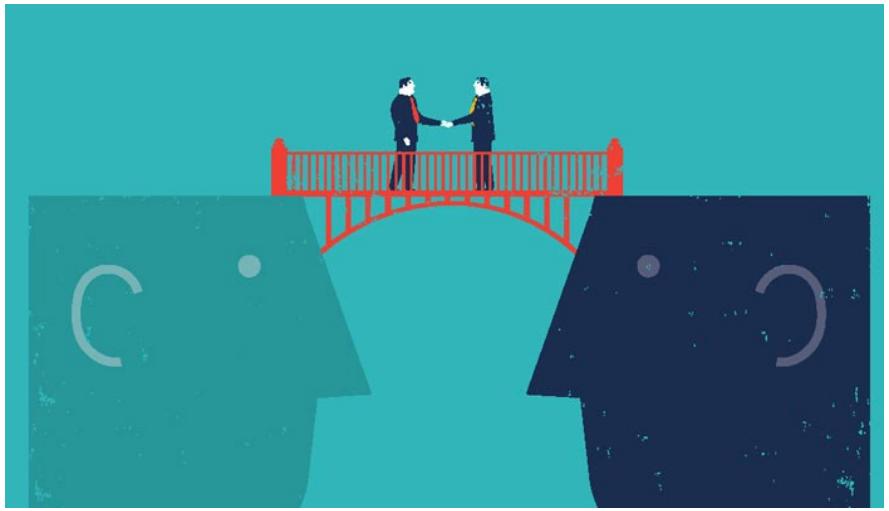
Final Thoughts

- Most industry disputes are relational and come with strong motivations to settle.
- For those which are “rights based,” make certain you select a mediator with sufficient understanding of the issues and law to engage substantively and creatively.
- See materials for details regarding attendance, structure and elements for success in mediation of entertainment and IP matters.



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ADMISSION TICKET: MEDIATING WITH CELEBRITIES

By Greg Derin, Mediator and Arbitrator
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Introduction

Mediations involving celebrities often involve issues beyond those which already complicate standard proceedings. Highlighting some of the implicated issues illuminates many factors which often determine success or failure in all mediations. Central to this analysis is the importance of identifying the participants whose involvement in a mediation session is critical. While not every party will bring an entourage to a mediation, discussion of a celebrity's prospective entourage provides a lens through which to evaluate the importance of bringing and preparing essential participants in addition to an individual party or senior executive.

What is the impact of a celebrity sending a personal or business manager, transactional attorney or agent, rather than personally appearing? Whether the celebrity attends, and if so, with whom, provides a roadmap to the highway that will be traveled. While the issues surrounding a mediation with a "personality" may be writ in neon, they resonate in less flamboyant situations.

Outline

I. Why the identity of attendees matters.
   A. Identifying Objectives.
      1. Resolution of the dispute.
      2. "Discovery." Is there essential information that should be exchanged to facilitate a productive process and optimize prospects for resolution?
      3. Repairing relationships.
      4. Use of the process to communicate with a broader audience. NB, issues of confidentiality.

5. Communicating a message. Respect, attention to interests, transparency, parity of power.
6. Other (e.g., satisfaction of contractual requirements, insurance).

B. Relevance of Attendance to Achieving Objectives.

1. Direct communication between principals.
2. Demonstrating an understanding of the importance of the process.
    a. Positive and negative messages.
        (1) How will the attending party perceive the attendance/non-attendance of the other party.
        (2) Level of commitment to resolution and/or repairing relationships.
        (3) Strength or seriousness of litigation position.
    b. Willingness to evaluate and negotiate certain types of resolution.
    c. Fixers and Deal Breakers.
3. Clarity of Communications.
    a. Do the parties have difficulty communicating with each other?
    b. Will the named party be willing to participate fully in the process?
4. Enhancing or diminishing the opportunity to achieve your objectives.
    a. Presence of decision makers/principals.
    b. Participation by true status and risk assessors.
    c. Potential contribution by specialists (e.g., transactional, tax, intellectual property).
    d. Are the “problems” at the table?
        (1) Need to “defend” a position.
        (2) Opportunities for apology.
        (3) Ability to respond to other party’s statements and

assertions in a meaningful manner.

5. Special Issues raised by potentially insured claims.
    a. Timing of advance evaluation.
    b. Bringing insurance representatives and coverage counsel.
    c. Mediations within the mediation.
    d. Triggering coverage obligations.
    e. Avoiding elimination of coverage.
    f. Settling potentially covered claims.

II. How To Create The Team.

A. Assess the objectives by revisiting the client's interests and the status of the dispute, while considering the other party's reaction to attendance.

B. Evaluate the need to expand the legal team.
    1. Settlement counsel.
    2. Transactional counsel and other specialists.
    3. Making certain that the client gets the message and information.
    4. Which attorney does the client trust most.
    5. Reading the power in the room.
    6. Insurance issues.
    7. The role of members of the "entourage."
        a. The litigators.
        b. Transactional counsel.
        c. Personal manager.
        d. Business manager.
        e. Assistant/employee/partner.
        f. Family.

C. Challenges in getting celebrities to the table.
    1. Relevance of the process to their agenda.
    2. Time commitment.
    3. Respect.
        a. Showing by attendance.

b. Being shown by the corresponding attendant.

4. Power.
    a. Will the celebrity have “control.”
    b. Influence on the outcome and on the celebrity.
5. Wishes of the entourage.
    a. Willingness to expose the principal to the facts.
    b. Desire to shield the celebrity from the litigation/resolution process.
    c. Ability to demonstrate strength to the principal and impact of the process.
    d. Exposure to the reality checking done by the mediator.
    e. In person mediations vs. remote.
6. Will the celebrity be able to interact positively with the other side.
7. Managing the process
    a. Location
    b. Set up of the room, facility, privacy, accommodations, meals.

III. The Pre-Mediation Conference

A. Try to obtain exchanged briefs and separate confidential statements.

B. Entertainment matters are more often mediated before litigation than other commercial disputes.

C. Importance of separate conferences with counsel.
    1. Seek conferences with counsel, without others from the entourage.
    2. Identify issues and sensitive relationships not in the briefs.

IV. The Mediation

A. Locating the power in the rooms.

B. Respecting everyone’s roles, status and relationships while determining interests, and moving toward resolution; identifying and managing agendas.

C. Standing eyeball to eyeball.

1. Standing one's ground.
2. Avoiding starlust.
3. Avoiding the appearance of starlust.
4. Maintaining independence.

D. Structure.
   1. When do the players arrive.
   2. Joint sessions.
   3. Avoiding boredome.
   4. Balancing the table; my entourage is bigger than your entourage.
   5. Keeping the players in the game.

E. Being multi-lingual.
   1. Speaking everyone's language at the right time, in the right context.
   2. Special problems with celebrities.

F. Where is my arugula? Catering to the powers that be.

G. Going my way: given 'em what they want?

H. Who is more challenging (actors, sports celebrities, models, musicians, dancers . . .)?

I. How to direct a room.

J. Document any agreements.
   1. Ask counsel in pre-mediation conferences to draft an agreement before the day of the mediation.
   2. NEVER leave a mediation which has achieved a resolution without a signed agreement – at best a fully executed agreement, at least, a memorandum of understanding.

DIAL *1* FOR INFRINGEMENT:
ANATOMY OF AN IP DISPUTE

By Greg Derin, Mediator and Arbitrator
Signature Resolution
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What Is Unique and What is Paradigmatic About Alternative Dispute Resolution Of IP Disputes

I. Uniqueness
   - A. Relevance of subject matter expertise
   - B. Vocabulary
   - C. Industry Issues
     1. Convening Problems
     2. Importance of Assembling Proper Participants
     3. Use of experts or consultants
   - D. Repeat players and lawyers
   - E. Opportunities for creative solutions
     1. Cost Effective Solutions vs. Litigation Expenses
     2. Reduce Risk of Adverse Results
     3. Opportunities to Share Rights
     4. Chance To Preserve and/or Enhance Relationships
     5. Ability To Maintain Confidential Information
   - F. Rights and Power vs. Interests
     1. High stakes
     2. Highly volatile depending upon timing and facts
   - G. Potential for high media profile

II. Common Lessons To Be Derived For All Dispute Resolution Processes
   - A. Initial determination of proper process (facilitative vs. evaluative)
   - B. Proposed focus on interest based solutions

C. Highly personal

D. Potential use of joint sessions and caucuses

E. Impasse breaking techniques

F. Pre-session preparations and pre-mediation conferences with counsel

G. Use of briefing and confidential statements

H. Defining “winning” vs. successful outcomes

SELECTING THE PROPER PROCESS FOR THE CONTROVERSY

I. Is the matter ripe for resolution?

A. Do the parties have sufficient information to resolve the dispute?

B. Have the necessary stakeholders been identified and agreed to participate?

II. What do the parties want?

A. Is the matter capable of an optimal interest based resolution?

B. Is an evaluative or facilitative solution preferable?

III. Evaluate the status of the dispute, desired outcome, available information, and confidentiality issues with the parties. Discuss resolution options:

A. Mediation

1. Early interest based mediation should be the default process

2. Formal discovery rarely does anything other than allow parties to select information which supports their opening positions

B. Early Neutral Evaluation

C. Mini-Trial

D. Summary jury trial

E. Med-Arb

F. Arb-Med

Optimizing The Mediation Pre-Session Process

I. Is the dispute ready for mediation?
   A. What is the status of the dispute?
   B. What is at stake for the parties?
   C. Do they know enough or are they prepared informally to exchange sufficient information to engage in a meaningful settlement process?
      1. This may turn on the imperatives of the underlying rights being contested and milestones involved (e.g., the release of a motion picture).
      2. Is a confidentiality or non-disclosure agreement required?
      3. Is an insurance carrier capable of making a timely decision?

II. Pre-Mediation Conference
   A. Discuss parties' goals
      1. Assist in helping to select\confirm a process
      2. By default, parties assume mediation is the correct process
   B. Discuss scheduling, information exchange, who will attend, availability of others whose involvement is important or who may provide needed resources, the process to be used at the session, logistics, special needs of the parties.

III. Identify the stakeholders. Who Should Come To The Dance?

IV. Why the identity of attendees matters.
      A. Identifying objectives of the process
         1. Resolution of the dispute
         2. Discovery
         3. Repairing relationships
         4. Communicating a "message"
         5. Other

B. Relevance of Attendance to Achieving Objectives

1. Who would be the most productive attendee
2. Respect for the other party, the other party's belief that s/he is being listened to; parity of power
3. With whom will the parties communicate most effectively
4. Direct communication between principals
5. Demonstrating the party's understanding as to the importance of the process
6. Positive and negative messages
    a. How will the attending party perceive the attendance/non-attendance of the other party
    b. Level of interest in resolution and/or repairing relationships
    c. Strength and seriousness of litigation position
    d. Willingness to evaluate and negotiate certain types of resolution
    e. Fixers and Deal Breakers
7. Clarity of communications
    a. Do the parties have difficulty communicating with each other
    b. Will the named party be willing to participate fully in the process
8. Enhancing or diminishing the opportunity to achieve your objectives
    a. Presence of decision makers
    b. Participation by true status and risk assessors
    c. Potential contribution by specialists (e.g., transactional, tax, intellectual property)
    d. Are the "problems" at the table?
        (1) Need to "defend" a position
        (2) Opportunities for apology

(3) Ability to respond to other party's statements and assertions in meaningful way

9. Special issues raised by potentially insured claims
   a. Timing of advance evaluation
   b. Bringing insurance representatives and coverage counsel
   c. Mediations within the mediation
   d. Triggering coverage obligations
   e. Settling potentially covered claims

C. How to Create the Team
   1. Assess the objectives by revisiting the client's interests and the status of the dispute, while considering the other party's reaction to attendance
   2. Evaluate need to expand the legal team
      a. "Settlement counsel"
      b. Transactional counsel and other specialists
      c. Making certain that the client gets the message and information
      d. Which attorney does the client trust most
      e. Insurance issues
      f. The role of members of the "entourage"
         (1) The litigator
         (2) Transactional counsel
         (3) Personal manager
         (4) Business manager
         (5) Assistant/employee/partner
         (6) Family

V. The Information Exchange

A. In a pre-litigation context, the parties should design an exchange of information essential to place all decision makers, including

insurance carriers, in a position to engage in a meaningful settlement discussion.

1. As necessary, this may require the execution of non-disclosure or confidentiality agreements.

B. Information Exchange Considerations.

1. What does your mediator require?
2. This deals with procedural requirements.
3. Make sure you contact the mediator if you have not heard from him.

C. What are you trying to accomplish?

1. If your client's goal is to settle the case, don't worry that you may be sharing "too much" information, whether or not it has been compelled by discovery.
2. If your agenda is otherwise, you may make a different decision.

D. Key consideration: Do not get hung up on formalities.

1. Call the mediator and opposing counsel.
2. Discuss informal exchanges of materials, appointment of neutral experts – whatever may be useful in the timely preparation of the case and the advancement of the settlement dialog.
3. Do not forget that insurers need advance information to be prepared meaningfully to participate in a mediation session.
4. Do not fear "free" discovery if your objective is to settle; most of the information will likely surface eventually.

VI. Briefs.

A. Know your mediator's requirements and rules.

B. Utility of Briefs.

1. They require (i) you to organize the evidence and structure the legal analysis and (ii) forces your client to face the strengths and weakness of their case.

2. They educate the mediator.
3. If shared with the other side, they educate the opposing party and counsel.

C. Briefs should include the following: (i) a description of the factual and legal issues relevant to a disposition of the matter, including a detailed description of damage claims, (ii) the procedural posture of the dispute, (iii) the latest offers and demands exchanged by the parties, and (iv) any special requests regarding the mediation process.

D. Confidential statements should: (i) identify what the parties perceive to be the barriers which they have encountered to settling the dispute in the past, (ii) six ideas which the parties would propose for overcoming the obstacles to settlement, and (iii) any facts or issues which the parties believe that the mediator should know before he can attempt to settle the matter.

E. Documentary evidence deemed important to a party's position should also be provided with the briefs or statements. Briefs should be marked on the first page to indicate whether they are submitted in confidence.

F. Candor of presentation.
   1. Brief.
      a. You are expected to be an advocate.
      b. Present the evidence and the law as you would in a trial brief.
      c. Hint at a willingness to recognize weaknesses if any exist.
   2. Confidential Statement.
      a. "It Depends"
         (1) Know your mediator.
         (2) Know your case.
         (3) Know your client.

(4) Subject to the foregoing . . .

b. Be more candid about weaknesses in the Confidential Statement. You have selected the mediator because you respect his or her ability, so assume he or she will pick up on the weaknesses. You have nothing to lose and everything to gain by your forthrightness.

c. Disclose your client's interests.

d. Share observations about barriers to settlement and ideas for overcoming the barriers.

e. Suggest potential settlement approaches.

The Day Begins

I. Joint Session.

A. Differing views on value and timing.

1. IP Counsel increasing reluctant to participate.
2. Preference to communicate through mediator.
3. Mediators prefer not to carry messages and "argue" the parties' cases, but to encourage parties directly to communicate and not to hide behind the neutral.

B. Mediators conduct the process differently and start it at different times.

1. Determine in the pre-mediation conference call whether there will be a joint session.
2. Ascertain the rules regarding presentation (i.e., who will speak, types of presentation allowed, scope of the session).

C. Opening Statement.

1. Importance of Opening Remarks.

a. Rare opportunity to speak directly to the opposing party.

b. Sets the tone for the mediation.

c. Beginning of factual presentation and revelation of

interests.

d. Options may start to be developed as well.

e. Emotional content is very important.

(1) Opportunity to convey feelings.

(2) Do not fear emotions.

(3) Consider power of empathy and concern (e.g., the “non-apology apology”).

2. Plan Ahead

a. Speak with the mediator and opposing counsel in advance about whether a joint session at the outset is an appropriate way to begin.

b. Prepare your client for the joint session.

3. Rules to keep in mind – prepare your client for this in advance.

a. This is a business meeting, not a courtroom.

b. You would not be in this situation if everyone saw the world the same way; prepare your clients that people can experience situations differently and persuade themselves of different realities without being evil – They do not need to accept what they hear from their opponents, but they should *RESPECT* it as their perspective on reality.

c. Each side should be *ATTENTIVE* to what the other has to say; only by doing so can they appreciate their opponent’s perspective on reality and understand what they need in order to negotiate a resolution of the dispute. This is the only way to begin to understand the other side’s interests.

d. Each side needs to be *FLEXIBLE* if they expect to reach a resolution.

D. Contents of Opening Statement.

1. Why are you here?
2. Share your interests and the issues to be resolved.
3. Discuss the facts in a manner which is informative, but not confrontational.
4. Follow the classic rule to be hard on the problem, but soft on the people. There will be plenty of opportunity to be tough as the bargaining gets serious.
5. Convey a sense that you or your client have been injured (if plaintiff) or acted justly (if defendant), but demonstrate a willingness to be flexible and open-minded.
6. Explain what you expect to hear from the other side and why you are at this mediation.
7. Ask what your opponent hopes to accomplish and why.
8. Counsel should explain legal positions generally, without becoming mired in details or complexities. The goal is to demonstrate your belief in the strength of your legal position, mastery of the legal principles and a willingness to engage in a more extended dialog on the legal points as the mediation progresses.

E. Demonstrative Aids and Evidence.

1. Tailor to the case.
2. Potential to enhance and clarify the presentation.
3. Ability to impress the opposition with your commitment to, and willingness to invest time and resources in, the case.

II. Joint Session Bargaining.

A. Stay in joint session as long as it is productive.

B. Possibility for bargaining.

C. Potential brainstorming.

D. If the other side chooses to engage in adversarial negotiating, rather than a problem solving approach, persevere in your

approach and “re-frame” their attacks as necessary to retain your focus on interests and options.

E. But, do not allow your client to be abused.

F. Key concepts:

1. Be open to learning about the other side’s interests; this will help provide fertile ground for options and solutions that may “expand the pie” or lead to a settlement where mutual gain may be achieved.
2. Shift the emphasis away from the legal dispute. Fighting over legal rights or power distracts the parties’ focus from their mutual interests, where the possibilities of joint gain is greatest.
3. Identify the issues to be resolved early in the mediation, preferably in joint session.
4. Search for non-monetary options to expand the opportunities for creative solutions.
5. Generate multiple options for mutual gain.
6. Use principled justifications and reasoned explanations for positions taken.
7. Attempt to base decisions on objective criteria.
8. Look for opportunities to expand value.
9. Select options based on interests and objective standards.

III. Separate Caucuses.

A. Timing and Use Vary With Mediators.

1. Understanding interests.
2. Helping parties separate positions from interests.
3. Development of options.
4. Helping attorneys with their clients.
5. Making the attorneys look good.
6. Facilitating case evaluation.
7. Decreasing expectations.

8. Creating a “Zone of Potential Agreement.”
9. Search for objective criteria and opportunities to expand value.

B. How Can You Use Your Mediator?
1. As a Negotiator.
a. To advise and counsel.
b. To add credibility to a proposal which might be disregarded if attributed to a party.
c. To generate options.
d. To fashion a “mediator’s proposal.”
2. As a Facilitator.
3. As a Sounding Board.
4. As an Evaluator.
5. As a Source of Information.
6. As the Bearer of Bad News.
a. To your client.
b. To the opposition.
7. As a Surrogate to release tension and emotion.

IV. Managing the process
A. Locating the power in the room
B. Respecting everyone’s role, status and relationships while determining interests and moving to resolution; identifying and managing agendas
C. Standing eyeball to eyeball
1. Standing one’s ground
2. Avoiding starlust
3. Avoiding the appearance of starlust
4. Maintaining independence
D. Structure
1. When do the players arrive to play
2. Joint sessions

3. Avoiding boredom
4. Balancing the table; my entourage is bigger than your entourage
5. Keeping the players in the game

E. Being multi-lingual; speaking everyone's language at the right time and in the right context

V. Creative Solutions in IP Cases

A. The One Off

B. I'll Read Your Script, But . . .

C. I'll Gladly Pay You Tuesday For A Hamburger Today

D. Carrier: 'The Demand Is Now What?!'

E. I Will Never Work With That SOB Again . . . Unless

F. His IP Is Not Worth A Nickle, But . . . My Company Is Worth A Billion

BIBLIOGRAPHY

Frank E.A. Sander and Stephen B. Goldberg, "Fitting The Forum To The Fuss: A User-Friendly Guild To Selecting An ADR Procedure," 10 Neg. Journal 49 (1994)

Frank E.A. Sander and Lukasz Rozdeiczer, "Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading To A Mediation-Centered Approach," 11 Harvard Negotiation Law Review 1 (2006)

Robert H. Mnookin, Scott R. Peppet and Andrew S. Tulumello, Beyond Winning: Negotiating To Create Value In Deals and Disputes (2000)

Roger Fisher and William Ury, Getting to Yes, Negotiating Agreement Without Giving In (2d Ed. 1991)

Roger Fisher and Daniel Shapiro, beyond reason, Using Emotions As You Negotiate (2005)

Preston v. Ferrer

Supreme Court of the United States | February 20, 2008 | 552 U.S. 346 | 128 S.Ct. 978

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Outline

128 S.Ct. 978
Supreme Court of the United States

Arnold M. PRESTON, Petitioner,

v.

Alex E. FERRER.

No. 06–1463.
|
Argued Jan. 14, 2008.
|
Decided Feb. 20, 2008.

Synopsis

Background: Attorney who rendered services for personnel in motion picture-television industry initiated arbitration proceeding against television performer, seeking to recover fees to which he claimed he was entitled under their contract. The Superior Court of Los Angeles County, No. BC342454, Haley J. Fromholz, J., denied arbitration and granted performer's motion to stay action pending proceedings before Labor Commissioner. Attorney appealed. The California Court of Appeal, Jackson, J., 145 Cal.App.4th 440, 51 Cal.Rptr.3d 628, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Ginsburg, held that when parties agree to arbitrate all questions arising under contract, Federal Arbitration Act (FAA) supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative.

Reversed and remanded.

Justice Thomas filed dissenting opinion.

West Headnotes (5)

[1] **Alternative Dispute Resolution** Existence and validity of agreement

When parties agree to arbitrate all disputes arising under their contract, questions concerning the validity of the entire contract are to be resolved by the arbitrator in the first instance, not by a federal or state court.

228 Cases that cite this headnote

[2] **Alternative Dispute Resolution** Arbitration favored; public policy

National policy favoring arbitration applies in state as well as federal courts and forecloses state legislative attempts to undercut the enforceability of arbitration agreements. 9 U.S.C.A. § 2.

263 Cases that cite this headnote

[3] **Alternative Dispute Resolution** Preemption

Labor and Employment Employment Agencies

States Labor and Employment

Federal Arbitration Act (FAA) preempts California Talent Agencies Act (TAA) provisions granting Labor Commissioner exclusive jurisdiction to decide issue that parties agreed to arbitrate and imposing prerequisites to enforcement of arbitration agreement that are not applicable to contracts generally. West's Ann.Cal.Labor Code §§ 1700.44(a), 1700.45.

247 Cases that cite this headnote

[4] **Alternative Dispute Resolution** Nature, purpose, and right to arbitration in general

Prime objective of agreement to arbitrate is to achieve streamlined proceedings and expeditious results.

41 Cases that cite this headnote

[5] **Alternative Dispute Resolution** Preemption

States Particular cases, preemption or supersession

When parties agree to arbitrate all questions arising under a contract, the Federal Arbitration Act (FAA) supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative. 9 U.S.C.A. § 1 et seq.

355 Cases that cite this headnote

West Codenotes

Preempted
West's Ann.Cal Labor Code §§ 1700.44(a), 1700.45.

****978** *Syllabus*[*]

A contract between respondent Ferrer, who appears on television as "Judge ****979** Alex," and petitioner Preston, an entertainment industry attorney, requires arbitration of "any dispute ... relating to the [contract's] terms ... or the breach, validity, or legality thereof ... in accordance with [American Arbitration Association (AAA)] rules." Preston invoked this provision to gain fees allegedly due under the contract. Ferrer thereupon petitioned the California Labor Commissioner (Labor Commissioner) for a determination that the contract was invalid and unenforceable under California's Talent Agencies Act (TAA) because Preston had acted as a talent agent without the required license. After the Labor Commissioner's hearing officer denied Ferrer's motion to stay the arbitration, Ferrer filed suit in state court seeking to enjoin arbitration, and Preston moved to compel arbitration. The court denied Preston's motion and enjoined him from proceeding before the arbitrator unless and until the Labor Commissioner determined she lacked jurisdiction over the dispute. While Preston's appeal was pending, this Court held, in *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 446, 126 S.Ct. 1204, 163 L.Ed.2d 1038, that challenges to the validity of a contract requiring arbitration of disputes ordinarily "should ... be considered by an arbitrator, not a court." Affirming the judgment below, the California Court of Appeal held that the TAA vested the Labor Commissioner with exclusive original jurisdiction over the dispute, and that *Buckeye* was inapposite because it did not involve an administrative agency with exclusive jurisdiction over a disputed issue.

Held: When parties agree to arbitrate all questions arising under a contract, the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative. Pp. 982 – 988.

(a) The issue is not whether the FAA preempts the TAA wholesale. Instead, the question is simply who decides —the arbitrator or the Labor Commissioner—whether Preston acted as an unlicensed talent agent in violation of the TAA, as Ferrer claims, or as a personal manager not governed by the TAA, as Preston contends. P. 983.

(b) FAA § 2 "declare[s] a national policy favoring arbitration" when the parties contract for that mode of dispute resolution. *Southland Corp. v. Keating,* 465 U.S. 1, 10, 104 S.Ct. 852, 79 L.Ed.2d 1. That national policy "appli[es] in state as well as federal courts" and "foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements." *Id.,* at 16, 104 S.Ct. 852. The FAA's displacement of conflicting state law has been repeatedly reaffirmed. See, *e.g., Buckeye,* 546 U.S., at 445–446, 126 S.Ct. 1204; *Allied–Bruce Terminix Cos. v. Dobson,* 513 U.S. 265, 272, 115 S.Ct. 834, 130 L.Ed.2d 753. A recurring question under § 2 is who should decide whether "grounds ... exist at law or in equity" to invalidate an arbitration agreement. In *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 403–404, 87 S.Ct. 1801, 18 L.Ed.2d 1270, which originated in federal court, this Court held that attacks on an entire contract's validity, as distinct from attacks on the arbitration clause alone, are within the arbitrator's ken. *Buckeye* held that the same rule applies in state court. See 546 U.S., at 446, 126 S.Ct. 1204.

Buckeye largely, if not entirely, resolves the present dispute. The contract at issue clearly "evidenc[ed] a transaction involving commerce" under § 2, and Ferrer has never disputed that the contract's written arbitration provision falls within ****980** § 2's purview. Ferrer sought invalidation of the contract as a whole. He made no discrete challenge to the validity of the arbitration

clause, and thus sought to override that clause on a ground *Buckeye* requires the arbitrator to decide in the first instance. Pp. 983 – 984.

(c) Ferrer attempts to distinguish *Buckeye,* urging that the TAA merely requires exhaustion of administrative remedies before the parties proceed to arbitration. This argument is unconvincing. Pp. 984 – 987.

(1) Procedural prescriptions of the TAA conflict with the FAA's dispute resolution regime in two basic respects: (1) One TAA provision grants the Labor Commissioner exclusive jurisdiction to decide an issue that the parties agreed to arbitrate, see *Buckeye,* 546 U.S., at 446, 126 S.Ct. 1204; (2) another imposes prerequisites to enforcement of an arbitration agreement that are not applicable to contracts generally, see *Doctor's Associates, Inc. v. Casarotto,* 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902. Pp. 984 – 985.

(2) Ferrer contends that the TAA is compatible with the FAA because the TAA provision vesting exclusive jurisdiction in the Labor Commissioner merely postpones arbitration. That position is contrary to the one Ferrer took in the California courts and does not withstand examination. Arbitration, if it ever occurred following the Labor Commissioner's decision, would likely be long delayed, in contravention of Congress' intent "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.,* 460 U.S. 1, 22, 103 S.Ct. 927, 74 L.Ed.2d 765. Pp. 985 – 986.

(3) Ferrer contends that the conflict between the arbitration clause and the TAA should be overlooked because Labor Commissioner proceedings are administrative rather than judicial. The Court rejected a similar argument in *Gilmer v. Interstate/ Johnson Lane Corp.,* 500 U.S. 20, 28–29, 111 S.Ct. 1647, 114 L.Ed.2d 26. Pp. 986 – 987.

(d) Ferrer's reliance on *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488, is misplaced for two reasons. First, arbitration was stayed in *Volt* to accommodate litigation involving third parties who were strangers to the arbitration agreement. Because the contract at issue in *Volt* did not address the order of proceedings and included a choice-of-law clause adopting California law, the *Volt* Court recognized as the gap filler a California statute authorizing the state court to stay either third-party court proceedings or arbitration proceedings to avoid the possibility of conflicting rulings on a common issue. Here, in contrast, the arbitration clause speaks to the matter in controversy; both parties are bound by the arbitration agreement; the question of Preston's status as a talent agent relates to the validity or legality of the contract; there is no risk that related litigation will yield conflicting rulings on common issues; and there is no other procedural void for the choice-of-law clause to fill. Second, the Court is guided by its decision in *Mastrobuono v. Shearson Lehman Hutton, Inc.,* 514 U.S. 52, 115 S.Ct. 1212, 131 L.Ed.2d 76. Although the *Volt* contract provided for arbitration in accordance with AAA rules, 489 U.S., at 470, n. 1, 109 S.Ct. 1248, Volt never argued that incorporation of those rules by reference trumped the contract's choice-of-law clause, so this Court never addressed the import of such incorporation. In *Mastrobuono,* the Court reached that open question, declaring that the "best way to harmonize" ****981** a New York choice-of-law clause and a clause providing for arbitration in accordance with privately promulgated arbitration rules was to read the choice-of-law clause "to encompass substantive principles that New York courts would apply, but not to include [New York's] special rules limiting [arbitrators'] authority." 514 U.S., at 63–64, 115 S.Ct. 1212. Similarly here, the "best way to harmonize" the Ferrer–Preston contract's adoption of the AAA rules and its selection of California law is to read the latter to encompass prescriptions governing the parties' substantive rights and obligations, but not the State's "special rules limiting [arbitrators'] authority." *Ibid.* Pp. 987 – 989.

145 Cal.App. 4th 440, 51 Cal.Rptr.3d 628, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C.J., and STEVENS, SCALIA, KENNEDY, SOUTER, BREYER, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, at 989.

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Opinion

Justice GINSBURG delivered the opinion of the Court.

[1] ***349** As this Court recognized in *Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984), the Federal Arbitration Act (FAA or Act), 9 U.S.C. § 1 *et seq*. (2000 ed. and Supp. V), establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution. The Act, which rests on Congress' authority under the Commerce Clause, supplies not simply a procedural framework applicable in federal courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration. 465 U.S., at 16, 104 S.Ct. 852. More recently, in *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006), the Court clarified that, when parties agree to arbitrate all disputes arising under their contract, questions concerning the validity of the entire contract are to be resolved by the arbitrator in the first instance, not by a federal or state court.

The instant petition presents the following question: Does the FAA override not only state statutes that refer certain state-law controversies initially to a judicial forum, but also state statutes that refer certain disputes initially to an administrative agency? We hold today that, when parties agree to arbitrate all questions arising under a contract, state laws lodging primary jurisdiction in another forum, ***350** whether judicial or administrative, are superseded by the FAA.

I

This case concerns a contract between respondent Alex E. Ferrer, a former Florida trial court judge who currently appears as "Judge Alex" on a Fox television network ****982** program, and petitioner Arnold M. Preston, a California attorney who renders services to persons in the entertainment industry. Seeking fees allegedly due under the contract, Preston invoked the parties' agreement to arbitrate "any dispute ... relating to the terms of [the contract] or the breach, validity, or legality thereof ... in accordance with the rules [of the American Arbitration Association]." App. 18.

Preston's demand for arbitration, made in June 2005, was countered a month later by Ferrer's petition to the California Labor Commissioner charging that the contract was invalid and unenforceable under the California Talent Agencies Act (TAA), Cal. Lab.Code Ann. § 1700 *et seq*. (West 2003 and Supp.2008). Ferrer asserted that Preston acted as a talent agent without the license required by the TAA, and that Preston's unlicensed status rendered the entire contract void.[1]

The Labor Commissioner's hearing officer, in November 2005, determined that Ferrer had stated a "colorable basis for exercise of the Labor Commissioner's jurisdiction." App. 33. The officer denied Ferrer's motion to stay the arbitration, however, on the ground that the Labor Commissioner lacked authority to order such relief. Ferrer then filed suit in the Los Angeles Superior Court, seeking a declaration that the controversy between the parties "arising from the [c]ontract, including in particular the issue of the validity of the [c]ontract, is not subject to arbitration." ***351** *Id.,* at 29. As interim relief, Ferrer sought an injunction restraining Preston from proceeding before the arbitrator. Preston responded by moving to compel arbitration.

In December 2005, the Superior Court denied Preston's motion to compel arbitration and enjoined Preston from proceeding before the arbitrator "unless and until the Labor Commissioner determines that ... she is without jurisdiction over the disputes between Preston and Ferrer." No. BC342454 (Dec. 7, 2005), App. C to Pet. for Cert. 18a, 26a–27a. During the pendency of Preston's appeal from the Superior Court's decision,

this Court reaffirmed, in *Buckeye,* that challenges to the validity of a contract providing for arbitration ordinarily "should ... be considered by an arbitrator, not a court." 546 U.S., at 446, 126 S.Ct. 1204.

In a 2–to–1 decision issued in November 2006, the California Court of Appeal affirmed the Superior Court's judgment. The appeals court held that the relevant provision of the TAA, Cal. Lab.Code Ann. § 1700.44(a) (West 2003), vests "exclusive original jurisdiction" over the dispute in the Labor Commissioner. 145 Cal.App.4th 440, 447, 51 Cal.Rptr.3d 628, 634. *Buckeye* is "inapposite," the court said, because that case "did not involve an administrative agency with exclusive jurisdiction over a disputed issue." 145 Cal.App.4th, at 447, 51 Cal.Rptr.3d, at 634. The dissenting judge, in contrast, viewed *Buckeye* as controlling; she reasoned that the FAA called for immediate recognition and enforcement of the parties' agreement to arbitrate and afforded no basis for distinguishing prior resort to a state administrative agency from prior resort to a state court. 145 Cal.App.4th, at 450–451, 51 Cal.Rptr.3d, at 636–637 (Vogel, J., dissenting).

The California Supreme Court denied Preston's petition for review. No. S149190 (Feb. 14, 2007), 2007 Cal. LEXIS 1539, App. A to Pet. for Cert. 1a. We granted certiorari to determine whether the FAA overrides a state law vesting ***352** initial adjudicatory ****983** authority in an administrative agency. 551 U.S. 1190, 128 S.Ct. 31, 168 L.Ed.2d 807 (2007).

II

An easily stated question underlies this controversy. Ferrer claims that Preston was a talent agent who operated without a license in violation of the TAA. Accordingly, he urges, the contract between the parties, purportedly for "personal management," is void, and Preston is entitled to no compensation for any services he rendered. Preston, on the other hand, maintains that he acted as a personal manager, not as a talent agent, hence his contract with Ferrer is not governed by the TAA and is both lawful and fully binding on the parties.

Because the contract between Ferrer and Preston provides that "any dispute ... relating to the ... validity, or legality," of the agreement "shall be submitted to arbitration," App. 18, Preston urges that Ferrer must litigate "his TAA defense in the arbitral forum," Reply Brief 31. Ferrer insists, however, that the "personal manager" or "talent agent" inquiry falls, under California law, within the exclusive original jurisdiction of the Labor Commissioner, and that the FAA does not displace the Commissioner's primary jurisdiction. Brief for Respondent 14, 30, 40–44.

The dispositive issue, then, contrary to Ferrer's suggestion, is not whether the FAA preempts the TAA wholesale. See *id.,* at 44–48. The FAA plainly has no such destructive aim or effect. Instead, the question is simply who decides whether Preston acted as personal manager or as talent agent.

III

[2] Section 2 of the FAA states:

> "A written provision in any ... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, ***353** save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Section 2 "declare[s] a national policy favoring arbitration" of claims that parties contract to settle in that manner. *Southland Corp.,* 465 U.S., at 10, 104 S.Ct. 852. That national policy, we held in *Southland,* "appli [es] in state as well as federal courts" and "foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements." *Id.,* at 16, 104 S.Ct. 852. The FAA's displacement of conflicting state law is "now well-established," *Allied–Bruce Terminix Cos. v. Dobson,* 513 U.S. 265, 272, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995), and has been repeatedly reaffirmed, see, *e.g., Buckeye,* 546 U.S., at 445–446, 126 S.Ct. 1204; *Doctor's Associates, Inc. v. Casarotto,* 517 U.S. 681, 684–685, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996); *Perry v. Thomas,* 482 U.S. 483, 489, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987).[2]

A recurring question under § 2 is who should decide whether "grounds ... exist at law or in equity" to invalidate an arbitration agreement. In ****984** *Prima*

Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 403–404, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967), we held that attacks on the validity of an entire contract, as distinct from attacks aimed at the arbitration clause, are within the arbitrator's ken.

The litigation in *Prima Paint* originated in federal court, but the same rule, we held in *Buckeye,* applies in state court. 546 U.S., at 447–448, 126 S.Ct. 1204. The plaintiffs in *Buckeye* alleged that the contracts they signed, which contained arbitration clauses, were illegal under state law and void *ab initio*. *Id.,* at 443, 126 S.Ct. 1204. Relying on *Southland,* we held that the plaintiffs' challenge was within the province of the arbitrator to decide. See 546 U.S., at 446, 126 S.Ct. 1204.

***354** *Buckeye* largely, if not entirely, resolves the dispute before us. The contract between Preston and Ferrer clearly "evidenc[ed] a transaction involving commerce," 9 U.S.C. § 2, and Ferrer has never disputed that the written arbitration provision in the contract falls within the purview of § 2. Moreover, Ferrer sought invalidation of the contract as a whole. In the proceedings below, he made no discrete challenge to the validity of the arbitration clause. See 145 Cal.App.4th, at 449, 51 Cal.Rptr.3d, at 635 (Vogel, J., dissenting).[3] Ferrer thus urged the Labor Commissioner and California courts to override the contract's arbitration clause on a ground that *Buckeye* requires the arbitrator to decide in the first instance.

IV

Ferrer attempts to distinguish *Buckeye* by arguing that the TAA merely requires exhaustion of administrative remedies before the parties proceed to arbitration. We reject that argument.

A

The TAA regulates talent agents and talent agency agreements. "Talent agency" is defined, with exceptions not relevant here, as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." Cal. Lab.Code Ann. § 1700.4(a) (West 2003). The definition ***355** "does not cover other services for which artists often contract, such as personal and career management (i.e., advice, direction, coordination, and oversight with respect to an artist's career or personal or financial affairs)." *Styne v. Stevens,* 26 Cal.4th 42, 51, 109 Cal.Rptr.2d 14, 26 P.3d 343, 349 (2001) (emphasis deleted). The TAA requires talent agents to procure a license from the Labor Commissioner. § 1700.5. "In furtherance of the [TAA's] protective aims, an unlicensed person's contract with an artist to provide the services of a talent agency is illegal and void." *Ibid.*[4]

****985 [3]** Section 1700.44(a) of the TAA states:

> "In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo."

Absent a notice of appeal filed within ten days, the Labor Commissioner's determination becomes final and binding on the parties. *REO Broadcasting Consultants v. Martin,* 69 Cal.App.4th 489, 495, 81 Cal.Rptr.2d 639, 642–643 (1999).[5]

The TAA permits arbitration in lieu of proceeding before the Labor Commissioner if an arbitration provision "in a contract between a talent agency and [an artist]" both "provides for reasonable notice to the Labor Commissioner of the time and place of all arbitration hearings" and gives the Commissioner ***356** "the right to attend all arbitration hearings." § 1700.45. This prescription demonstrates that there is no inherent conflict between the TAA and arbitration as a dispute resolution mechanism. But § 1700.45 was of no utility to Preston. He has consistently maintained that he is *not* a talent agent as that term is defined in § 1700.4(a), but is, instead, a personal manager not subject to the TAA's regulatory regime. 145 Cal.App.4th, at 444, 51 Cal.Rptr.3d, at 631. To invoke § 1700.45, Preston would have been required to concede a point fatal to his claim for compensation —*i.e.*, that he is a talent agent, albeit an unlicensed one —and to have drafted his contract in compliance with a statute that he maintains is inapplicable.

Procedural prescriptions of the TAA thus conflict with the FAA's dispute resolution regime in two basic respects: First, the TAA, in § 1700.44(a), grants the Labor Commissioner exclusive jurisdiction to decide an issue that the parties agreed to arbitrate, see *Buckeye,* 546 U.S., at 446, 126 S.Ct. 1204; second, the TAA, in § 1700.45, imposes prerequisites to enforcement of an arbitration agreement that are not applicable to contracts generally, see *Doctor's Associates, Inc.,* 517 U.S., at 687, 116 S.Ct. 1652.

B

Ferrer contends that the TAA is nevertheless compatible with the FAA because § 1700.44(a) merely postpones arbitration until after the Labor Commissioner has exercised her primary jurisdiction. Brief for Respondent 14, 40. The party that loses before the Labor Commissioner may file for *de novo* review in Superior Court. See § 1700.44(a). At that point, Ferrer asserts, either party could move to compel arbitration under Cal.Civ.Proc.Code Ann. § 1281.2 (West 2007), and thereby obtain an arbitrator's determination prior to judicial review. See Brief for Respondent 13.

That is not the position Ferrer took in the California courts. In his complaint, he urged the Superior Court to ***357** declare that "the [c]ontract, including in particular the issue of the validity of the [c]ontract, *is not subject to arbitration,*" and he sought an injunction stopping arbitration "unless and until, *if ever,* the Labor Commissioner determines that he/she has no jurisdiction over the parties' dispute." App. 29 (emphasis added). Ferrer also told the Superior Court: "[I]f ... the Commissioner rules that the [c]ontract is void, Preston may appeal that ruling and have a hearing de novo *before this Court*." Appellant's ****986** App. in No. B188997 (Cal.App.), p. 157, n. 1 (emphasis added).

Nor does Ferrer's current argument—that § 1700.44(a) merely postpones arbitration—withstand examination. Section 1700.44(a) provides for *de novo* review in Superior Court, not elsewhere.[6] Arbitration, if it ever occurred following the Labor Commissioner's decision, would likely be long delayed, in contravention of Congress' intent "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.,* 460 U.S. 1, 22, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). If Ferrer prevailed in the California courts, moreover, he would no doubt argue that judicial findings of fact and conclusions of law, made after a full and fair *de novo* hearing in court, are binding on the parties and preclude the arbitrator from making any contrary rulings.

[4] A prime objective of an agreement to arbitrate is to achieve "streamlined proceedings and expeditious results." ***358** *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.,* 473 U.S. 614, 633, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985). See also *Allied–Bruce Terminix Cos.,* 513 U.S., at 278; *Southland Corp.,* 465 U.S., at 7, 104 S.Ct. 852. That objective would be frustrated even if Preston could compel arbitration in lieu of *de novo* Superior Court review. Requiring initial reference of the parties' dispute to the Labor Commissioner would, at the least, hinder speedy resolution of the controversy.

Ferrer asks us to overlook the apparent conflict between the arbitration clause and § 1700.44(a) because proceedings before the Labor Commissioner are administrative rather than judicial. Brief for Respondent 40–48. Allowing parties to proceed directly to arbitration, Ferrer contends, would undermine the Labor Commissioner's ability to stay informed of potentially illegal activity, *id.,* at 43, and would deprive artists protected by the TAA of the Labor Commissioner's expertise, *id.,* at 41–43.

In *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991), we considered and rejected a similar argument, namely, that arbitration of age discrimination claims would undermine the role of the Equal Employment Opportunity Commission (EEOC) in enforcing federal law. The "mere involvement of an administrative agency in the enforcement of a statute," we held, does not limit private parties' obligation to comply with their arbitration agreements. *Id.,* at 28–29, 111 S.Ct. 1647.

Ferrer points to our holding in *EEOC v. Waffle House, Inc.,* 534 U.S. 279, 293–294, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002), that an arbitration agreement signed by an employee who becomes a discrimination

complainant does not bar the EEOC from filing an enforcement suit in its own name. He further emphasizes our observation in *Gilmer* that individuals who agreed to arbitrate their discrimination claims would "still be free to file a charge with the EEOC." 500 U.S., at 28, 111 S.Ct. 1647. Consistent with these decisions, Ferrer argues, the arbitration clause in his contract ****987** with Preston leaves undisturbed the Labor Commissioner's ***359** independent authority to enforce the TAA. See Brief for Respondent 44–48. And so it may.[7] But in proceedings under § 1700.44(a), the Labor Commissioner functions not as an advocate advancing a cause before a tribunal authorized to find the facts and apply the law; instead, the Commissioner serves as impartial arbiter. That role is just what the FAA-governed agreement between Ferrer and Preston reserves for the arbitrator. In contrast, in *Waffle House* and in the *Gilmer* aside Ferrer quotes, the Court addressed the role of an agency, not as adjudicator but as prosecutor, pursuing an enforcement action in its own name or reviewing a discrimination charge to determine whether to initiate judicial proceedings.

Finally, it bears repeating that Preston's petition presents precisely and only a question concerning the forum in which the parties' dispute will be heard. See *supra,* at 983. "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral ... forum." *Mitsubishi Motors Corp.,* 473 U.S., at 628, 105 S.Ct. 3346. So here, Ferrer relinquishes no substantive rights the TAA or other California law may accord him. But under the contract he signed, he cannot escape resolution of those rights in an arbitral forum.

[5] In sum, we disapprove the distinction between judicial and administrative proceedings drawn by Ferrer and adopted by the appeals court. When parties agree to arbitrate all questions arising under a contract, the FAA supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative.

***360** V

Ferrer's final attempt to distinguish *Buckeye* relies on *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989). *Volt* involved a California statute dealing with cases in which "[a] party to [an] arbitration agreement is also a party to a pending court action ... [involving] a third party [not bound by the arbitration agreement], arising out of the same transaction or series of related transactions." Cal.Civ.Proc.Code Ann. § 1281.2(c) (West 2007). To avoid the "possibility of conflicting rulings on a common issue of law or fact," the statute gives the Superior Court authority, *inter alia,* to stay the court proceeding "pending the outcome of the arbitration" or to stay the arbitration "pending the outcome of the court action." *Ibid.*

Volt Information Sciences and Stanford University were parties to a construction contract containing an arbitration clause. When a dispute arose and Volt demanded arbitration, Stanford sued Volt and two other companies involved in the construction project. Those other companies were not parties to the arbitration agreement; Stanford sought indemnification from them in the event that Volt prevailed against Stanford. At Stanford's request, the Superior Court stayed the arbitration. The California Court of Appeal affirmed the stay order. Volt and Stanford incorporated § 1281.2(c) into their agreement, the appeals court held. They did so by stipulating that the contract—otherwise silent ****988** on the priority of suits drawing in parties not subject to arbitration—would be governed by California law. *Board of Trustees of Leland Stanford Junior Univ. v. Volt Information Sciences, Inc.,* 240 Cal.Rptr. 558, 561 (1987) (officially depublished). Relying on the Court of Appeal's interpretation of the contract, we held that the FAA did not bar a stay of arbitration pending the resolution of Stanford's Superior Court suit against Volt and the two companies not bound by the arbitration agreement.

***361** Preston and Ferrer's contract also contains a choice-of-law clause, which states that the "agreement shall be governed by the laws of the state of California." App. 17. A separate saving clause provides: "If there is any conflict between this agreement and any present or future law," the law prevails over the contract "to the extent necessary to bring [the contract] within the requirements of said law." *Id.,* at 18. Those contractual terms, according to Ferrer, call for the application of California procedural

law, including § 1700.44(a) 's grant of exclusive jurisdiction to the Labor Commissioner.

Ferrer's reliance on *Volt* is misplaced for two discrete reasons. First, arbitration was stayed in *Volt* to accommodate litigation involving third parties who were strangers to the arbitration agreement. Nothing in the arbitration agreement addressed the order of proceedings when pending litigation with third parties presented the prospect of inconsistent rulings. We thought it proper, in those circumstances, to recognize state law as the gap filler.

Here, in contrast, the arbitration clause speaks to the matter in controversy; it states that "any dispute ... relating to ... the breach, validity, or legality" of the contract should be arbitrated in accordance with the American Arbitration Association (AAA) rules. App. 18. Both parties are bound by the arbitration agreement; the question of Preston's status as a talent agent relates to the validity or legality of the contract; there is no risk that related litigation will yield conflicting rulings on common issues; and there is no other procedural void for the choice-of-law clause to fill.

Second, we are guided by our more recent decision in *Mastrobuono v. Shearson Lehman Hutton, Inc.,* 514 U.S. 52, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995). Although the contract in *Volt* provided for "arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association," 489 U.S., at 470, n. 1, 109 S.Ct. 1248 (internal quotation marks omitted), Volt never argued that incorporation of those rules trumped the choice-of-law clause contained in the contract, see Brief for ***362** Appellant, and Reply Brief, in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* O.T. 1988, No. 87–1318. Therefore, neither our decision in *Volt* nor the decision of the California appeals court in that case addressed the import of the contract's incorporation by reference of privately promulgated arbitration rules.

In *Mastrobuono,* we reached that open question while interpreting a contract with both a New York choice-of-law clause and a clause providing for arbitration in accordance with the rules of the National Association of Securities Dealers (NASD). 514 U.S., at 58–59, 115 S.Ct. 1212.[8] The "best ****989** way to harmonize" the two clauses, we held, was to read the choice-of-law clause "to encompass substantive principles that New York courts would apply, but not to include [New York's] special rules limiting the authority of arbitrators." *Id.,* at 63–64, 115 S.Ct. 1212.

Preston and Ferrer's contract, as noted, provides for arbitration in accordance with the AAA rules. App. 18. One of those rules states that "[t]he arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part." AAA, Commercial Arbitration Rules ¶ R–7(b) (2007), online at http://www.adr.org/sp.asp? id=22440 (as visited Feb. 15, 2008, and in Clerk of Court's case file). The incorporation of the AAA rules, and in particular Rule 7(b), weighs against inferring from the choice-of-law clause an understanding shared by Ferrer and Preston that their disputes would be heard, in ***363** the first instance, by the Labor Commissioner. Following the guide *Mastrobuono* provides, the "best way to harmonize" the parties' adoption of the AAA rules and their selection of California law is to read the latter to encompass prescriptions governing the substantive rights and obligations of the parties, but not the State's "special rules limiting the authority of arbitrators." 514 U.S., at 63–64, 115 S.Ct. 1212.

* * *

For the reasons stated, the judgment of the California Court of Appeal is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

As I have stated on many previous occasions, I believe that the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.* (2000 ed. and Supp. V), does not apply to proceedings in state courts. See *Allied–Bruce Terminix Cos. v. Dobson,* 513 U.S. 265, 285–297, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995) (dissenting opinion); see also *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 449, 126 S.Ct. 1204, 163 L.Ed.2d

1038 (2006) (same); *Green Tree Financial Corp. v. Bazzle,* 539 U.S. 444, 460, 123 S.Ct. 2402, 156 L.Ed.2d 414 (2003) (same); *Doctor's Associates, Inc. v. Casarotto,* 517 U.S. 681, 689, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996) (same). Thus, in state-court proceedings, the FAA cannot displace a state law that delays arbitration until administrative proceedings are completed. Accordingly, I would affirm the judgment of the Court of Appeal.

All Citations

552 U.S. 346, 128 S.Ct. 978, 169 L.Ed.2d 917, 76 USLW 3437, 76 USLW 4097, 27 IER Cases 257, 08 Cal. Daily Op. Serv. 2100, 2008 Daily Journal D.A.R. 2511, 21 Fla. L. Weekly Fed. S 77, 28 A.L.R. Fed. 2d 681

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 The TAA uses the term "talent agency" to describe both corporations and individual talent agents. We use the terms "talent agent" and "talent agency" interchangeably.

2 Although Ferrer urges us to overrule *Southland,* he relies on the same arguments we considered and rejected in *Allied–Bruce Terminix Cos. v. Dobson,* 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995). Compare Brief for Respondent 55–59 with Brief for Attorney General of Alabama et al. as *Amici Curiae* in *Allied–Bruce Terminix Cos. v. Dobson,* O.T.1994; No. 93–1001, pp. 11–19. Adhering to precedent, we do not take up Ferrer's invitation to overrule *Southland*.

3 Ferrer's petition to the Labor Commissioner sought a declaration that the contract "is void under the [TAA]." App. 23. His complaint in Superior Court seeking to enjoin arbitration asserted: "[T]he [c]ontract is void by reason of [Preston's] attempt to procure employment for [Ferrer] in violation of the [TAA]," and "the [c]ontract's arbitration clause does not vest authority in an arbitrator to determine whether the contract is void." *Id.,* at 27. His brief in the appeals court stated: "Ferrer does not contend that the arbitration clause in the [c]ontract was procured by fraud. Ferrer contends that Preston unlawfully acted as an unlicensed talent agent and hence cannot enforce the [c]ontract." Brief for Respondent in No. B188997, p. 18.

4 Courts "may void the entire contract" where talent agency services regulated by the TAA are "inseparable from [unregulated] managerial services." *Marathon Entertainment, Inc. v. Blasi,* 42 Cal.4th 974, 998, 174 P.3d 741, 744 (2008). If the contractual terms are severable, however, "an isolated instance" of unlicensed conduct "does not automatically bar recovery for services that could lawfully be provided without a license." *Ibid.*

5 To appeal the Labor Commissioner's decision, an aggrieved party must post a bond of at least $1,000 and up to twice the amount of any judgment approved by the Commissioner. § 1700.44(a).

6 From Superior Court an appeal lies in the Court of Appeal. Cal. Civ. Proc. Code Ann. § 904.1(a) (West 2007); Cal. Rule of Court 8.100(a) (Appellate Rules) (West 2007 rev. ed.). Thereafter, the losing party may seek review in the California Supreme Court, Rule 8.500(a)(1) (Appellate Rules), perhaps followed by a petition for a writ of certiorari in this Court, 28 U.S.C. § 1257. Ferrer has not identified a single case holding that California law permits interruption of this chain of appeals to allow the arbitrator to review the Labor Commissioner's decision. See Tr. of Oral Arg. 35.

7 Enforcement of the parties' arbitration agreement in this case does not displace any independent authority the Labor Commissioner may have to investigate and rectify violations of the TAA. See Brief for Respondent 47 ("[T]he Commissioner has independent investigatory authority and may receive information concerning alleged violations of the TAA from any source." (citation omitted)). See also Tr. of Oral Arg. 13–14.

8 The question in *Mastrobuono* was whether the arbitrator could award punitive damages. See *Mastrobuono v. Shearson Lehman Hutton, Inc.,* 514 U.S. 52, 53–54, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995). New York law prohibited arbitrators, but not courts, from awarding such damages. *Id.,* at 55, 115 S.Ct. 1212. The NASD rules, in contrast, authorized "damages and other relief," which, according to an NASD arbitration manual, included punitive damages. *Id.,* at 61, 115 S.Ct. 1212 (internal quotation marks omitted). Relying on *Volt,* respondents argued that the choice-of-law clause incorporated into the parties' arbitration agreement New York's ban on arbitral awards of punitive damages. Opposing that argument, petitioners successfully urged that the agreement to arbitrate in accordance with the NASD rules controlled.

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Marathon Entertainment, Inc. v. Blasi

Supreme Court of California | January 28, 2008 | 42 Cal.4th 974 | 174 P.3d 741

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Outline

42 Cal.4th 974
Supreme Court of California

MARATHON ENTERTAINMENT, INC., Plaintiff and Appellant,
v.
Rosa BLASI et al., Defendants and Respondents.

No. S145428
|
Jan. 28, 2008.
|
As Modified on Denial of Rehearing March 12, 2008.

Synopsis

Background: Personal manager of actress filed action against actress for his commission on her earnings from a television show. After Labor Commissioner voided parties' contract ab initio for manager's procurement of employment for actress without license under Talent Agencies Act, actress moved for summary judgment. The Superior Court, Los Angeles County, No. BC290839, Rolf M. Treu and James C. Chalfant, JJ., entered summary judgment for actress. Manager appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Werdegar, J., held that:

[1] Talent Agencies Act applied to personal manager;

[2] doctrine of severance applied to contracts partially illegal under Act; and

[3] fact issue remained whether contract was severable.

Judgment of Court of Appeal affirmed and matter remanded.

Opinion, 45 Cal.Rptr.3d 158, superseded.

West Headnotes (18)

[1] **Labor and Employment** Regulation and regulatory agencies

The Labor Commissioner has original and exclusive jurisdiction over issues arising under the Talent Agencies Act. West's Ann.Cal.Labor Code § 1700.44.

8 Cases that cite this headnote

[2] **Labor and Employment** Constitutional and statutory provisions

Exploitation of artists by representatives is the central concern of the Talent Agencies Act. West's Ann.Cal.Labor Code § 1700 et seq.

3 Cases that cite this headnote

[3] **Labor and Employment** Regulation and regulatory agencies

The Talent Agencies Act establishes detailed licensing requirements for talent agents who procure employment for artists, but no separate analogous licensing or regulatory scheme extends to artists' personal managers. West's Ann.Cal.Labor Code § 1700 et seq.

6 Cases that cite this headnote

[4] **Labor and Employment** Regulation and regulatory agencies

Licensing requirements of Talent Agencies Act apply to artists' personal managers who procure employment for artists, including managers who only incidentally or occasionally procure such employment; Act regulates conduct, not titles. West's Ann.Cal.Labor Code §§ 1700, 1700.4.

6 Cases that cite this headnote

[5] **Labor and Employment** Regulation and regulatory agencies

Legislative title of the Talent Agencies Act did not restrict Act's application to talent agents such that artists' personal managers would be exempt from Act's licensing requirements for procuring employment. West's Ann.Cal. Const. Art. 4, § 9; West's Ann.Cal.Labor Code § 1700 et seq.

3 Cases that cite this headnote

[6] **Statutes** Logrolling defined

The constitutional single-subject rule for statutes is intended to prevent "log-rolling" by the Legislature, i.e., combining several proposals in a single bill so that legislators, by combining their votes, obtain a majority for a measure which would not have been approved if divided into separate bills. West's Ann.Cal. Const. Art. 4, § 9.

2 Cases that cite this headnote

[7] **Statutes** Purpose of single-subject rule

The constitutional requirement that the single subject of a legislative bill shall be expressed in its title is to prevent misleading or inaccurate titles so that legislators and the public are afforded reasonable notice of the contents of a statute. West's Ann.Cal. Const. Art. 4, § 9.

[8] **Statutes** Acts Relating to One or More Subjects; Single-Subject Rule

The constitutional single-subject rule for statutes is to be liberally construed to uphold proper legislation and not used to invalidate legitimate legislation. West's Ann.Cal. Const. Art. 4, § 9.

1 Case that cites this headnote

[9] **Statutes** Acts Relating to One or More Subjects; Single-Subject Rule

Under the constitutional single-subject rule for statutes, the Legislature may combine in a single act numerous provisions governing projects so related and interdependent as to constitute a single scheme, and provisions auxiliary to the scheme's execution may be adopted as part of that single package. West's Ann.Cal. Const. Art. 4, § 9.

1 Case that cites this headnote

[10] **Statutes** What Constitutes Sufficient or Insufficient Title

Statutes Cataloging or indexing

A legislative act's title need not contain either an index or an abstract of its provisions; the constitutional mandate for titles is satisfied if the provisions themselves are cognate and germane to the subject matter designated by the title, and if the title intelligently refers the reader to the subject to which the act applies, and suggests the field of legislation which the text includes. West's Ann.Cal. Const. Art. 4, § 9.

1 Case that cites this headnote

[11] **Labor and Employment** Regulation and regulatory agencies

Legislature's decision not to add separate licensing and regulation of artists' personal managers, to legislation requiring talent agents who procure employment to be licensed, exempts managers from regulation insofar as they do those things that personal managers do, but managers are regulated under Talent Agencies Act to extent they do things that make one a talent agency under Act. West's Ann.Cal.Labor Code § 1700 et seq.

5 Cases that cite this headnote

[12] **Labor and Employment** Review

Under the Talent Agencies Act's statutorily guaranteed trial de novo procedure for review of the Labor Commissioner's rulings, the Labor Commissioner's findings carry no weight. West's Ann.Cal.Labor Code § 1700.44.

4 Cases that cite this headnote

[13] **Labor and Employment** Regulation and regulatory agencies

Labor and Employment Validity

While the Labor Commissioner has the authority to void manager-talent contracts ab initio for procurement of employment without the license required by the Talent Agencies Act, the Commissioner also has discretion to apply the doctrine of severability to partially enforce these contracts to allow recovery of fees for legally provided services. West's Ann.Cal.Civ.Code § 1599; West's Ann.Cal.Labor Code §§ 1700.4, 1700.5.

13 Cases that cite this headnote

[14] **Contracts** Partial Illegality

Courts have the power, but not the duty, to sever the illegal portion of partially illegal contracts in order to avoid an inequitable windfall or preserve a contractual relationship where doing so would not condone illegality. West's Ann.Cal.Civ.Code § 1599.

15 Cases that cite this headnote

[15] **Summary Judgment** Contracts in general

Fact issue remained, precluding summary judgment for actress in personal manager's action to recover commission on her earnings from television show, whether doctrine of severability applied to allow partial enforcement of parties' contract that was illegal to extent manager procured employment without license required by Talent Agencies Act; neither absence of match between services rendered and compensation charged, nor manager's illegal act of procurement, established as matter of law that there was no basis for severance. West's Ann.Cal.Civ.Code § 1599; West's Ann.Cal.Labor Code § 1700 et seq.

15 Cases that cite this headnote

[16] **Contracts** Partial Illegality

In deciding whether severance of a partially illegal contract is available, the overarching inquiry is whether the interests of justice would be furthered by severance. West's Ann.Cal.Civ.Code § 1599.

13 Cases that cite this headnote

[17] **Contracts** Partial Illegality

In determining whether severance of a partially illegal contract is available, courts are to look to the various purposes of the contract; if the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced, but if the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate. West's Ann.Cal.Civ.Code § 1599.

47 Cases that cite this headnote

[18] **Labor and Employment** Validity

Illegal procurement of employment for artist by unlicensed personal manager does not necessarily void entire management contract; whether

illegal portion of contract is severable depends on central purposes of contract. West's Ann.Cal.Civ.Code § 1599; West's Ann.Cal.Labor Code § 1700 et seq.

8 Cases that cite this headnote

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****730** WERDEGAR, J.

***980** In Hollywood, talent—the actors, directors, and writers, the Jimmy Stewarts, Frank Capras, and Billy Wilders who enrich our daily cultural lives—is represented by two groups of people: agents and managers. Agents procure roles; they put artists on the screen, on the stage, behind the camera; indeed, by law, only they may do so. Managers coordinate everything else; they counsel and advise, take care of business arrangements, and chart the course of an artist's career.

This division largely exists only in theory. The reality is not nearly so neat. The line dividing the functions of agents, who must be licensed, and of managers, who need not be, is often blurred and sometimes crossed. Agents sometimes counsel and advise; managers sometimes procure work. Indeed, the occasional procurement of employment opportunities may be standard operating procedure for many managers and an understood goal when not-yet-established talents, lacking access to the few licensed agents in Hollywood, hire managers to promote their careers.[1]

We must decide what legal consequences befall a manager who steps across the line and solicits or procures employment without a talent agency license. We hold that (1) contrary to the arguments of personal manager Marathon Entertainment, Inc. (Marathon), the strictures of the Talent Agencies Act (Lab.Code, § 1700 et seq.) (Act) apply to managers as well as agents; (2) contrary to the arguments of actress Rosa Blasi (Blasi), while the Labor Commissioner has the authority to void manager-talent contracts *ab initio* for unlawful procurement, she also has discretion to apply the ***981** doctrine of severability to partially enforce these contracts; and (3) in this case, a genuine dispute of material fact exists over whether severability might apply to allow partial enforcement of the parties' contract. Accordingly, we affirm the Court of Appeal.

Factual and Procedural Background

In 1998, Marathon and Blasi entered into an oral contract for Marathon to serve as Blasi's personal manager. Marathon was to counsel Blasi and promote her career; in exchange, Blasi was to pay Marathon 15 percent of her earnings from entertainment employment obtained during the course of the contract. During the ensuing three years, Blasi's professional appearances included a role in a film, Noriega: God's Favorite (Industry Entertainment 2000), and a lead role as Dr. Luisa Delgado on the television series *Strong Medicine.*

According to Marathon, Blasi reneged on her agreement to pay Marathon its 15 percent commission from her *Strong Medicine* employment contract. In the summer of 2001, she unilaterally reduced payments to 10 percent. Later that year, she ceased payment altogether and terminated her Marathon contract, stating that her licensed talent agent, John Kelly, who had served as her agent throughout the term ****731** of the management contract with Marathon, was going to become her new personal manager.

Marathon sued Blasi for breach of oral contract, quantum meruit, false promise, and unfair business practices, seeking to recover unpaid *Strong Medicine* commissions. Marathon alleged that it had provided Blasi with lawful personal manager services by providing the downpayment on her home, paying the salary of her business manager, providing her with professional and personal advice, and paying her travel expenses.

[1] After obtaining a stay of the action, Blasi filed a petition with the Labor Commissioner alleging that Marathon had violated the Act by soliciting and procuring employment for Blasi without a talent agency license.[2] The Labor Commissioner agreed. The Commissioner found Marathon had procured various engagements for Blasi, including a role in the television series *Strong Medicine*. Concluding that one or more acts of solicitation and procurement by Marathon violated the Act, the Commissioner voided the parties' contract *ab initio* and barred Marathon from recovery.

Marathon appealed the Labor Commissioner's ruling to the superior court for a trial de novo. (See § 1700.44, subd. (a); ***982** *Buchwald v. Katz* (1972) 8 Cal.3d 493, 500–501, 105 Cal.Rptr. 368, 503 P.2d 1376.) It also amended its complaint to include declaratory relief claims challenging the constitutionality of the Act. Marathon alleged that the Act's enforcement mechanisms, including the sanction of invalidating the contracts of personal managers that solicit or procure employment for artists without a talent agency license, violated the managers' rights under the due process, equal protection, and free speech guarantees of the state and federal Constitutions.

Blasi moved for summary judgment on the theory that Marathon's licensing violation had invalidated the entire personal management contract. Blasi submitted excerpts from the Labor Commissioner hearing transcript as evidence that Marathon had violated the Act by soliciting or procuring employment for her without a talent agency license. Blasi did not specifically argue or produce evidence that Marathon had illegally procured the *Strong Medicine* employment contract.

The trial court granted Blasi's motion for summary judgment and invalidated Marathon's personal management contract as an illegal contract for unlicensed talent agency services in violation of the Act, denied Marathon's motion for summary adjudication of the Act's constitutionality, and entered judgment for Blasi.

The Court of Appeal reversed in part. It agreed with the trial court that the Act applied to personal managers. However, it concluded that under the law of severability of contracts (Civ.Code, § 1599), because the parties' agreement had the lawful purpose of providing personal management services that are unregulated by the Act, and because Blasi had not established that her *Strong Medicine* employment contract was procured illegally, the possibility existed that Blasi's obligation to pay Marathon a commission on that contract could be severed from any unlawful parts of the parties' management agreement. In reaching this conclusion, the Court of Appeal distinguished prior cases that had voided management contracts in their entirety ****732** (*Yoo v. Robi* (2005) 126 Cal.App.4th 1089, 24 Cal.Rptr.3d 740; *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 48 Cal.Rptr.2d 437) and in some cases expressly

refused to sever the contracts (*Yoo,* at pp. 1104–1105, 24 Cal.Rptr.3d 740).

We granted review to address the applicability of the Act to personal managers and the availability of severance under the Act.

***983 Discussion**

I. ***Background***

A. *Agents and Managers*

In Hollywood, talent agents act as intermediaries between the buyers and sellers of talent. (*Regulation of Attorneys, supra,* 80 Cal. L.Rev. at p. 479.) While formally artists are agents' clients, in practice a talent agent's livelihood depends on cultivating valuable connections on both sides of the artistic labor market. (Birdthistle, *A Contested Ascendancy: Problems with Personal Managers Acting as Producers* (2000) 20 Loyola L.A. Ent. L.J. 493, 502–503 (hereafter *Contested Ascendancy*); *Regulation of Attorneys,* at p. 479.) Generally speaking, an agent's focus is on the deal: on negotiating numerous short-term, project-specific engagements between buyers and sellers. (*Conflicts in the New Hollywood, supra,* 76 So.Cal. L.Rev. at p. 981.)

Agents are effectively subject to regulation by the various guilds that cover most of the talent available in the industry: most notably, the Screen Actors Guild, American Federation of Television and Radio Artists, Directors Guild of America, Writers Guild of America, and American Federation of Musicians. (*Regulation of Attorneys, supra,* 80 Cal. L.Rev. at p. 487.) Artists may informally agree to use only agents who have been "franchised" by their respective guilds; in turn, as a condition of franchising, the guilds may require agents to agree to a code of conduct and restrictions on terms included in agent-talent contracts. (*Conflicts in the New Hollywood, supra,* 76 So.Cal. L.Rev. at pp. 989–990; *Contested Ascendancy, supra,* 20 Loyola L.A. Ent. L.J. at p. 520.) Most significantly, those restrictions typically include a cap on the commission charged (generally 10 percent), a cap on contract duration, and a bar on producing one's client's work and obtaining a producer's fee. (Screen Actors Guild, Codified Agency Regs., rule 16(g); American Federation of Television and Radio Artists, Regs. Governing Agents, rule 12–C; *Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 596–597, 60 Cal.Rptr.3d 93; *Conflicts in the New Hollywood,* at pp. 989–990; *Contested Ascendancy,* at pp. 520–521.) These restrictions create incentives to establish a high volume clientele, offer more limited services, and focus on those lower risk artists with established track records who can more readily be marketed to talent buyers. (*Conflicts in the New Hollywood,* at p. 981; *Contested Ascendancy,* at p. 503.)

Personal managers, in contrast, are not franchised by the guilds. (*Conflicts in the New Hollywood, supra,* 76 So.Cal. L.Rev. at p. 991; *Contested Ascendancy, supra,* 20 Loyola L.A. Ent. L.J. at p. 522.) They typically accept a higher risk clientele and offer a much broader range of services, focusing on ***984** advising and counseling each artist with an eye to making the artist as marketable and attractive to talent buyers as possible, as well as managing the artist's personal and professional life in a way that allows the artist to focus on creative productivity. (*Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th at pp. 252–253, 48 Cal.Rptr.2d 437; Cal. Entertainment Com., Rep. (Dec. 2, 1985) p. 9 (hereafter Entertainment Commission Report); ****733** *Regulation of Attorneys, supra,* 80 Cal. L.Rev. at pp. 482–483.) "Personal managers primarily advise, counsel, direct, and coordinate the development of the artist's career. They advise in both business and personal matters, frequently lend money to young artists, and serve as spokespersons for the artists." (*Park v. Deftones* (1999) 71 Cal.App.4th 1465, 1469–1470, 84 Cal.Rptr.2d 616.) Given this greater degree of involvement and risk, managers typically have a smaller client base and charge higher commissions than agents (as they may, in the absence of guild price caps); managers may also produce their clients' work and thus receive compensation in that fashion. (*Conflicts in the New Hollywood,* at p. 992; *Talent Agencies Act, supra,* 28 Pepperdine L.Rev. at p. 383; *Contested Ascendancy,* at pp. 508, 526–527; *Regulation of Attorneys,* at p. 483.)

B. *The Talent Agencies Act*

[2] Aside from guild regulation, the representation of artists is principally governed by the Act. (§§

1700–1700.47.) The Act's roots extend back to 1913, when the Legislature passed the Private Employment Agencies Law and imposed the first licensing requirements for employment agents. (*Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 357, 62 Cal.Rptr. 364; *Talent Agencies Act, supra,* 28 Pepperdine L.Rev. at p. 387; *Regulation of Attorneys, supra,* 80 Cal. L.Rev. at p. 493.) From an early time, the Legislature was concerned that those representing aspiring artists might take advantage of them, whether by concealing conflicts of interest when agents split fees with the venues where they booked their clients, or by sending clients to houses of ill-repute under the guise of providing "employment opportunities." (See Stats.1913, ch. 282, § 14, pp. 519–520 [prohibiting agents from fee-splitting, sending artists to "house[s] of ill fame" or saloons, or allowing "persons of bad character" to frequent their establishments]; *Talent Agencies Act,* at pp. 386–387; *Regulation of Attorneys,* at p. 493.) Exploitation of artists by representatives has remained the Act's central concern through subsequent incarnations to the present day. (See *Styne v. Stevens, supra,* 26 Cal.4th at p. 50, 109 Cal.Rptr.2d 14, 26 P.3d 343.)

In 1978, the Legislature considered establishing a separate licensing scheme for personal managers. (See Assem. Bill No. 2535 (1977–1978 Reg. Sess.) as amended May 1, 1978, § 41; Assem. Com. on Labor, Employment & Consumer Affairs, Analysis of Assem. Bill No. 2535 (1977–1978 Reg. Sess.) as amended May 1, 1978, pp. 1–4; Entertainment ***985** Com. Rep., *supra,* at p. 8.) Unable to reach agreement, the Legislature eventually abandoned separate licensing of personal managers and settled for minor changes in the statutory regime, shifting regulation of musician booking agents to the Labor Commissioner and renaming the Artists' Managers Act the Talent Agencies Act. (Stats.1978, ch. 1382, pp. 4575–4583.)

In 1982, the Legislature provisionally amended the Act to impose a one-year statute of limitations, eliminate criminal sanctions for violations of the Act, and establish a "safe harbor" for managers to procure employment if they did so in conjunction with a licensed agent. (Former § 1700.44, as enacted by Stats.1982, ch. 682, § 3, p. 2815; Entertainment Com. Rep., *supra,* at pp. 8, 38–39.) It subjected these changes to a sunset provision and established the 10–person California Entertainment Commission (Entertainment Commission), consisting of agents, managers, artists, and the Labor Commissioner, to evaluate the Act and "recommend to the Legislature a model bill." (Former §§ 1701–1704, added by Stats.1982, ch. 682, § 6, p. 2816, repealed by its own ****734** terms, Jan. 1, 1986.) In 1986, after receiving the Entertainment Commission Report, the Legislature adopted its recommendations, which included making the 1982 changes permanent and enacting a modest series of other changes. (Stats.1986, ch. 488, pp. 1804–1808; Entertainment Com. Rep., at pp. 22–34; Sen. Com. on Industrial Relations, Analysis of Assem. Bill No. 3649 (1985–1986 Reg. Sess.) as amended Apr. 15, 1986, p. 5 [bill would implement Entertainment Commission's recommendations "in full"].) So the Act has stood, with minor modifications, for the last 20 years.

[3] In its present incarnation, the Act requires anyone who solicits or procures artistic employment or engagements for artists[3] to obtain a talent agency license. (§§ 1700.4, 1700.5.) In turn, the Act establishes detailed requirements for how licensed talent agencies conduct their business, including a code of conduct, submission of contracts and fee schedules to the state, maintenance of a client trust account, posting of a bond, and prohibitions against discrimination, kickbacks, and certain conflicts of interest. (§§ 1700.23–1700.47.) No separate analogous licensing or regulatory scheme extends to personal managers. (*Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th at p. 252, 48 Cal.Rptr.2d 437.)

***986** With this background in mind, we turn to two questions not previously addressed by this court: whether the Act in fact applies to personal managers, as the Courts of Appeal and Labor Commissioner have long assumed, and if so, how.

II. *The Scope of the Talent Agencies Act: Application to Managers*

[4] Marathon contends that personal managers are categorically exempt from regulation under the Act. We disagree; as we shall explain, the text of the Act and persuasive interpretations of it by the Courts of Appeal and the Labor Commissioner demonstrate otherwise.

We begin with the language of the Act. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 927, 22 Cal.Rptr.3d 530, 102 P.3d 915.) Section 1700.5 provides in relevant part: "No *person* shall engage in or carry on the occupation of a *talent agency* without first procuring a license therefor from the Labor Commissioner." (Italics added.) In turn, "person" is expressly defined to include "any individual, company, society, firm, partnership, association, corporation, limited liability company, *manager,* or their agents or employees" (§ 1700, italics added), and " '[t]alent agency' means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists" other than recording contracts (§ 1700.4, subd. (a)).

The Act establishes its scope through a functional, not a titular, definition. It regulates *conduct,* not labels; it is the act of procuring (or soliciting), not the title of one's business, that qualifies one as a talent agency and subjects one to the Act's licensure and related requirements. (§ 1700.4, subd. (a).) Any person who procures employment—any individual, any corporation, any manager—is a talent agency subject to regulation. (§§ 1700, ****735** 1700.4, subd. (a).) Consequently, as the Courts of Appeal have unanimously held, a personal manager who solicits or procures employment for his artist-client is subject to and must abide by the Act. (*Park v. Deftones, supra,* 71 Cal.App.4th at pp. 1470–1471, 84 Cal.Rptr.2d 616; *Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th at p. 253, 48 Cal.Rptr.2d 437; see also *Buchwald v. Superior Court, supra,* 254 Cal.App.2d at pp. 354–355, 62 Cal.Rptr. 364 [deciding same issue under the Act's predecessor, the Artists' Managers Act].)[4] The Labor ***987** Commissioner, whose interpretations of the Act we may look to for guidance (see *Styne v. Stevens, supra,* 26 Cal.4th at p. 53, 109 Cal.Rptr.2d 14, 26 P.3d 343; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8, 78 Cal.Rptr.2d 1, 960 P.2d 1031), has similarly uniformly applied the Act to personal managers. (See, e.g., *Sheridan v. Yoches, Inc.* (Cal.Lab.Com., Sept. 4, 2007) TAC No. 21–06, pp. 2, 13–20; *Jones v. La Roda Group* (Cal.Lab.Com., Dec. 30, 2005) TAC No. 35–04, pp. 9–11; *Hall v. X Management, Inc.* (Cal.Lab.Com., Apr. 24, 1992) TAC No. 19–90, pp. 28–35.)[5]

As to the further question whether even a single act of procurement suffices to bring a manager under the Act, we note that the Act references the "occupation" of procuring employment and serving as a talent agency. (§§ 1700.4, subd. (a), 1700.5.) Considering this in isolation, one might interpret the statute as applying only to those who regularly, and not merely occasionally, procure employment. (See *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628, 16 Cal.Rptr.2d 496 [Act applies only when "the agent's employment procurement function constitutes a significant part of the agent's business as a whole"].) However, as we have previously acknowledged in dicta, "[t]he weight of authority is that even the incidental or occasional provision of such services requires licensure." (*Styne v. Stevens, supra,* 26 Cal.4th at p. 51, 109 Cal.Rptr.2d 14, 26 P.3d 343, citing *Park v. Deftones, supra,* 71 Cal.App.4th 1465, 84 Cal.Rptr.2d 616, and *Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th 246, 48 Cal.Rptr.2d 437.)[6] In ****736** agreement with these decisions, the Labor Commissioner has uniformly interpreted the Act as extending to incidental procurement. (See, e.g., *Gittelman v. Karolat* (Cal.Lab.Com., July 19, 2004) TAC No. 24–02, p. 14; *Kilcher v. Vainshtein* (Cal.Lab.Com., May 30, 2001) TAC No. 02–99, pp. 20–21; *Damon v. Emler* (Cal.Lab.Com., Jan. 12, ***988** 1982) TAC No. 36–79, p. 4.) The Labor Commissioner's views are entitled to substantial weight if not clearly erroneous (*Styne v. Stevens,* at p. 53, 109 Cal.Rptr.2d 14, 26 P.3d 343); accordingly, we likewise conclude the Act extends to individual incidents of procurement.

[5] Marathon offers two main arguments against the conclusion that it is subject to the Act whenever it solicits or procures employment. First, it objects that the Act's title and contents reference only talent agencies and thus only talent agencies may be regulated under the Act. (See Cal. Const., art. IV, § 9; *Brunson v. City of Santa Monica* (1915) 27 Cal.App. 89, 92–93, 148 P. 950 [act whose title limits its scope to public *officer* liability may not constitutionally be interpreted to alter public *municipal corporation* liability].) Article IV, section 9 sets out this state's single-subject rule and, as relevant here, requires: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not

in its title, only the part not expressed is void." From this, Marathon reasons that (1) the Act's title omits reference to regulation of personal managers, and (2) to the extent it purports to regulate personal managers, it is thus void.

[6] **[7]** This is a misreading of the constitutional provision and the 1978 legislation. The single-subject rule is intended to prevent "log-rolling by the Legislature, i.e., combining several proposals in a single bill so that legislators, by combining their votes, obtain a majority for a measure which would not have been approved if divided into separate bills." (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1096, 240 Cal.Rptr. 569, 742 P.2d 1290.) In turn, "the requirement that the single subject of a bill shall be expressed in its title is to prevent misleading or inaccurate titles so that legislators and the public are afforded reasonable notice of the contents of a statute." (*Ibid.;* see also *Homan v. Gomez* (1995) 37 Cal.App.4th 597, 600, 43 Cal.Rptr.2d 647 [rule intended to prevent unrelated provisions from sliding through "unnoticed and unchallenged"]; *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1196, 219 Cal.Rptr. 664 [rule intended to " 'prevent legislators and the public from being entrapped by misleading titles to bills whereby legislation relating to one subject might be obtained under the title of another' "].)

[8] **[9]** **[10]** However, the single-subject rule "is to be liberally construed to uphold proper legislation and not used to invalidate legitimate legislation." (*San Joaquin Helicopters v. Department of Forestry* (2003) 110 Cal.App.4th 1549, 1556, 3 Cal.Rptr.3d 246; accord, *Harbor v. Deukmejian, supra,* 43 Cal.3d at pp. 1097–1098, 240 Cal.Rptr. 569, 742 P.2d 1290; *Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159, 172–173, 28 Cal.Rptr. 724, 379 P.2d 28; *Evans v. Superior Court* (1932) 215 Cal. 58, 62, 8 P.2d 467.) The Legislature may combine in a single act numerous provisions " 'governing projects so related and interdependent as to constitute a single scheme,' " and provisions auxiliary to the ***989** scheme's execution may be adopted ****737** as part of that single package. (*Harbor,* at p. 1097, 240 Cal.Rptr. 569, 742 P.2d 1290, quoting *Evans,* at p. 62, 8 P.2d 467.) The act's title "need not contain either an index or an abstract of its provisions. The constitutional mandate [citation] is satisfied if the provisions themselves are cognate and germane to the subject matter designated by the title, and if the title intelligently refers the reader to the subject to which the act applies, and suggests the field of legislation which the text includes." (*Powers Farms, Inc. v. Consolidated Irr. Dist.* (1941) 19 Cal.2d 123, 130, 119 P.2d 717; see also *City of Whittier v. Dixon* (1944) 24 Cal.2d 664, 666, 151 P.2d 5 [to satisfy the Constitution, title need only "contain [ ] a reasonably intelligible reference to the subject to which the legislation is addressed"]; *Lyons v. Municipal Court* (1977) 75 Cal.App.3d 829, 841, 142 Cal.Rptr. 449.)

Here, the 1978 legislation and its title satisfy the California Constitution. The legislation's provisions pertain to a single subject, the comprehensive regulation of persons and entities that provide talent agency services. The title, quoted in full in the margin, identifies that subject and specifically references the existing comprehensive regulations that are to be modified.[7] The legislation defines talent agencies as those that engage in particular conduct; thus, to the extent personal managers engage in that conduct, they fit within the legislation's title and subject matter and may be regulated by its provisions.

[11] Second, Marathon correctly notes that in 1978, after much deliberation, the Legislature decided not to add separate licensing and regulation of personal managers to the legislation. (See Assem. Bill No. 2535 (1977–1978 Reg. Sess.) as amended May 10, 1978, pp. 16–18 [deleting new licensure provisions].) The consequence of this conscious omission is not, as Marathon contends, that personal managers are therefore exempt from regulation. Rather, they remain exempt from regulation insofar as they do those things that personal managers do, but they are regulated under the Act to the extent they stray into doing the things that make one a talent agency under the Act.[8]

***990** III. *Sanctions for Solicitation and Procurement Under the Act*

A. *Marathon's Procurement*

We note we are not called on to decide, and do not decide, what precisely constitutes "procurement" under the Act. The Act contains no definition, and

the Labor ****738** Commissioner has struggled over time to better delineate which actions involve mere general assistance to an artist's career and which stray across the line to illicit procurement. Here, however, the Labor Commissioner concluded Marathon had engaged in various instances of procurement, the trial court concluded there was no material dispute that Marathon had done so, and Marathon has not further challenged that conclusion. We thus take it as a given that Marathon has engaged in one or more acts of procurement and that (as the parties also agree) Marathon has no talent agency license to do so.

[12] We also take as a given, at least at this stage, that Marathon's unlicensed procurement did not include the procurement specifically of Blasi's *Strong Medicine* role. Blasi takes issue with this point, correctly pointing out that the Labor Commissioner found to the contrary, but (1) under the Act's statutorily guaranteed trial de novo procedure, the Labor Commissioner's findings carry no weight (*Buchwald v. Katz, supra,* 8 Cal.3d at p. 501, 105 Cal.Rptr. 368, 503 P.2d 1376), and (2) neither Blasi's separate statement of undisputed material facts nor the evidence supporting it establish that Marathon procured the *Strong Medicine* role. Thus, for present purposes we presume Marathon did not procure that role for Blasi.

Finally, although Marathon argued below that it fell within section 1700.44, subdivision (d) 's "safe harbor" for procurement done in conjunction with a licensed talent agency, it has not preserved that argument here. Accordingly, we assume for present purposes that the safe harbor provision does not apply.

B. *The Applicability of the Doctrine of Severability to Manager-talent Contracts*

[13] We turn to the key question in Blasi's appeal: What is the artist's remedy for a violation of the Act? In particular, when a manager has engaged in unlawful procurement, is the manager always barred from any recovery of outstanding fees from the artist or may the court or Labor Commissioner apply the doctrine of severability (Civ.Code, § 1599) to allow partial recovery of fees owed for legally provided services?

***991** Again, we begin with the language of the Act. On this question, it offers no assistance. The Act is silent—completely silent—on the subject of the proper remedy for illegal procurement.

On the other hand, the text of Civil Code section 1599 is clear. Adopted in 1872, it codifies the common law doctrine of severability of contracts: "Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." (*Ibid.*) By its terms, it applies even —indeed, only—when the parties have contracted, in part, for something illegal. Notwithstanding any such illegality, it preserves and enforces any lawful portion of a parties' contract that feasibly may be severed.[9]

Under ordinary rules of interpretation, we must read Civil Code section 1599 and the Act so as to, to the extent possible, give effect to both. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1, 15, fn. 11, 50 Cal.Rptr.3d 585, 145 P.3d 462; ****739** *People v. Garcia* (1999) 21 Cal.4th 1, 6, 87 Cal.Rptr.2d 114, 980 P.2d 829.) The two are not in conflict. The Act defines conduct, and hence contractual arrangements, that are illegal: An unlicensed talent agency may not contract with talent to provide procurement services. (Lab.Code, §§ 1700.4, subd. (a), 1700.5.) The Act provides no remedy for its violation, but neither does it repudiate the generally applicable and long-standing rule of severability. Hence, that rule applies absent other persuasive evidence that the Legislature intended to reject the rule in disputes under the Act.

The conclusion that the rule applies is consistent with those of the Labor Commissioner's decisions that recognize severability principles may apply to disputes under the Act. In *Almendarez v. Unico Talent Management, Inc.* (Cal.Lab.Com., Aug. 26, 1999) TAC No. 55–97, a radio personality sought a determination that his personal manager had acted as an unlicensed talent agency. The Labor Commissioner concluded the manager had engaged in unlawful procurement—indeed, that procuring employment was the manager's primary role (*id.* at pp. 2, 14)—but stopped short of voiding all agreements between the parties in their entirety. Citing and applying Civil Code section 1599, the Labor Commissioner concluded that a 1997 agreement between the parties had both a lawful purpose (repayment of personal

expenses the manager had fronted for Almendarez) and an unlawful purpose (payment of commissions for unlawful procurement services) and should be partially enforced. (*Almendarez,* at pp. 18–21.) On numerous other occasions, the Labor Commissioner has severed contracts and allowed managers to ***992** retain or seek commissions based on severability principles without expressly citing Civil Code section 1599.[10]

[14] Until two years ago, Court of Appeal decisions under the Act had neither accepted nor repudiated the general applicability of the severability doctrine.[11] In 2005, in *Yoo v. Robi, supra,* 126 Cal.App.4th 1089, 24 Cal.Rptr.3d 740, however, the Court of Appeal considered whether to ****740** apply Civil Code section 1599 to allow a personal manager to seek commissions for lawfully provided services. It noted, correctly, that severance is not mandatory and its application in an individual case must be informed by equitable considerations. (*Yoo,* at p. 1105, 24 Cal.Rptr.3d 740.) Civil Code section 1599 grants courts the power, not the duty, to sever contracts in order to avoid an inequitable windfall or preserve a contractual relationship where doing so would not condone illegality. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 123–124, 99 Cal.Rptr.2d 745, 6 P.3d 669.) The *Yoo* Court of Appeal concluded the windfall for the artist, Robi, was not so great as to warrant severance.

In *Chiba v. Greenwald* (2007) 156 Cal.App.4th 71, 67 Cal.Rptr.3d 86, the Court of Appeal also considered whether severance was available for an unlicensed manager/agent who in that case alleged she had had a *Marvin* agreement[12] with her deceased musician client/partner. Acknowledging she had acted without a license, the manager relinquished any claim to commissions, and the Court of Appeal thus was not presented with the question ***993** whether severance might apply to any management services that required no license. In light of the facts as pleaded, the Court of Appeal concluded equity did not require severance of any lawful portions of the *Marvin* agreement from the unlawful agreement to provide unlicensed talent agency services. (*Chiba,* at pp. 81–82, 67 Cal.Rptr.3d 86.)

Neither *Chiba* nor *Yoo v. Robi, supra,* 126 Cal.App.4th 1089, 24 Cal.Rptr.3d 740, stands for the proposition that severance is never available under the Act. In contrast, the Court of Appeal here expressly concluded, as we do, that it is available.

More generally, the conclusion that severance is available is consistent with a wide range of cases that have applied the doctrine to partially enforce contracts involving unlicensed services. Thus, for example, in *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 70 Cal.Rptr.2d 304, 949 P.2d 1 (*Birbrower*), a law firm licensed in New York, but not California, provided legal services in both states. The trial court and Court of Appeal invalidated the entire attorney fee agreement, but we reversed in part, explaining that under the doctrine of severability the firm might be able to recover the fees it had lawfully earned by providing services in New York, notwithstanding its unlicensed provision of services in California. (*Id.* at pp. 138–139, 70 Cal.Rptr.2d 304, 949 P.2d 1.)[13] Likewise, in *Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 64 Cal.Rptr.2d 484, an individual assisted a company in finding home health care businesses to acquire. The individual may have acted only as a finder with regard to some businesses, but may have crossed the line into providing ****741** broker services without a real estate broker license in other instances. The Court of Appeal explained that the provision of unlicensed services did not bar all relief; on remand, the unlicensed individual could still recover for those services that did not require a broker's license. (*Id.* at p. 894, 64 Cal.Rptr.2d 484; see also *Levison v. Boas* (1907) 150 Cal. 185, 194, 88 P. 825 [severance doctrine applies to contract with unlicensed pawnbroker]; *Broffman v. Newman* (1989) 213 Cal.App.3d 252, 261–262, 261 Cal.Rptr. 532 [unlicensed real estate broker may defend entitlement to compensation for services for which no license is required]; ***994** *Southfield v. Barrett* (1970) 13 Cal.App.3d 290, 294, 91 Cal.Rptr. 514 [under equitable principles, unlicensed commission merchant entitled to partial recovery under contract].)

Blasi contends that even if severability may generally apply to disputes under the Act, we should announce a rule categorically precluding its use to recover for artist advice and counseling services. She relies on three sources in support of this rule: the legislative history, case law interpreting the Act, and decisions of the Labor Commissioner. None persuades us that

the Legislature intended to foreclose the application of severability, as codified in Civil Code sections 1598 and 1599, to manager-talent contracts that involve illegal procurement, either generally or with regard to recovery specifically for personal manager services.

For legislative history, Blasi relies on a portion of the Entertainment Commission's 1985 report to the Legislature. Addressing whether criminal sanctions for violations of the Act, temporarily suspended in 1982, should be reinstated, the Entertainment Commission said: "The majority of the Commission believes that existing civil remedies, which are available by legal action in the civil courts, to anyone who has been injured by breach of the Act, are sufficient to serve the purposes of deterring violations of the Act and punishing breaches. These remedies include actions for breach of contract, fraud and misrepresentation, breach of fiduciary duty, interference with business opportunity, defamation, infliction of emotional distress, and the like. *Perhaps the most effective weapon for assuring compliance with the Act is the power of the Labor Commissioner, at a hearing on a Petition to Determine Controversy, to find that a personal manager or anyone has acted as an unlicensed talent agent and, having so found, declare any contract entered into between the parties void from the inception and order the restitution to the artist, for the period of the statute of limitations, of all fees paid by the artist and the forfeiture of all expenses advanced to the artist. If no fees have been paid, the Labor Commissioner is empowered to declare that no fees are due and owing, regardless of the services which the unlicensed talent agent may have performed on behalf of the artist.* [¶] These civil and administrative remedies for violation of the Act continue to be available and should serve adequately to assure compliance with the Act." (Entertainment Com. Rep., *supra,* at pp. 17–18.) According to Blasi, this passage demonstrates the Entertainment Commission endorsed voiding of contracts in all instances, and the Legislature necessarily embraced this view because it adopted all of the commission's proposals when it amended the Act in 1986.

We are not persuaded. The passage acknowledges what all parties recognize—that the Labor Commissioner has the "power" to void contracts, ***995** that she is "empowered" to deny all recovery for services where the Act has been violated, and that these remedies are "available." But the *power* to so rule does not suggest a *duty* to do so in all instances. The Labor ****742** Commissioner is empowered to void contracts in their entirety, but nothing in the Entertainment Commission's description of the available remedies suggests she is obligated to do so, or that the Labor Commissioner's power is untempered by the ability to apply equitable doctrines such as severance to achieve a more measured and appropriate remedy where the facts so warrant. Thus, we need not consider at length Blasi's further contention that these two paragraphs in the Entertainment Commission Report accurately reflect the views of the Legislature as a whole. Even if so, they do not connote an intent that managers in proceedings under the Act be deprived of the opportunity even to raise severability.

Second, Blasi relies on those Court of Appeal decisions that have voided manager-talent contracts in their entirety. (E.g., *Chiba v. Greenwald, supra,* 156 Cal.App.4th 71, 67 Cal.Rptr.3d 86; *Yoo v. Robi, supra,* 126 Cal.App.4th 1089, 24 Cal.Rptr.3d 740; *Park v. Deftones, supra,* 71 Cal.App.4th 1465, 84 Cal.Rptr.2d 616; *Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th 246, 48 Cal.Rptr.2d 437.) With the exception of *Chiba* and *Yoo,* discussed above, however, the decisions do not touch on when or whether the doctrine of severability should apply under the Act; as such, they offer no persuasive arguments in favor of reading the Act as precluding application of Civil Code section 1599.[14]

Finally, Blasi relies on a long line of Labor Commissioner decisions that have denied personal managers any right to recover commissions where they engaged in unlicensed solicitation or procurement. (See, e.g., *Cher v. Sammeth* (Cal.Lab.Com., July 17, 2000) TAC No. 17–99, pp. 12–13; *Sevano v. Artistic Productions, Inc.* (Cal.Lab.Com., Mar. 20, 1997) TAC No. 8–93, pp. 23–25.) But the fact this remedy is often, or even *almost* always, appropriate, does not support the position that it is *always* proper. The Labor Commissioner decisions cited above (see *ante,* at pp. 17–18) suggest the Labor Commissioner historically has recognized she has the authority to allow partial recovery in appropriate circumstances.

We recognize, however, that in more recent decisions, the Labor Commissioner has expressly adopted the position Blasi advocates: severance is never available to permit partial recovery of commissions for managerial services that required no talent agency license. (*Smith v. Harris* (Cal.Lab.Com., Aug. 27, 2007) ***996** TAC No. 53–05, pp. 16–17; *Cham v. Spencer/Cowings Entertainment, LLC* (Cal.Lab.Com., July 30, 2007) TAC No. 19–05, pp. 17–18.) The weight accorded agency adjudicatory rulings such as these varies according to the validity of their reasoning and their overall persuasive force. (*Yamaha Corp. of America v. State Bd. of Equalization, supra,* 19 Cal.4th at pp. 12–15, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Here, the Labor Commissioner's views rest in part on a reading of the legislative history as suggesting such a rule, in part on a reading of past Court of Appeal decisions as announcing such a rule, and perhaps in part on a policy judgment that voiding contracts in their entirety is necessary to enforce the Act effectively. With due respect, the Labor Commissioner's assessment of the legislative history and case law is mistaken; as we have explained, neither requires the rule she proposes. And any view that it would be better policy if the Act stripped the Labor Commissioner (and the superior ****743** courts in subsequent trials de novo) of the power to apply equitable doctrines such as severance would be squarely at odds with the Act's text, which contains no such limitation. Neither we nor the Labor Commissioner are authorized to engraft onto the Act such a limitation neither express nor implicit in its terms. We are thus unpersuaded and decline to follow the Labor Commissioner's interpretation.

In sum, the Legislature has not seen fit to specify the remedy for violations of the Act. Ordinary rules of interpretation suggest Civil Code section 1599 applies fully to disputes under the Act; nothing in the Act's text, its history, or the decisions interpreting it justifies the opposite conclusion. We conclude the full voiding of the parties' contract is available, but not mandatory; likewise, severance is available, but not mandatory.

C. *Application of the Severability Doctrine*

[15] Finally, we turn to application of the severability doctrine to the facts of this case, insofar as those facts are established by the summary judgment record. Given the procedural posture, our inquiry is narrow: On this record, has Blasi established as a matter of law that there is no basis for severance?

[16] **[17]** In deciding whether severance is available, we have explained "[t]he overarching inquiry is whether ' "the interests of justice ... would be furthered" ' by severance." (*Armendariz v. Foundation Health Psychcare Services, Inc., supra,* 24 Cal.4th at p. 124, 99 Cal.Rptr.2d 745, 6 P.3d 669.) "Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate." (*Ibid.;* accord, *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1074, 130 Cal.Rptr.2d 892, 63 P.3d 979.)

***997** Blasi does not contend that particular evidence in the record unique to this contract establishes severance cannot apply. Instead, she offers two arguments applicable to this contract and to manager-talent contracts in general.

First, Blasi points to the nature of the compensation. In the Marathon–Blasi contract, as with most such contracts, there is no match between services and compensation. That is, a personal manager provides an undifferentiated range of services; in exchange, he receives an undifferentiated right to a certain percentage of the client's income stream.

This compensation scheme is essentially analogous to a contingency fee arrangement, in which an attorney provides an undifferentiated set of services and is compensated not for each service but as a percentage of the ultimate recovery her efforts yield for her client. In *Birbrower,* we dealt with both fixed fee and contingency fee arrangements, and nothing in the nature of the latter stood as an obstacle to application of severability. We directed the trial court to determine on remand, if it determined a partially valid agreement existed, what value should be attributed to legally provided services and what to illegally provided services. (*Birbrower, supra,* 17 Cal.4th at pp. 139–140, 70 Cal.Rptr.2d 304, 949 P.2d 1.) While an undifferentiated compensation scheme may in some instances preclude severance (see Civ.Code, § 1608;

Hyon v. Selten (2007) 152 Cal.App.4th 463, 471, 60 Cal.Rptr.3d 896), *Birbrower* demonstrates that it does not represent a categorical obstacle to application ****744** of the doctrine.[15] Accordingly, we may not affirm summary judgment on this basis.

[18] Second, Blasi argues that once a personal manager solicits or procures employment, all his services—advice, counseling, and the like—become those of an unlicensed talent agency and are thus uncompensable. We are not persuaded. In this regard, the conduct-driven definitions of the Act cut both ways. A personal manager who spends 99 percent of his time engaged in counseling a client and organizing the client's affairs is not insulated from the Act's strictures if he spends 1 percent of his time procuring or soliciting; conversely, however, the 1 percent of the time he spends soliciting and procuring does not thereby render illegal the 99 percent of the time spent in conduct that requires no license and that may involve a level of personal service and attention far beyond what a talent agency might have time to provide. Courts are empowered under the severability doctrine to consider the central purposes of a contract; if they determine in a given instance that the ***998** parties intended for the representative to function as an unlicensed talent agency or that the representative engaged in substantial procurement activities that are inseparable from managerial services, they may void the entire contract. For the personal manager who truly acts as a personal manager, however, an isolated instance of procurement does not automatically bar recovery for services that could lawfully be provided without a license. (See *Lindenstadt v. Staff Builders, Inc., supra,* 55 Cal.App.4th at p. 894, 64 Cal.Rptr.2d 484.)

Inevitably, no verbal formulation can precisely capture the full contours of the range of cases in which severability properly should be applied, or rejected. The doctrine is equitable and fact specific, and its application is appropriately directed to the sound discretion of the Labor Commissioner and trial courts in the first instance. As the Legislature has not seen fit to preclude categorically this case-by-case consideration of the doctrine in disputes under the Act, we may not do so either.

In closing, we note one final point apparent from the briefing and oral argument. Letters and briefs submitted by personal managers indicate a uniform dissatisfaction with the Act's application. At oral argument, counsel for Blasi likewise agreed that the Legislature might profitably consider revisiting the Act. The Legislature has in the past expressed dissatisfaction with the Act's enforcement scheme. (See Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 1359 (1989–1990 Reg. Sess.) as amended May 1, 1989, p. 2 [decrying absence of effective regulatory and enforcement mechanisms in the wake of the Entertainment Commission's inability to devise an "equitable civil or criminal penalty system"].) Adopted with the best of intentions, the Act and guild regulations aimed at protecting artists evidently have resulted in a limited pool of licensed talent agencies and, in combination with high demand for talent agency services, created the right conditions for a black market for unlicensed talent agency services. (See Assem. Labor and Employment Com., Republican Analysis of Sen. Bill No. 1359 (1989–1990 Reg. Sess.) as amended May 1, ****745** 1989 [Labor Commissioner believes unlicensed talent agencies outstrip licensed talent agencies two to one].) In the event of any abuses by unlicensed talent agencies, the principal recourse for talent is to raise unlawful procurement as a defense against collection of commissions, but this is a blunt and unwieldy instrument. It is of little use to unestablished artists, who it appears may legitimately fear blacklisting (*Talent Agencies Act, supra,* 28 Pepperdine L.Rev. at p. 402; *Contested Ascendancy, supra,* 20 Loyola L.A. Ent. L.J. at p. 517), and may well punish most severely those managers who work hardest and advocate most successfully for their clients, allowing the clients to establish themselves, make themselves marketable to licensed talent agencies, and be in a position to turn and renege on commissions (e.g., *Kilcher v. Vainshtein, supra,* TAC No. 02–99; *Contested Ascendancy,* at p. 517).

***999** We, of course, have no authority to rewrite the regulatory scheme. In the end, whether the present state of affairs is satisfactory is for the Legislature to decide, and we leave that question to the Legislature's considered judgment.

Disposition

For the foregoing reasons, we affirm the Court of Appeal's judgment and remand this case for further proceedings consistent with this opinion.

We Concur: KENNARD, Acting C.J., BAXTER, CHIN, MORENO, CORRIGAN, JJ., and McADAMS, J.*

Opinion

All Citations

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Footnotes

1 See Zelenski, *Talent Agents, Personal Managers, and Their Conflicts in the New Hollywood* (2003) 76 So.Cal. L.Rev. 979, 993–998 (hereafter *Conflicts in the New Hollywood*); Comment, *The Talent Agencies Act: Reconciling the Controversies Surrounding Lawyers, Managers, and Agents Participating in California's Entertainment Industry* (2001) 28 Pepperdine L.Rev. 381, 386 (hereafter *Talent Agencies Act*); Comment, *Regulation of Attorneys Using California's Talent Agencies Act: A Tautological Approach to Protecting Artists* (1992) 80 Cal. L.Rev. 471, 481–484 (hereafter *Regulation of Attorneys*). Additionally, in connection with the petition for review in this case, this court has received dozens of letters from personal managers working in the entertainment industry who suggest they owe a fiduciary duty to their clients to procure employment.

2 The Labor Commissioner has original and exclusive jurisdiction over issues arising under the Act. (*Styne v. Stevens* (2001) 26 Cal.4th 42, 54–56, 109 Cal.Rptr.2d 14, 26 P.3d 343; Lab.Code, § 1700.44, subd. (a).) All further undesignated statutory references are to the Labor Code.

3 " 'Artists' means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises." (§ 1700.4, subd. (b).)

4 The Legislature clearly agreed with this understanding of the Act. In 1978, it considered but ultimately rejected a special exemption that would have specifically authorized personal managers to procure employment for artists already represented by licensed talent agencies. (See Assem. Bill No. 2535 (1977–1978 Reg. Sess.) as amended May 10, 1978 [deleting proposal to enact new § 1708, which would have codified special exemption].) In 1986, it made permanent section 1700.44, subdivision (d), which creates a safe harbor for an unlicensed person or entity to "act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract." Both the originally contemplated exemption and the ultimately adopted safe harbor provision would have been largely superfluous if unlicensed entities were already free to procure employment, so long as they did not label themselves as talent agencies. (See *Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th at p. 259, 48 Cal.Rptr.2d 437.)

5 While we do not place great weight on legislative inaction, we note as well that the Legislature in 1982 considered but ultimately rejected an amendment to the Act that would have expressly exempted a particular class of personal managers—an amendment that would have been wholly superfluous if, as Marathon argues, they were already exempt. (Compare Assem. Bill No. 997 (1981–1982 Reg. Sess.) as amended Aug. 17, 1982 [including exemption] with Assem. Bill No. 997 (1981–1982 Reg. Sess.) as amended Aug. 26, 1982 [deleting exemption].)

6 Post-*Styne,* the Courts of Appeal have arrived at unanimity on this question. In *Yoo v. Robi, supra,* 126 Cal.App.4th 1089, 24 Cal.Rptr.3d 740, the same court that had issued *Wachs v. Curry, supra,* 13 Cal.App.4th 616, 16 Cal.Rptr.2d 496, effectively repudiated its prior interpretation, noting with approval that courts have "unanimously denied ... recovery to personal managers even when the majority of the managers' activities

did not require a talent agency license and the activities which did require a license were minimal and incidental." (*Yoo,* at p. 1104, 24 Cal.Rptr.3d 740, fn. omitted.)

7 The title of the legislation is: "An act to amend Section 9914 of, to repeal Section 9902.8 of, and to repeal Chapter 21.5 (commencing with Section 9999) of Division 3 of, the Business and Professions Code, and to amend the heading of Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of, to amend Sections 1700.2, 1700.3, 1700.4, 1700.5, 1700.6, 1700.7, 1700.9, 1700.11, 1700.12, 1700.13, 1700.15, 1700.16, 1700.17, 1700.19, 1700.20a, 1700.20b, 1700.23, 1700.24, 1700.25, 1700.26, 1700.27, 1700.28, 1700.30, 1700.31, 1700.32, 1700.33, 1700.34, 1700.35, 1700.36, 1700.37, 1700.38, 1700.39, 1700.40, 1700.41, 1700.43, and 1700.45 of, to add Section 1700.47 of, and to repeal and add Section 1700.10 of, the Labor Code, *relating to talent agencies.*" (Stats.1978, ch. 1382, p. 4575, italics added.)

8 The Entertainment Commission articulated precisely this rationale in concluding there was no need to separately license personal managers: "It is not a person who is being licensed [under] the [Act;] rather, it is the activity of procuring employment. Whoever performs that activity is legally defined as a talent agent and [must be] licensed, as such. Therefore, the licensing of a personal manager—or anyone else who undertakes to procure employment for an artist—with the [Act] already in place would be a needless duplication of licensure activity." (Entertainment Com. Rep., *supra,* at pp. 20–21.)

9 Civil Code section 1598 codifies the companion principle for when severability is infeasible: "Where a contract has but a single object, and such object is unlawful, whether in whole or in part ..., the entire contract is void."

10 See, e.g., *Danielewski v. Agon Investment Co.* (Cal.Lab.Com., Oct. 28, 2005) TAC No. 41–03, pages 24–27 (partially enforcing agreement to the extent it involved loan repayment and invalidating it to the extent it involved payment of commissions for unlawful services); *Gittelman v. Karolat, supra,* TAC No. 24–02 pages 14–16 (where manager engaged in unlawful procurement before 1997 but not thereafter, holding agreement unenforceable through 1997, but allowing manager to seek commissions earned thereafter); *Cuomo v. Atlas/Third Rail Management, Inc.* (Cal.Lab.Com., Jan. 3, 2003) TAC No. 21–01, pages 13–14 (voiding contract only for the period of time after manager commenced acting as an unlicensed talent agency and denying disgorgement of commissions for earlier lawful services); *Anderson v. D'Avola* (Cal.Lab.Com., Feb. 24, 1995) TAC No. 63–93, pages 11–12 (where manager acted as an unlicensed talent agency in procuring role, denying right to recover commissions for that role, but preserving right to recover commissions for personal manager services in connection with later role lawfully procured by Anderson's licensed talent agency); *Bank of America Nat. Trust & Sav. Assn. v. Fleming* (Cal.Lab.Com., Jan. 14, 1982) No. 1098 ASC MP–432, page 16 (ordering return of 20 percent of compensation based on a determination respondent spent 20 percent of time acting as an unlicensed talent agency). More recent Labor Commissioner decisions appear to take a more stringent view toward the availability of severance. We address these decisions *post* at page 24.

11 The same is true of our own decisions. In *Styne v. Stevens, supra,* 26 Cal.4th at page 51, 109 Cal.Rptr.2d 14, 26 P.3d 343, we correctly noted in dicta that "an unlicensed person's contract with an artist to provide the services of a talent agency is illegal and void." We did not address whether severance could ever apply to contracts with artists to provide personal management services.

12 *Marvin v. Marvin* (1976) 18 Cal.3d 660, 134 Cal.Rptr. 815, 557 P.2d 106.

13 Blasi distinguishes *Birbrower* on the ground that there the basis for differentiating services for which recovery could be had from those for which it could not was jurisdictional. This is a distinction without a difference. We recognized in *Birbrower* a point equally applicable here: In the absence of an express contrary legislative determination, the equitable principles of severability may be applied to contracts where some portion of the services provided was unlicensed and hence unlawful. (*Birbrower, supra,* 17 Cal.4th at pp. 138–139, 70 Cal.Rptr.2d 304, 949 P.2d 1; cf. *Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 151, 308 P.2d 713 [Bus. & Prof.Code, § 7031 "represents a legislative determination that the importance of deterring unlicensed

persons from engaging in the contracting business outweighs any harshness between the parties" and forecloses severance of those contracts to which it applies].)

14 For this same reason, we see no basis for concluding the Legislature has acquiesced in an interpretation of the Act under which severability is precluded. Until 2005, the issue had never been discussed in the Courts of Appeal.

15 Other courts have likewise recognized that severability may apply, so long as the service provider contributes lawful consideration wholly independent of the illegal services, without regard to whether payment was allocated in advance between the lawful and unlawful services. (E.g., *Whorton v. Dillingham* (1988) 202 Cal.App.3d 447, 452–454, 248 Cal.Rptr. 405 [applying severance where the plaintiff alleged a *Marvin* agreement based on both sexual services and chauffeur, bodyguard, secretarial, and business services].)

* Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Acting Chief Justice pursuant to article VI, section 6 of the California Constitution.

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GUEST COLUMN

Can copyright infringement damages be recovered beyond three years?

By Greg Derin

On May 5, 2023, the defendants in *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325 (11th Cir. 2023) filed a petition for certiorari with the United States Supreme Court. The issue presented for review is whether the Copyright Act's statute of limitations for civil actions, 17 U.S.C. 507(b), precludes relief for acts that occurred more than three years before the filing of a lawsuit. On its face, the petition in *Nealy* seeks to resolve a split on this narrow issue among three circuit courts of appeal. However, if the Court grants *certiorari* in *Nealy*, it could portend a major shift in copyright damage calculations in nearly all of the federal circuits: the Court's first, and perhaps unfavorable, determination regarding the application of the "discovery rule" to copyright claims, or a narrow ruling which could leave the circuits in conflict and the situation ripe for forum shopping.

17 U.S.C. §507(b) provides that "[n]o civil action shall be maintained under the [Act] unless it is commenced within three years after the claim accrued." The Supreme Court previously considered whether prejudicial delay can bar a copyright claim othewise timely commenced within the three-year limitation period. In *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014), the Court held that laches cannot entirely preclude a claim brought within the statutory window. The Court recognized the Ninth Circuit's "separate accrual rule" pursuant to which the statute of limitations runs separately for successive violations of the Copyright Act. Under this rule, an infringer is generally insulated from liability for infringements which occurred more than three years before filing. *Petrella* filed her action more than nine years after an initial infringing act, but only sought damages occurring within three years of filing.

The Court in *Petrella* expressly noted that it was not passing on the Ninth Circuit's "discovery rule" and had no reason to deal with the separate accrual rule. The question presented and resolved was limited to an equitable one: whether laches prevented recovery of damages in an action filed within the statutory three-year limitations window. After *Petrella*, several courts questioned whether the opinion included binding pronouncements concerning recoverable damages.

In *Sohm v. Scholastic, Inc.*, 959 F.3d 39 (2d Cir. 2020), the Second Circuit evaluated the three-year copyright statute of limitations post-*Petrella* and rejected arguments that *Petrella* and *SCA Hygiene Prods. Akiebolag v. First Quality Baby Prods, LLC*, 580 U.S. 328 (2017), cast doubt on the viability of the "discovery rule" and urged adoption only of the "injury rule." *Sohm* noted that the Supreme Court had expressly passed on considering the validity of the discovery rule in *Petrella*. Although affirming the circuit's adherence to the discovery rule, the *Sohm* Court concluded that *Petrella* had specifically limited the recovery of damages to the three-year period prior to commencement of a copyright action.

Both the discovery rule and the separate accrual rule had their origins in the Ninth Circuit opinion in *Roley v. New World Pictures, Ltd.*, 19 F.3d 479 (9th Cir. 1994). Ten years later, in *Polar Bear Productions, Inc. v. Timex Corporation*, 384 F.3d 700 (9th Cir. 2004), the Court explained and expanded its reasoning in *Roley* by affirming the principle that 17 U.S.C. §507(b) permits the recovery of damages that occurred outside the three-year window as long as the claimant could not have reasonably discovered the infringement before the commencement of the three-year period.

In *Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC*, 39 F.4th 1236 (9th Cir. 2022), the Ninth Circuit affirmed the discovery and separate accrual rules established in *Roley* and *Polar Bear*. The Court parsed the language of *Petrella* and *Sohm* and concluded that nothing in *Petrella* or the Copyright Act bars recovery of damages for all infringing acts, including those which occurred prior to the three-year window before filing, as long as the claimant, with reasonable diligence, did not know or could not discovery, the infringing acts. The Court held that to conclude otherwise would "eviscerate the discovery rule."

The *Starz* Court reasoned that its decision was not inconsistent with *Petrella*. The language from *Petrella* upon which the defendant relied in *Starz* was deemed to be relevant only to an "incident of injury rule" case, not to a case in which the discovery rule was applicable.

With the Second and Ninth Circuits split, *Nealy* decided Feb. 27, 2023, addressed the lookback question as one of first impression in the Eleventh Circuit. Adhering to the circuit's discovery and separate accrual rules, the Court reviewed *Petrella*, *Sohm* and *Starz* and agreed with *Starz* that a plaintiff may recover retrospective relief for infringements occurring more than three years before filing as long as the claim is timely under the discovery rule.

If the Supreme Court grants *certiorari* in *Nealy* on the question presented, last term's decisions by the Court suggest several possibilities. The Court's copyright and trademark cases were decided on narrow issues, which suggests that the Court could resolve the split only on the "look back" question.

However, a fundament of all of

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the cases discussed above and in the question presented by the certiorari petition is the application of the discovery rule to Section 507(b) actions. The Supreme Court has never addressed that issue. Indeed, in both *Petrella* and *SCA Hygiene Prods.* the Court expressly noted this fact. Eleven courts of appeal and their encompassed district courts have adopted the discovery rule as an available alternative to the injury rule in Section 507(b) cases, thereby creating economic expectations in most of the country.

A footnote in the *Nealy petition for certiorari*, expressly invites the Court to address the broader issue of whether the Copyright Act supports application of a discovery rule and states that it is "within the question presented." Supported by several amici curiae whose focus was a more direct assault on the application of the discovery rule to copyright damage actions, the petitioner emphasized this opportunity in its reply brief, commenting upon the fact that numerous district courts have relied upon the discovery rule in Section 507(b) actions as a predicate in adopting the majority view expressed by the Ninth and Eleventh Circuits.

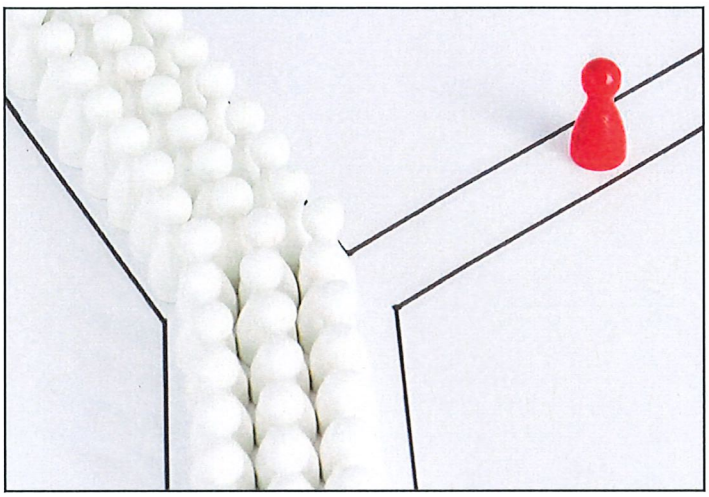
The continued viability of the discovery rule in Section 507(b) actions was recently considered by the Fifth Circuit in *Martinelli v. Hearst Newspapers, L.L.C.*, 2023 WL 2927141 (5th Cir. April 13, 2023). *Martinelli* rejected efforts to interpret *Petrella* and other authorities as not supportive of the discovery rule, stating that were it to so hold, it would be the only court of appeal to do so. *Nealy* presents an opportunity for the Supreme Court to address the issue. In other contexts, the majority of the Court, led by Justices Thomas and Alito, have read federal statutes to exclude the application of a discovery rule if not expressly incorporated by Congress in the statutory language. *See, e.g., Rotkiske v. Klemm*, 140 S.Ct. 355 (2019).

The *Nealy* petition and related briefs have been distributed for the Court's Sept. 26, 2023 conference. In the meantime, look for plaintiffs to seek opportunities to file appropriate actions in the Ninth or Eleventh Circuits and defendants to either try to move cases to the Second Circuit or preemptively file declaratory relief actions there.

Daily Journal
VERDICTS & SETTLEMENTS
FRIDAY, JUNE 19, 2020

Early neutral evaluation: The road less traveled

By Greg Derin



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According to the prophet Mick Jagger "[y]ou can't always get what you want, but if you try sometimes, you might find, you get what you need." Since the advent of the modern alternative dispute resolution movement in 1976, mediation has grown more popular and supplanted private negotiation as the preferred means of avoiding resolution by adjudication.

Mediation has obvious advantages to litigation. Within the limits of having a bargaining partner, parties have complete control of the resolution of their dispute. As great as their advocates may be, as compelling as the witnesses and documentary evidence may appear, once parties step into a courtroom or arbitration forum, they surrender control to those who view the controversy through a lens clouded by a lifetime of experience and prejudice. In a confidential mediation setting, after identifying their interests and objectives, the parties control the outcome. They like a deal, they take it, they do not like the best available deal, they reject it and proceed with their alternatives.

Yet even in mediation, the parties enter the process viewing the controversy through the lens of their own story, and with their own perspective on the facts — each with a determined view of how the dispute should be resolved. As Mick would probe, what do you really need? When we default to mediation, we skip down the road, not always pausing to ask where it leads.

Some years ago, I received a call from two general counsel of sophisticated media companies. They asked me to mediate their pre-litigation dispute. The controversy involved what is known as a vertical integration claim: one party alleging that the other had not paid it a fair license fee for the broadcast of its television production, because that licensor was the parent company of the broadcaster with which it was negotiating (i.e., it had not bargained at arm's length). As I probed the nature of the dispute, both general counsel responded positively when asked if what they really wanted was for me to evaluate the claims and tell them who would prevail if they litigated the dispute.

I then asked if they would be better served by an early neutral evaluation, or ENE, rather than progressing immediately to mediation. I explained, in its simplest form, that an ENE is a confidential proceeding in which an attorney with expertise in a subject area reviews proffers of evidence and either helps the parties reach a resolution, or provides an opinion of the likely litigated outcome. If no settlement is achieved, the neutral evaluator may help the parties design a streamlined discovery or litigation plan in anticipation of trial.

Both general counsel enthusiastically embraced the ENE concept, and we designed and executed an agreement structuring a one-day confidential proceeding in which the parties presented documentary evidence, and witnesses presented relevant facts by direct examination. I asked clarifying questions, but cross-examination was not permitted. Highly confidential financial information regarding comparable license fees was submitted only to me in camera.

*AN **ENE** IS A CONFIDENTIAL PROCEEDING IN WHICH AN ATTORNEY WITH EXPERTISE IN A SUBJECT AREA REVIEWS PROFFERS OF EVIDENCE AND EITHER HELPS THE PARTIES REACH A RESOLUTION, OR PROVIDES AN OPINION OF THE LIKELY LITIGATED OUTCOME.*

After a full day of "hearing," I asked how the parties and counsel wished to proceed. One side stated that they understood the position of the other side, and the relevant facts, much better and desired to move immediately into mediation. The other side rejected that approach and insisted upon receiving a written evaluation. I produced a 15-page single spaced evaluation of the merits of the parties' positions,

and my view of the likely outcome of litigation, based on the information provided, including my in camera review of the confidential financial documents. Armed with this confidential document, senior executives of the two companies met directly and settled the dispute.

The ENE process bore many attributes of a mediation, but with significant differences.

1. The parties obtained an informed factual and legal review from someone they viewed as a credible source. Although an "evaluative" mediation assesses the risks and potential of claims, the ENE provided a non-binding review in which witnesses were assessed by the parties, and evidence was shared confidentially in a more fulsome manner, and subject to a more comprehensive review than would have been possible in a mediation, which is now generally conducted in private caucuses. Mediations are often lauded for allowing parties "their day in court." While this can be a strength, the goal of mediation is settlement. Evaluation is at the heart of ENE. The evaluator is hired for his subject matter expertise, and for the express purpose of rendering an opinion. After the first phase of the ENE, the parties can consider mediation, or request assistance structuring a litigation process. In appropriate cases, this flexibility is very advantageous.

2. Both ENE and mediation are private processes. Confidentiality and avoidance of precedent make ENE a powerful element. In the highly confidential pre-litigated matter in which I was engaged, privacy was essential. Privacy aside, in an ENE, there are no caucuses, and hence no apprehension that the evaluator is receiving information ex parte or communicating opinions to the parties differently. If evaluation is the central goal of the parties, an ENE levels the playing field in a more arbitration-like format.

3. Confidentiality. In structuring the ENE process, the parties may fashion flexible additional protections. The ENE discussed above involved documents which would have been the subject of expensive discovery battles in public litigation. The parties trusted the evaluator to review them in camera and render opinions based upon the documents in a manner which protected the documents, but used them as a factual basis of opinion.

4. Avoiding precedent. Neither mediation nor an ENE create binding evaluations. The power of the ENE is in its more granular focus on the facts and law, persuading those who require such an analysis of the likely outcome. Good mediators will engage in gradations of evaluative behavior. The art of the process lies in focusing on the win-win of interest-based negotiations. ENE is best suited for those who need to drill into the facts and law and receive a concentrated opinion of the likely results from an evaluator whose opinion they respect.

5. Comparative efficiency of mediation and ENE. Increasingly, mediation of complex matters may require more than one day. An ENE will likely require more than one day for preparation, hearing and the possible writing of an opinion. The speed and cost of both processes will vary depending on complexity. The cost of the ADR process should not be the "tail wagging the dog." I often hear how grateful parties are for what they consider to be money well spent on securing good results, avoiding the uncertainties of trial, and controlling their own destinies.

6. What process is best positioned to resolve a dispute with least disruption to the relationship of the parties? Parties often seek a non-adjudicatory resolution that will repair, improve or avoid further damage to already strained relationships.

7. Sequential processes. Although the licensing dispute did not formally transmute from an ENE to a mediation, the parties took the evaluation and used it as a predicate for a negotiated solution. If it had not resolved in this manner, our next step would have been an effort to streamline the litigation to preserve privacy and minimize cost. The particular matter would have been very public and given the scope of the financial data, the cost of the litigation would have run into the millions of dollars.

Mick Jager's fellow philosopher, Yogi Berra, said "[y]ou got to be very careful if you don't know where you're going, because you might not get there." Know where you want to go and choose your ADR process accordingly. ■

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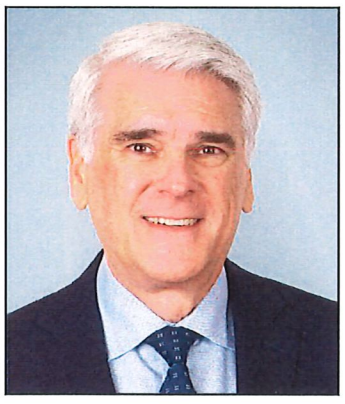

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THE RESOLUTION ISSUE 2023

COLUMN

Listening and seeing – perceiving reality

BY GREG DAVID DERIN

Ten years ago my brother-in-law, John, an award-winning television writer, director and producer, taught a class on storytelling at a local university. Given our frequent discussions regarding storytelling and perception, he asked me to participate as a guest lecturer. We ran an exercise with the students in which someone unexpectedly interrupted the class and made a dramatic pronouncement and plea for assistance. After we responded to her request, the person left. An hour later the students were asked to write what they had observed and turn them in after lunch.

When we reviewed the students' submissions we were fascinated by the variance in their perceptions. There was a wide divergence among the students as they described the identity and behavior of the intruder and what s/he said. Even more intriguing, the students did not agree as to the number of intruders who entered the classroom a mere hour before, and the interaction among them.

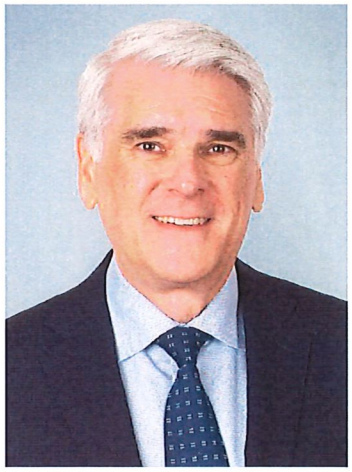
I came to the class as John and I had shared our professional experiences regarding perception and reality – he as a dramatist and I as a litigator, mediator and arbitrator. We were interested in exploring how the distinction played out in his fictional portrayal of life and in the stories I had seen unfold in courtrooms, mediations and arbitrations over thirty years of complex litigation experience.

In The Man Who Shot Liberty Valance, screenwriters James Warner Bellah and Willis Goldbeck famously advised "[w]hen the legend becomes fact, print the legend." Every character has a "legend." So to every person who enters a courtroom or similar venue. In adjudicatory proceedings, each side will tell a story, from which the court, arbitrator or jury may adopt a third story which they may utilize in assessing liability and damages. Each player in this drama – witnesses, parties, experts, consultants, attorneys, trier of fact, journalists and others – brings a lifetime of experience and cultural overlays and emotions to bear in filtering information and developing their perception of "reality." But how good are they at seeing or listening to the "reality" perceived by others?

In his famous Allegory of the Cave, Plato described the lives of individuals who had been imprisoned and chained in a cave since birth. They had never experienced the outside world. The prisoners could not turn their heads; they could only stare at a wall on which shadows danced. Behind the prisoners a fire burned and provided light for the shadows. There was a parapet behind the prisoners on which puppeteers could walk and carry objects used to cast the shadows. As the prisoners saw nothing except shadows, they believed them to be real objects or creatures, although they were only the appearance of reality. When the prisoners were released from the cave, they realized the error of their thinking and gained a more accurate perception of the world.

To ancient Greeks, like Plato, seeing was a path to knowledge. If the prisoners could turn their heads, they would see the wall, see the objects casting the shadows, and gain a better perspective on reality. So too, when they emerged from the cave, they gained a richer, more fulsome understanding of the real world. All cause for deeper introspection if one chose. Plato's mentor, Socrates, observed "[a]n unexamined life is not worth living."

In other cultures, knowledge is less dependent on physical observation. In Judaism, for example, listening is a path to knowledge. In fact, it is valued as a spiritual act.



Questioning and challenging are fundamental elements of Jewish spiritual engagement, with roots in active listening. Regarding listening as therapeutic, it became the fundament of psychotherapy and many religious practices.

Conflict occurs in our everyday life, and we create stories to deal with it. Our stories define, limit and help us cope with the chaos of conflict. Although our subconscious minds process what is real and what is imagined, we tell ourselves stories to make the world consistent with our feelings, actions and especially, our desired outcomes. Necessarily, parties are both the victims and heroes of their own stories, and deem them-

selves to have acted rationally and justly. Stories always point to a party's suggested one true meaning and exclude other possibilities. The more often the story is told, the more certain the facts become; inconsistent facts disappear or are denied.

Mediators hope to help parties view the composite story which emerges from understanding the essential elements of each party's perspective. Truth generally cannot be determined in a mediator's conference room. Consequently, a mediator's emphasis is on how narratives operate to create "a reality," rather than demonstrating a definitive "reality," which can be measured objectively to determine who will prevail before a trier of fact. The power of stories will usually motivate movement in a negotiation. Mediators listen to stories for "access points" – ways to bring parties more deeply into an understanding of their own interests and those of their adversary, and thus engage in conversation with parties with whom they have a conflict.

Parties see the world through their own lens. In fact, this is the source of most of the conflicts which I have seen in more than 40 years of litigation. As appropriately zealous advocates, counsel often filter facts and evidence through their client's prism – one uniquely focused to magnify their client's version of reality. Given that more than 98% of civil cases resolve without a trial, what can lawyers do to facilitate a learning and understanding process?

1. Encourage Clients to Listen. Clients need not accept the version of reality perceived by their adversary. But in assessing their risks, the likelihood of success at trial, and their options for resolution, it is useful for parties to attempt to understand the perspective of their opponent. Counsel can perform a valuable service by encouraging their clients to challenge their own view for these purposes. By communicating a willingness to understand, even without accepting, parties gain trust and credibility, and communicate respect. This in turn affords opportunities to learn, develop potential options for resolution and may even move toward reconciliation. This is a difficult task. It requires wisdom and the ability to listen for the emotion behind the words and silences. It is a skill honed by good mediators, but counsel who recognize the opportunities and help their clients hear between the words provide an invaluable service.

2. Be Vulnerable. A corollary to being open to understanding opposing versions of the facts is finding the right context for doing so. Increasingly, parties and counsel are unwilling to sit with their adversaries to engage in this exchange. I rarely find a traditional opening session helpful given the structural temptation to make opening statements rather than engage in dialog. However, following a mediator's instinct to assemble appropriate groups to discuss specific agenda items can be very effective. Whether it is a meeting of counsel, the parties meeting without counsel but moderated by the mediator, or full group meetings, if the agenda is discreet and structured so expectations are established the rewards can be bountiful.

3. Reframe Your Client's Story. Aided by the mediator, counsel can encourage clients to reframe their own stories – to think of them differently – in light of the alternative versions which a trier of fact will hear from their adversary. If a party comes to realize that the trier of fact may perceive their opponent's story as being equally or more plausible, they may be open to reframing their own perception of what happened to accommodate all concerned – just as the judge or jury might.

4. Test Your Client's Alternatives. Armed with the varied stories and supporting facts, counsel can work cooperatively with their mediator to test their client's best alternative to a negotiated agreement. Whether by objectively evaluating legal and factual issues, engaging in a decision-tree analy-sis or cost-benefit review, focusing on realistic settlement values and opportunities creates clarity regarding the viability of a claim.

Listening deeply and actively provides a productive path to testing one's perception of the shadows and finding a path to resolution.

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LOS ANGELES & SAN FRANCISCO

Daily Journal

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MONDAY, JUNE 26, 2023

PERSPECTIVE

Transactional mediation: facilitating negotiations without litigation

By Greg David Derin

Earlier this year, American Airlines and the union representing its flight attendants jointly requested assistance from federal mediators in contract negotiations. Such aid is common and highly successful in resolving impasses in collective bargaining situations. With such long-standing exemplars, why are mediators not engaged more often to assist parties in transactional negotiations? Seeming impasses arise in a range of non-litigated or pre-litigated disputes, from stumbling blocks in single contract negotiations to multi-employer or trade group negotiations such as the current stalemate between the Writers' Guild of America (WGA) and the Alliance of Motion Picture and Television Producers (AMPTP).

DAs regular mediation participants know, the power of a process lies in overcoming false perceptions and myths. A common fallacy is that the participants are actually at an "impasse." Another is that all stakeholders must walk away from a negotiation feeling a level of disappointment to perceive that they have achieved a "fair" resolution. Experienced mediators reject these superficial views and resist approaching the process with a zero sum or 'I lose if you win' mentality. Success often lies in focusing the parties on 'expanding the pie' to achieve mutual gains.

Empowering parties to think creatively is frequently a challenge. It requires trust in one's bargaining partner and the mediator. When negotiations stall, it can be due to a reluctance to explore one's own interests and motivations or insufficient confidence or knowledge as to how best to share information with an adversary. Allowing an impartial mediator to explore each parties' boundaries and probe their interests and the potential parameters of a bargain permits inquiry into achievable solutions, without fear of premature disclosure of valuable information.

How does a mediator bring value in this context? For best results, three predicates are helpful: (1) confidentiality in the exchange of information and in the negotiations; (2) transparency; and (3) identification of stakeholders so that all constituents commit to the confidentiality of the process. These elements assure that the parties are committed to a serious, candid process designed for one purpose – exploring all options for an optimal resolution. If one or more parties have constituencies which they must serve by publicly sharing information, there is no reason for their bargaining partner to trust them with competitive data and business plans. Resolution may be achieved, but it may not be optimal or achieve the greatest "win-win" for all concerned.

Let's explore several examples. First, a simple two-party contract negotiation: Acme is the region's largest manufacturer of titanium widgets. Willgrow is a national defense contractor which has historically purchased its widgets from Acme's main competitor. Willgrow has approached Acme about shifting its purchases exclusively to Acme and begun negotiation of price and quantities. Acme has no idea why Willgrow is moving away from its competitor, what price it has paid in the past, and what the future may hold. Willgrow is a publicly traded company; while certain information is available, it is not enough to inform all of Acme's negotiating strategy and tactics. A mediator is employed to assist in the negotiation.

In conversations with the parties, the mediator learns that Willgrow is deep in conversation with the government to manufacture and sell a recently designed aircraft which will require titanium widgets. Although individual units are less expensive from its historic source, Acme's competitor does not have the capability to manufacture a sufficient quantity of widgets in the time required to meet Willgrow's delivery schedule for the new aircraft and meet its future needs if the project is successful. Willgrow is willing to commit to purchasing a large number of widgets over an extended period, hoping that the government will be happy with the aircraft and purchase many in the future. By locking up Acme as its source, Willgrow would position itself to supply the aircraft faster and likely cheaper than any competitor. Willgrow hopes that making a sizable long-term commitment will result in a lower price and favorable terms.

Acme has been experimenting with a new fabrication process. It believes that it can produce the required widgets, meeting all necessary strength and durability specifications, at 65% of its former manufacturing costs. Acme is suspicious of Willgrow's reasons for changing suppliers and hopes to secure a long-term commitment with minimum orders of both its widgets and other products which it believes Willgrow utilizes on a range of projects. Such a commitment will aid Acme by providing the capital for the equipment needed to ramp up its new widget manufacturing procedure. Securing this contract will also position Acme in the marketplace to compete for contracts with other major buyers of its products.

A good mediator will probe and explore where s/he suspects that undisclosed information is driving a reluctance to move further, and will seek disclosures for mutual gain. In helping the parties frame their proposals, a mediator can transform a stalled conversation such as that between Acme and Willgrow into one in which they mutually gain from an expanded business relationship. For example, what may begin as a supply chain discussion could lead to an acquisition, just as a lease dispute

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may end in a conversation regarding a property sale. When the respective interests of the parties become clear, cash flow, time value of money, shared opportunities, all become ripe for discussion when they otherwise might have remained obscured one-sided speculation.

Next, how can mediators help in complex multi-party negotiations such as the WGA-AMPTP talks? Mediation is designed to seek mutual gain in a confidential setting in which candor encourages disclosure of useful information. If one, or both sides desire, or feel compelled, to utilize negotiating tactics such as public disclosure, the likelihood that information will be shared openly diminishes trust and the opportunity to explore options for optimal gain. It is understandable, for example, that the WGA might feel compelled to report to its members to meet transparency obligations or achieve leverage by public discussion of negotiating points.

Conversely, consider the alternative if information can flow freely. A major issue in dispute arises from the parties' differing perspectives regarding the economics of streaming. Those economics are complicated, with many stakeholders having potentially conflicting interests. The constituents on the AMPTP side have different interests and perspectives with respect to production, streaming and their interaction with each other and with legacy theatrical and broadcasting outlets. If truly candid conversations might occur, and purely distributive (i.e., zero sum) bargaining was replaced by transparent discussion, one might imagine the development of transformative business models and proposals embracing the future evolution of streaming. This would require the sharing of data concerning production entities, streaming services, studios, networks, unions, related businesses tied to streaming services, and the list goes on. Such negotiations could reform perspectives, and the partnership of creative and business elements, utilizing the power of mediation at its best.

Even a transparent and candid conversation cannot ignore economic and social realities. The parties might share data to consider new economic models to address mutual interest, but still find that their objectives differ. One side might seek "economic justice" while the other seeks "economic efficiency." The parties could still recognize these differences and the potential for their accommodation. To bargain as if this was merely an exercise of power by one or both sides is fine; it will continue to achieve short-term solutions as it always has and as technology and institutional structures evolve. But nothing great was ever achieved without imagination and sacrifice.

Without underestimating the colliding forces of shareholder obligations, entrenched institutions, creatives paying their daily bills, and the entire industry supply chain, it is also a reality that historically there is no more creative and enterprising group than those staring at one another across these tables. Mediators are here to help.

NATIONAL FOOTBALL LEAGUE

POLICY AND PROGRAM ON SUBSTANCES OF ABUSE

2023

as agreed by the
National Football League Players Association
and the
National Football League Management Council

National Football League Policy and Program on Substances of Abuse

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NATIONAL FOOTBALL LEAGUE
POLICY AND PROGRAM ON SUBSTANCES OF ABUSE

GENERAL POLICY

The National Football League ("NFL") and the National Football League Players Association ("NFLPA") have maintained policies and programs regarding substance abuse. In Article 39, Section 7 of the NFL Collective Bargaining Agreement (the "CBA"), the NFL Management Council and the NFLPA (hereinafter referred to individually as "Party" and collectively as the "Parties") reaffirmed that "substance abuse [is] unacceptable within the NFL, and that it is the responsibility of the parties to deter and detect substance abuse . . . and to offer programs of intervention, rehabilitation, and support to players who have substance abuse problems." Accordingly, in fulfillment of this provision of the CBA, the Parties have agreed upon the following terms of a policy regarding substance abuse in the NFL (hereinafter the "Policy").

The illegal use of drugs and the abuse of prescription drugs, over-the-counter drugs, and alcohol (hereinafter "Substances of Abuse") is prohibited[1] for Players[2] in the NFL. Moreover, the use of alcohol may be prohibited for individual Players in certain situations where clinically indicated in accordance with the terms of this Policy.

Substance abuse can lead to on-the-field injuries, to alienation of the fans, to diminished job performance, and to personal hardship. The deaths of several NFL Players have demonstrated the potentially tragic consequences of substance abuse. NFL Players should not by their conduct suggest that substance abuse is either acceptable or safe.

This Policy and its terms shall be binding on all NFL Clubs and shall constitute the sole and exclusive means by which the NFL and Clubs can test Players for Substances of Abuse or refer them for substance abuse treatment, and as to those Players having problems with Substances of Abuse, the sole and exclusive means by which they will gain access to the benefits of this Policy. This Policy supersedes all previous policies and shall continue until the expiration or termination of the CBA. All Players in the Intervention Stages under the superseded policy shall be deemed to be in the corresponding Intervention Stage under this Policy. Such terms that are not otherwise defined herein shall have the same meaning as set forth in the CBA.

The cornerstone of this Policy is the Intervention Program. Under the Intervention Program, Players are tested, evaluated, treated, and monitored for substance abuse. Players who do not comply with the requirements of the Intervention Program or who have violations of law involving Substances of Abuse are subject to the established levels of discipline set forth in this Policy. The provisions of Article 51, Section 10 of the CBA are not applicable to the testing of Players in the Intervention Program that is conducted pursuant to the terms of this Policy.

All discipline provided under the provisions of this Policy is imposed through the authority of the Commissioner of the National Football League ("Commissioner") subject to the terms set forth in this

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[1] The NFL and the NFLPA prohibit Players from the illegal use, possession, or distribution of drugs, including but not limited to cocaine; marijuana and synthetic cannabinoids; opiates and opioids; methylenedioxymethamphetamine (MDMA); and phencyclidine (PCP). The abuse of prescription drugs, over-the-counter drugs, and alcohol is also prohibited. For example, the use of amphetamines and substances that induce similar effects, absent a verified and legitimate need for appropriate dosages of such substances to treat existing medical conditions, is prohibited.

[2] Except as otherwise noted in this Policy, the term "Players" includes all present and future Players in the NFL described as being in the bargaining unit as set forth in the preamble to the CBA as well as all Players attending the annual scouting combines.

Policy. The Commissioner maintains the ability to impose other discipline for conduct not covered by this Policy. This Policy is not to be considered a grant of authority to discipline players but instead is an agreement to impose the stated discipline for violations of the requirements of the Intervention Stages. Discipline for violations of the law relating to use, possession, acquisition, sale, or distribution of Substances of Abuse, or conspiracy to do so, will remain at the discretion of the Commissioner.

The primary purpose of this Policy is to assist Players who misuse Substances of Abuse. As a result, the implementation and application of the terms of this Policy should first be directed toward ensuring evaluation and treatment. Nevertheless, as a part of the overall program, Players who violate the law or do not comply with the requirements of the Policy will be subject to appropriate discipline. An important principle of this Policy is that a Player will be held responsible for whatever goes into his body.

The Parties recognize that maintaining competitive balance among NFL Clubs requires that all NFL Players be subject to the same rules and procedures regarding drug testing. The rules and procedures set forth herein are designed to protect the confidentiality of information associated with this Policy and to ensure the accuracy of test results, and the Parties intend that the Policy meets or exceeds all applicable laws and regulations related thereto. The Parties also recognize the importance of clarity in the Policy's procedures, including the scientific methodologies that underlie the Policy, the appeals process and the basis for discipline imposed, and reaffirm their commitment to deterrence, discipline and a fair system of adjudication.

1. Intervention Program and Discipline for Violations of Its Terms

1.1 Administration

1.1.1 Medical Director and Regional Teams

The Parties will jointly select and be equally responsible for the salary of a Medical Director who is responsible for developing and implementing all aspects of the Policy that relate to the treatment of Players. The Medical Director shall be a physician licensed and in good standing by the medical board of any state in the United States. The Medical Director will have the responsibility, among other duties, of selecting and overseeing physicians, psychologists, social workers and other counselors ("Evaluating Clinician(s)") who will be members of various treatment teams together with the National Psychiatrist. The Medical Director, Evaluating Clinicians and National Psychiatrist will work together in a collaborative manner to facilitate, coordinate, monitor, and assess Players' compliance with their Treatment Plans. (For purposes of this Policy, a "Treatment Plan" is defined as a written plan of intervention and requirements to assist in the treatment of a Player.)

The Medical Director will be assisted by a Substance Abuse Program Coordinator & Educator ("Program Administrator"). The Parties will jointly select and be equally responsible for the salary of the Program Administrator.

The Parties agree that the Medical Director shall have the sole discretion to make various decisions regarding the treatment portions of this Policy. The Medical Director's decisions that do not result in the discipline (a fine or suspension) of a Player shall be final and binding, except as otherwise provided for in this Policy.

The Medical Director and the Program Administrator (and any persons employed thereby) shall act in good faith and with equal obligation to the NFLPA and NFL. The Medical Director and the Program Administrator shall report equally, promptly and contemporaneously to both the NFLPA and NFL regarding all correspondence and relevant

information, and seek guidance from both Parties when exercising responsibilities under the Policy.

1.1.2 Medical Advisor

The Parties will jointly select and be equally responsible for the salary of a Medical Advisor who will have the responsibility, among other duties, of serving as medical review officer and overseeing selection and testing under this Intervention Program. The Medical Advisor shall be a physician licensed and in good standing by the medical board of any state in the United States.

The Medical Advisor may advise the Medical Director regarding Treatment Plans for Players and may consult with the Chief Forensic Toxicologist as appropriate. The Medical Advisor will be informed at all times of the identity and treatment status of all Players in the Intervention Program with the exception of those entering the Intervention Stages through Self-Referral.

The Parties agree that the Medical Advisor will have sole discretion to make the various decisions assigned to him or her under the terms of the Policy, and such decisions shall be final and binding, except as otherwise provided for in this Policy.

The Medical Advisor (and any persons employed thereby) shall act in good faith and with equal obligation to the NFLPA and NFL. The Medical Advisor shall report equally, promptly and contemporaneously to both the NFLPA and NFL regarding all correspondence and relevant information, and seek guidance from both Parties when exercising responsibilities under the Policy.

1.1.3 Treating Clinicians and Treatment Facilities

The Medical Director will approve and select an appropriate number of health care professionals experienced and trained in the treatment of substance abuse and legally authorized to prescribe written plans of intervention and requirements designed to assist in the treatment of substance abuse ("Treating Clinicians"). Treating Clinicians will be responsible for administering the Treatment Plans for Players assigned to him or her by the Medical Director. A health care professional who is not a psychiatrist and who wants to qualify as a Treating Clinician must establish a consulting relationship with an appropriately credentialed and experienced psychiatrist, as determined by the Medical Director.

It is the responsibility of the Medical Director in consultation with the treatment teams to designate suitable facilities at which Players entering the Program may be treated ("Treatment Facilities").

The Medical Director may terminate the Program's relationship with any Treating Clinician or Treatment Facility if the Medical Director determines that such clinician or facility is unable to satisfy the medical requirements or other demands of this Policy. No Treatment Facility may be terminated until a replacement Treating Facility has been designated. If the Medical Director and treatment teams are unable to agree upon a successor Treatment Facility within four (4) months of the notice from the Medical Director to the Parties of his desire to terminate a Treatment Facility, the matter shall be referred to the Medical Director and the Medical Advisor, who shall promptly select and consult with a third physician who is neither an Interested Party (as defined below) nor affiliated with an Interested Party; after consultation, the three physicians together will jointly choose a successor Treatment Facility as soon as practicable.

1.1.4 Team Substance Abuse Physicians

Each NFL Club will designate one of its affiliated physicians as its team physician for substance abuse matters (the "Team Substance Abuse Physician"). With the exception of those Players who enter the Intervention Program through Self-Referral, the Team Substance Abuse Physician will be informed as to the participation of any Player from his team in the Intervention Program, the Player's administrative status, and/or the nature of that Player's treatment. The Team Substance Abuse Physician shall consult and coordinate as appropriate regarding Club-level aspects of the Player's treatment program including the prescription or prohibition of medications to facilitate compliance with the treatment program.

1.1.5 Chief Forensic Toxicologist

The Parties will select and be equally responsible for the salary of a Chief Forensic Toxicologist who will have the responsibility for, among other duties: (1) laboratory evaluation of urine samples produced pursuant to the terms of this Policy; (2) providing scientific advice to the Parties, the Medical Director and the Medical Advisor on matters of toxicology and the analysis of specimens; (3) scientific interpretation of positive drug findings; and (4) providing forensic testimony as needed.

The Parties agree that the Chief Forensic Toxicologist will have sole discretion to make the various decisions assigned under the terms of the Policy, and such decisions shall be final and binding, except as otherwise provided for in this Policy.

The Chief Forensic Toxicologist (and any persons employed thereby) shall act in good faith and with equal obligation to the NFLPA and NFL. The Chief Forensic Toxicologist shall report equally, promptly and contemporaneously to both the NFLPA and NFL regarding all correspondence and relevant information, and seek guidance from both Parties when exercising responsibilities under the Policy.

1.1.6 Collection Vendor

The NFL and NFLPA shall jointly agree upon one or more Collection Vendors to be responsible for specimen collection, storage and transportation to the designated laboratory. The Collection Vendor's written protocols and chain-of-custody documents must ensure that best practices collection procedures are utilized at all times in a manner consistent with generally accepted scientific principles relevant to the collection and storage of the types of substances tested for under this Policy. The collection protocols and chain-of-custody documents, together with any material modifications thereto, shall be reviewed and approved by the Parties with the advice and recommendation of the Chief Forensic Toxicologist and Medical Advisor. Once approved, if the Chief Forensic Toxicologist or Medical Advisor seeks to make any additional modifications, he or she must immediately inform the Parties.

The Collection Vendor shall implement a training and certification process for all employees or agents involved in the collection of any sample under this Policy. Upon request of either Party, the Collection Vendor shall provide the Parties with all information regarding its training and certification processes.

1.1.7 Club Physicians

Club Physicians are physicians designated by the Clubs or selected by the Player in accordance with Article 39 of the CBA.

1.1.8 Policy Review

The NFL Management Council, NFLPA, Medical Director, Medical Advisor, Program Administrator and Chief Forensic Toxicologist will meet periodically to review the operation

of the Policy and Program. To facilitate the review process, the Parties will have full access to information relating to the implementation and operation of this Policy, except to the extent that such access would conflict with the confidentiality or other provisions of this Policy. Modification of the Policy will require the mutual consent of the Parties.

1.1.9 Payment for Treatment

Payment for treatment services rendered to Players participating in the Intervention Program shall be governed by the terms and conditions set forth in the NFL Player Insurance Plan.

1.1.10 Term, Discharge and New Appointments

Unless the Parties mutually determine otherwise, the Medical Director, Medical Advisor, Chief Forensic Toxicologist and Program Administrator each shall serve a minimum three-year term. Notwithstanding, either or all may be discharged by either Party at any time provided that written notice is given by the discharging party one year prior to discharge.

Within six months of issuance of a notice of intent to discharge or notice of intent to resign the appointment by the Medical Director, Medical Advisor, Chief Forensic Toxicologist or Program Administrator, the Parties will each identify a minimum of three successor candidates. All timely identified candidates will then promptly be ranked by the Parties, with input from personnel for the Policy and Policy on Performance-Enhancing Substances. Within sixty days, the top three candidates will be interviewed by the Parties, with participation by Policy personnel if requested. Absent agreement on a successor, the Parties will alternately strike names from said list, with the Party striking first to be determined by the flip of a coin.

Should a Party fail to identify, rank, interview or strike candidates in a timely manner, that Party will forfeit its rights with respect to that step of the appointment process, including selection of the ultimate successor if that Party fails to participate in alternate striking.

Where necessary, the Parties will endeavor to name an interim appointee for any vacant positions pending selection of a successor.

1.2 Confidentiality

1.2.1 Program Information

The Medical Advisor, Medical Director, Program Administrator, Team Substance Abuse Physician, Chief Forensic Toxicologist and all employees and consultants of the NFL, NFL Management Council, NFLPA (including its employees, members and Certified Contract Advisors), Evaluating Clinicians, Treating Clinicians and NFL Clubs ("Interested Parties") shall take all reasonable steps to protect the confidentiality of information acquired in accordance with the provisions of this Policy, including but not limited to the history, diagnosis, treatment, prognosis, test results, or the fact of participation in the Intervention Program of any Player or the Club(s) employing or having employed the Player ("Intervention Program Information").

Intervention Program Information about a Player is subject to the confidentiality provisions of this Policy unless such information is disclosed: (a) by the Player or by authorization of the Player; or (b) pursuant to Section 1.2.2 below; or (c) via corrective disclosure by the Management Council pursuant to this Section.

Intervention Program Information, including but not limited to information learned on appeal, will be shared among Interested Parties only on a need-to-know basis and only in accordance with the terms of this Policy.

The Management Council may publicly announce or acknowledge disciplinary action against a Player when a suspension is upheld or if the allegations relating to a Player's violation of the Program previously are made public through a source other than the Management Council or a Club (or their respective employees or agents).

In addition, the Parties jointly may publicly disclose information relating to a Player to maintain confidence in the credibility of the Policy or to correct inaccurate public claims made by that Player or his representatives about the operation of the Policy, discipline, underlying facts or appeals process.

Finally, on an annual basis the Medical Director will prepare and submit to the Parties a report with de-identified information concerning Program census and clinical information. The Parties will review the report and agree on what if any information should be published in an Annual Report, together with any results management, research, education or other relevant subjects.

1.2.2 Program Information Provided to Clubs

An NFL Club that:

a. has contacted a restricted or unrestricted free agent or that Player's Certified Contract Advisor and is considering making an offer to and/or signing the Player; or

b. has contacted another NFL Club regarding a potential acquisition of a Player in a trade and is considering making the Club an offer for the Player; or

c. is contemplating acquiring a Player through the waiver system;

may be informed by the Medical Advisor or the Management Council whether the Player is subject to suspension the next time he fails to comply with any terms of the Intervention Program and whether or not the Player has disciplinary action pending against him. Such information may be disclosed to the senior Club executives responsible for signing restricted or unrestricted free agents who, in turn, shall share such information only with the Club employee(s) or officer(s) who participate in the decision to sign the Player. Any Club employee or officer who, by reason of such inquiry, is in receipt of information disclosed pursuant to this Section will immediately become subject to and be bound by the confidentiality provisions established by this Policy.

Additionally, the Parties will establish a system to permit Club Behavioral Health Clinicians to receive information concerning Program participants.

1.2.3 Discipline for Violations of Confidentiality

The Parties may, in appropriate cases, agree to retain an independent investigator to investigate and report on alleged breaches of confidentiality.

Any Player, Club or Club employee who breaches the confidentiality provisions of this Policy is subject to a fine of up to $500,000 by the Commissioner.

Any NFLPA employee, or other person subject to the Executive Director's authority who breaches these provisions shall be subject to a fine of up $500,000 by the Executive Director. Any Certified Contract Advisor who breaches these provisions shall be subject to discipline under the NFLPA Regulations for Certified Contract Advisors.

Any other person involved in the administration of this Policy who breaches these provisions shall be subject to termination of services or other appropriate action.

The provisions of this Section shall be the sole remedy available to a Player or other Interested Party aggrieved by an alleged violation of the Policy's confidentiality provisions.

1.3 Testing for Substances of Abuse

All testing for Substances of Abuse of Players is to be conducted under the direction of the Medical Advisor pursuant to this Intervention Program. Before entering an Intervention Stage, Players shall be tested only for the following substances, which collectively shall be termed the "NFL Drug Panel":

Benzoylecognine (cocaine) ≥ 150 ng/mL

Delta 9-THC-carboxylic acid (marijuana) ≥ 150 ng/mL [≥ 35-149 ng/mL in Stage Two for clinical purposes only]

Synthetic Cannabinoids ≥ 2.5 ng/mL

Amphetamine and its analogues ≥ 300 ng/mL

Opiates (total morphine and codeine) ≥ 300 ng/mL

Opioids (e.g., hydrocodone, oxycodone) ≥ 300 ng/mL

Phencyclidine (PCP) ≥ 25 ng/mL

Methylenedioxymethamphetamine ("MDMA") and its analogues ≥ 200 ng/mL

Alcohol ≥ .06 g/dl (%)

Alcohol is prohibited only if a Player's Treatment Plan explicitly prohibits alcohol, but all Players in Intervention Stages are tested for alcohol for clinical monitoring purposes.[3] Discipline for alcohol use is imposed only if a Player's Treatment Plan prohibits alcohol.

After a Player enters any stage of the Intervention Program, testing for additional Substances of Abuse may be included in the Player's Treatment Plan in accordance with the terms of this Intervention Program.

1.3.1 Types of Testing

Pre-Employment: Unless otherwise required by this Policy, a Pre-Employment Test may be administered to:

(A) Draft-eligible Players during the annual scouting combines;

(B) A rookie Player desirous of signing a contract with an NFL Club who has not had a test in the four-month period prior to his Pre-Employment Test (excluding a test given at the annual scouting combines); or

(C) A veteran Player desirous of signing a contract with an NFL Club who:

(i) was not under contract to that Club or was under contract with another NFL Club on the date of the last game of the immediately preceding season; and

(ii) agrees with the Club with whom he is seeking employment, prior to the execution of a new NFL Player or Practice Squad Player Contract ("NFL Contract") to submit to a Pre-Employment Test.

Any Club contemplating signing a Player who has been tested under the provisions of this subsection may be informed of the results as permitted under Section 1.2.2.

[3] If a Player does not have a Treatment Plan that prohibits alcohol consumption, the Player may elect to complete a form satisfactory to the Parties that prohibits transmission of clinical advisory notices for alcohol to the Team Substance Abuse Physician, as discussed in Section 1.3.3 of this Policy.

Pre-Season (THC): During the period between the start of Pre-Season Training Camps and the Club's first Pre-Season Game, Players on each Club will be tested for THC as part of the Annual Test for Performance-Enhancing Substances pursuant to protocols agreed upon by the Parties. A Player who is signed or otherwise acquired after Pre-Season Testing has occurred will be subject to a Pre-Season Test for THC as determined by the protocols agreed upon by the Parties.

Pre-Season (Other Substances of Abuse): All Players under contract with an NFL Club will be tested once for substances on the NFL Drug Panel (excluding THC) during the period beginning April 20 and continuing through August 9. Pre-Season Testing may be done on a team-wide basis or by position groups at the discretion of the Medical Advisor but not on an individual-by-individual basis. However, a Player who is excused by the Medical Advisor from the scheduled team-wide or position's group test may be tested individually but only if such test takes place before the first regular-season game absent a showing of extenuating circumstances. A Player who is signed or otherwise acquired after the date of the Pre-Season Test that would have applied to him may be given his Pre-Season Test individually if such test has not already been given.

Intervention Program: All Players in the Intervention Program will be required to provide a specimen when determined by the Medical Advisor. For Players in Stage One, the Medical Director will determine the frequency of testing for each Player; for Players in Stage Two, the Medical Advisor will determine the frequency of testing subject to the terms of the Policy.

Testing by Agreement: An NFL Club and a Player may agree that the Player will submit to unannounced testing during the term of his NFL Contract, provided that the Club has a reasonable basis for requesting testing. A Positive Test Result (as hereinafter defined) as a result of such testing shall be reported to the Medical Director and shall result in the Player's entry into Stage One. Once a Player enters an Intervention Stage, the number of tests required will be determined by the Medical Director or the Medical Advisor, as set forth herein – not by the terms of the Player's NFL Contract. Upon being dismissed from the Intervention Program, the Player's NFL Contract will govern the number of tests required. All individually negotiated testing shall be conducted under the direction of the Medical Advisor and not the Club. In cases of individually negotiated testing, all Interested Parties will continue to be bound by the confidentiality provisions established in this Policy.

1.3.2 Testing Laboratory

A central laboratory certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA Lab") will analyze urine specimens for Substances of Abuse. NFLPA shall have a right to review the Policy's SAMHSA Lab annually.

Either Party will have the right to discharge a testing laboratory provided that written notice is provided by the discharging Party six months prior to discharge. Upon issuance of a discharge notice, the Chief Forensic Toxicologist, Medical Director and Medical Advisor will recommend one or more potential successor laboratories after which the NFL Management Council, with appropriate consultation with the NFLPA, will promptly select and engage the successor laboratory.

1.3.3 Testing Procedures

A Player in the Intervention Program may choose to have his specimens collected away from the Club facility or stadium. A Player's choice to have his specimens collected away from the Club facility or stadium will not serve as an excuse for failing to appear for testing.

The following procedures are applicable to all testing performed in all Stages of the Intervention Program:

Notification and Collection Procedures: Specimen collections occurring at a Club facility, stadium or scouting combine venue will be conducted at the discretion of the Medical Advisor and Collection Vendor without advance notice to the Player. Upon notification that he has been selected for testing, the Player shall furnish a specimen to the authorized specimen collector immediately or as soon as possible, but in no event more than three (3) hours following notification. Until the specimen is provided, the collector shall maintain specific knowledge of the Player's whereabouts and the Player may not leave the premises for any reason. If the collector reasonably believes that the Player is evading testing, he shall report the matter to the Collection Vendor and/or Medical Advisor for disciplinary review.

For specimen collections occurring away from the Club facility, the Collection Vendor may, in its discretion, contact the Player by telephone, voicemail or text message to notify him that he has been selected. Following notification, from the beginning of training camps (the earliest date of the commencement of the first NFL Club's training camp) through the Super Bowl, Players in the Intervention Program shall furnish a specimen within three (3) hours. From the period after the Super Bowl through the commencement of training camps (the earliest date of the commencement of the first NFL Club's training camp), Players in the Intervention Program shall furnish a specimen within four (4) hours.

The Medical Advisor may consider a Player's prompt, consistent provision of specimens in determining future testing frequency.

To prevent evasive techniques and ensure that specimens are accurately attributable to the selected Player, specimens will be collected, stored and transported to the SAMHSA Lab according to the protocols referenced in Section 1.1.6. Except in specifically authorized circumstances by the Parties, in order to protect the privacy and confidentiality of the process for all stakeholders, recording of the collection process via any media (audio or visual) is not permitted.

Concentration Levels: Tests for the NFL Drug Panel will be deemed positive if they are confirmed by laboratory analysis at the identified urine concentration levels. Passive inhalation shall be precluded as a defense in any appeal hearing for discipline based on a Positive Test Result for marijuana and synthetic cannabinoids. Alcohol testing will be conducted only in the context of clinical monitoring or as otherwise provided herein. If a Player does not have a Treatment Plan that prohibits alcohol consumption, the Player may elect to complete a form satisfactory to the Parties that prohibits transmission of clinical advisory notices for alcohol to the Team Substance Abuse Physician. In addition, a "dilute specimen" — a urine specimen that has a specific gravity value less than 1.003 and a creatinine concentration of less than 20 mg/dL — shall be deemed a positive test result and will be subject to discipline as set forth in Sections 1.5.1(c) or 1.5.2(c) as appropriate.

Any Treatment Plan which has been approved by the clinician(s) and signed by the Player may include the provision for urine toxicology analysis for other substances not enumerated here and tests will be deemed positive if they are confirmed by laboratory analysis at standard urine concentration levels recommended by the Chief Forensic Toxicologist and agreed to by the Parties. Any such positive test, as referenced in this subsection, shall hereinafter be referred to as a "Positive Test Result."

"B" Sample Analysis: The NFLPA shall maintain a non-exclusive list of approved, independent board-certified forensic toxicologists ("Observing Toxicologists"), which shall be compiled in consultation with the Chief Forensic Toxicologist and which may not include any person affiliated with a commercial laboratory. If the Player wishes to have an independent toxicologist who is not on the NFLPA list observe the "B" bottle analysis, the

independent toxicologist must sign an appropriate nondisclosure and confidentiality agreement with the applicable testing laboratory prior to scheduling the "B" sample analysis. Any Player who receives written notification of an "A" positive may either accept the result and discipline, await the results of the scheduled "B" sample analysis, or have an Observing Toxicologist witness the "B" sample analysis if he makes a written request to the Medical Advisor within five (5) business days of receiving the notification. Notwithstanding the foregoing, "B" bottle testing shall not be afforded to Players who provide a dilute specimen that results in a dilute warning pursuant to Appendix A.

If observation is requested, the Medical Advisor will coordinate with the laboratory and designated Observing Toxicologist to schedule the "B" sample analysis to occur within seven (7) business days of the Player's request. If observation is not requested, the laboratory will conduct the analysis as soon as is practicable.

The "B" sample analysis will be performed at the same laboratory that did the "A" sample analysis according to established analytical procedures. To confirm the results of the "A" bottle test, the "B" bottle test need only show that the substance revealed in the "A" bottle test is evident to the "limits of detection."

With respect to Pre-Employment Testing, the procedure set forth above shall apply, except that: (a) the "B" analysis will be performed as soon as possible with no Observing Toxicologist permitted; and (b) upon confirmation of the Positive Test Result, the Medical Advisor shall promptly notify the NFL Management Council and NFLPA and: (i) all Clubs in the case of a Combine Test, or (ii) the requesting Club(s) in the case of a Free Agent test. "B" bottle testing shall be conducted during Stage One of the Intervention Program. However, the Player shall not have the right to have an Observing Toxicologist present for a Stage One "B" bottle analysis, nor does the Player have the right to challenge a Stage One Positive Test Result.

Notice of Positive Test Result: If the "B" sample analysis confirms the Positive Test Result, the Medical Advisor will notify the Medical Director and Team Substance Abuse Physician and will provide written notice via electronic or overnight delivery, together with a copy of the appropriate supporting documentation, to the Player and Parties. (If the "B" bottle test does not confirm the result, only the Player will be notified in writing.) If the Player is subject to disciplinary action, the Management Council will notify him in writing via electronic or overnight delivery with a copy to the NFLPA.

Failure to Appear for Testing: The Medical Advisor and Collection Vendor will be responsible for scheduling all tests and for ensuring that Players are notified when individual testing will take place. A Player who fails to appear for required testing without a valid reason as determined by the Medical Advisor will be subject to discipline as set forth in Appendix E.

Failure to Cooperate; Attempt to Manipulate: A Player who provides a dilute specimen will be treated as having a Positive Test Result. A player who engages in a deliberate effort to substitute or adulterate a specimen; to alter a test result; or to engage in prohibited doping methods[4] may be subject to additional discipline.

[4] For purposes of this Policy, "prohibited doping methods" shall mean: pharmacological, chemical or physical manipulation; for example, catheterization, urine substitution, tampering, or inhibition of renal excretion by, for example, probenecid and related compounds.

1.4 Entrance into the Intervention Program

1.4.1 Entrance

All Players shall be eligible for entrance into the Intervention Program. Eligibility will not be affected by termination or expiration of a Player's contract subsequent to entry into the Intervention Program.

Players enter Stage One of the Intervention Program by one of three methods —Positive Test Result, Behavior or Self-Referral — as more fully described below:

Positive Test Result: A Pre-Employment, Pre-Season, Testing-By-Agreement test result that meets or exceeds the established threshold concentration levels, as well as positive test results referred by the Independent Administrator pursuant to the Policy on Performance-Enhancing Substances.

Behavior: Behavior (including but not limited to an arrest or conduct related to an alleged misuse of Substances of Abuse occurring up to two (2) football seasons prior to the Player's applicable scouting combine) which, in the judgment of the Medical Director, exhibits physical, behavioral, or psychological signs or symptoms of misuse of Substances of Abuse.

Self-Referral: Personal notification to the Medical Director by a Player of his desire voluntarily to enter Stage One of the Intervention Program prior to his being notified to provide a specimen leading to a Positive Test Result, and prior to behavior of the type described above becoming known to the Medical Director from a source other than the Player. The Player also may satisfy this requirement by contacting a Club Physician, but in order to be valid, the Club Physician must establish personal contact between the Player and the Medical Director as soon as possible after being contacted. In such cases: (i) any information provided to the Club Physician by the Player and disclosed by the Club Physician to the Medical Director for the purpose of establishing contact will not be considered information from "a source other than the Player;" and (ii) a Club Physician may not provide substance abuse treatment for any Player or facilitate substance abuse treatment not provided by a Treating Clinician.

A Self-Referred Player will always remain in Stage One; however, a Player will no longer be considered a Self-Referred Player, but rather as a mandatory entrant into Stage One if:

(1) the Player has a Positive Test Result (other than from a test conducted pursuant to his Treatment Plan); or

(2) the Medical Director learns from a source other than the Player that the Player has engaged in subsequent and new Behavior of the type described above; or

(3) an event occurs that would be expected to lead the Medical Director to become aware of the Player's Behavior (for example, the Player is arrested for the Behavior or the Behavior is reported in the media).

A Self-Referred Player may not be fined under this Intervention Program prior to the time of his mandatory entrance into the Intervention Program. Self-Referred Players will be advised when the Medical Director determines that notification to the Team Substance Abuse Physician (if not previously notified by the Player) is medically advisable, and the Player will be given the option either to permit such notification or to withdraw from the Intervention Program.

1.4.2 Continued Participation

A Player who enters the Intervention Program will remain until he is discharged in accordance with the terms set forth herein. Notwithstanding, (1) a Player who is released by

his Club and who has not been on a roster for more than six (6) consecutive regular or postseason games ("Never-Rostered Player") is not required to comply with the terms of his Treatment Plan or to submit himself for testing until he re-signs with a Club; (2) a veteran who is released by his Club or whose NFL Contract expires ("Non-Contract Veteran") must comply with the conditions of the Intervention Program for twelve (12) months after the expiration of his NFL Contract or receipt by the Program Administrator of written notification of his retirement, whichever is sooner. After six months, testing shall cease unless the Medical Director or the Medical Advisor requests that testing be continued; and (3) a veteran who is under contract with a Club ("Contract Veteran") does not have to comply with the terms of his Treatment Plan if he notifies the Medical Director of his retirement from football. However, if after retiring from football, he signs an NFL Contract to play for an NFL Club prior to the first anniversary date of (*i*) the expiration or termination of his last NFL Contract with an NFL Club if a Non-Contract Veteran or (*ii*) the termination or tolling of his NFL Contract upon retirement if a Contract Veteran, he will be deemed not to have complied with the terms of his Treatment Plan and be disciplined for a violation of his Treatment Plan in accordance with the terms of this Policy.

Non-Contract Veterans who either have not been under contract with an NFL Club for twelve (12) months or have notified the Program Administrator of their retirement; Contract Veterans who have notified the Program Administrator of their retirement; and released Never-Rostered Players who return to the NFL as a Player, will re-enter the Intervention Program at the same stage as when they left except as set forth above.

1.5 Intervention Stages

1.5.1 Stage One

(a) Procedures

Evaluation: A Player entering Stage One will be referred by the Medical Director to a treatment team, which shall evaluate the Player promptly. After receipt of the treatment team's evaluation, the Medical Director, in his or her discretion, shall determine whether the Player would benefit from clinical intervention and/or treatment. The Medical Director's determination is not dependent upon a finding that the Player carries a diagnosis of a substance use disorder, but rather upon whether, in the Medical Director's judgment, participation in the Intervention Program may assist in preventing the Player's potential future misuse of Substances of Abuse.

Provision of Care: The Treating Clinician (or Treatment Facility) shall be solely responsible for the care of the Player. A Player who fails to adhere to the Treatment Plan approved by the Medical Director or refuses or unreasonably fails to execute a Consent to Exchange Intervention Program Information document shall be subject to discipline as set forth in the Policy.

Testing: In Stage One, the Medical Director may, in his discretion, require a Player to submit to testing for Substances of Abuse as often as is required to evaluate the Player adequately, and those tests shall be administered under the direction of the Medical Advisor.

(b) Duration

Players generally will remain in Stage One for a period not to exceed 60 days, during or upon which he will be subject to the following:

Extension: If due to unusual and compelling circumstances the Medical Director determines that a period in excess of 60 total days is required, the period may be extended with the concurrence of the Medical Advisor, and the Player shall be notified in writing of the reason(s) for and the duration of the extension of his status in Stage One.

Discharge: A Player who is deemed not to require specific clinical intervention and/or treatment will immediately be released from any further obligations to participate in the Intervention Program and will thereafter assume the same status as Players who have never been referred to the Intervention Program.

Advancement: A Player who upon evaluation is deemed to require specific clinical intervention and/or treatment will be advanced to Stage Two upon notification to the Player by the Medical Director. A Player also may voluntarily request advancement to Stage Two for continued care.

(c) Discipline for Stage One Violations

The Medical Director shall solely determine whether the failure or refusal to test or an attempt to alter the test results constitutes a Player's failure to comply in Stage One subjecting him to discipline. If the Medical Director, after consultation with the Medical Advisor, determines that a Player in Stage One has failed to cooperate with the evaluation process or fails to comply with his Treatment Plan, the NFL Management Council and the NFLPA shall be notified and the Player will be subject to a fine equal to two-seventeenths ($^{2}/_{17}$) of the Paragraph 5 amount in his NFL Contract, and he will be advanced to Stage Two upon notification by the Medical Director.

A Self-Referred Player may not be fined for a failure to cooperate with the evaluation process or a failure to comply with his Treatment Plan. He may, however, be discharged from the Intervention Program at the Medical Director's discretion.

1.5.2 Stage Two

(a) Procedures

Treatment Plan/Treatment Facility: If the Medical Director determines that a Player should be referred for appropriate clinical intervention and/or treatment, the Player shall be referred to a Treating Clinician. If the Treating Clinician determines the Player requires a Treatment Plan, one shall be developed. The Medical Director shall review and approve the Treatment Plan if appropriate. If the Treating Clinician determines that inpatient treatment at a Treatment Facility is appropriate, the Medical Director shall review the recommendation and, if agreed, select a qualified Treatment Facility to treat the Player's particular needs.

Testing: All Players in Stage Two will be subject to unannounced testing subject to the terms of this Policy. At the sole discretion of the Medical Advisor, a Player may or may not be tested; however, if he is tested, he may not be tested more than ten (10) times during any calendar month. Such testing shall include testing only for the NFL Drug Panel, except that tests for alcohol and other Substances of Abuse will be conducted as set forth in Section 1.3 of the Policy and/or if the Player's Treatment Plan requires abstention from and enumerates testing for such substances.

(b) Program Review: Duration

On a monthly basis, the treatment team will review each Player's case and provide him with a status report regarding his participation in the Intervention Program. Such report may be conveyed by a case manager or others as appropriate, but should include

an assessment of the Player's engagement, Program expectations and prognosis for continued treatment, testing and/or discharge from the Program.

A Player will remain in Stage Two until such time as he is discharged by the Medical Director following assessment and determination. Such determination shall be based on the Medical Director's professional judgment regarding the Player's compliance with the Program, clinical progress and negative testing record. Any decision to discharge a Player from the Program shall be within the sole discretion of the Medical Director. Once a Player is discharged, he will be afforded the same status as a Player who has never been referred to the Intervention Program.

(c) Program Violations; Discipline

A Player in Stage Two who violates the Policy will be subject to discipline by the Commissioner as set forth below:

Unexcused Failure to Appear for Testing	1st Violation: $20,000 fine 2nd Violation: 1-week's salary 3rd Violation: 2-weeks' salary 4th and Subsequent: 4-weeks' salary
Positive Test Result	1st Violation: 1/2-week salary 2nd Violation: 1 week's salary 3rd Violation: 2-weeks' salary 4th and Subsequent: 3-weeks' salary
Failure to Cooperate with Testing or Clinical Care	1st Violation: 1-week's salary 2nd Violation: 2-weeks' salary 3rd Violation: 3-weeks' salary 4th Violation: 3-game suspension 5th Violation: 4-game suspension 6th Violation: 8-game suspension 7th Violation: banishment for an indefinite period of at least one calendar year

(d) Banishment; Reinstatement

Banishment: A Player banished from the NFL pursuant to this subsection will be required to adhere to his Treatment Plan and the provisions of this Intervention Program during his banishment. During a Player's period of banishment, his NFL Player Contract shall be tolled.

Reinstatement Criteria: After the completion of the one-year banishment period, the Commissioner, in his sole discretion, will determine if and when the Player will be allowed to return to the NFL. A Player's failure to adhere to his Treatment Plan during his banishment will be a significant consideration in the Commissioner's decision. A Player seeking reinstatement also must meet certain clinical requirements as determined by the Medical Director and other requirements as set forth in Appendix B.

Procedures after Reinstatement: If a Player is reinstated, he will be returned to Stage Two for the remainder of his NFL career and will be subject to continued testing and immediate rescission of reinstatement for subsequent violations. A Player allowed to return to the NFL following banishment also must participate in continued treatment under this Intervention Program as required by the Medical Director.

1.6 Location Information and Notice

Players who are in the Intervention Program are required to provide a street address and telephone number where they can be reached at all times, and the Collection Vendor and/or Medical Advisor shall attempt to notify the Player using the method that is reasonably calculated to provide notice to the Player in a timely manner. Players may either call the Collection Vendor or use the Player Location Website (https://apps.nfl.net/pla) to provide contact and location information. Any Player in the Intervention Program who will be traveling internationally must remain in compliance with his obligation to provide a street address and telephone number where he can be reached at all times; therefore, before boarding a departing flight (or any other transportation) for international travel, the Player must provide street addresses and telephone numbers during his trip, and the Player should retain copies of his travel documentation for four months after his trip so that if there is a reasonable basis to question the accuracy of the Player's reported location, the Player can provide copies of such documentation. If the Player's participation in the Intervention Program is subject to disclosure pursuant to Section 1.2.2, then the Medical Advisor also shall inform the Parties and the Club of the Player's travel plans.

Any notice required to be provided to a Player under this Policy will be deemed to have occurred: (1) when delivery is made via electronic mail or overnight delivery to the address provided by the Player (no signature required); or (2) when a voicemail or text message is left at the telephone number provided by the Player. The Management Council is not required to establish individual receipt by the Player.

Any Player in the Program may choose to authorize notice of his status in the Program to his Certified Contract Advisor and/or the NFLPA. If the Player chooses to permit notification to his Certified Contract Advisor and/or the NFLPA about his status in the Program, the designated recipient will be copied on Program correspondence to the Player, except for Program correspondence that only includes medical information (*e.g.*, clinical advisory notes).

The NFL Management Council and the NFLPA shall be promptly notified whenever an event occurs that will subject a Player to discipline in either Intervention Stage.

2. Abuse of Alcohol and Violations of Law Related to Substances of Abuse

2.1 Abusive Consumption

Although alcoholic beverages are legal substances, when consumed abusively they can produce or contribute to conduct that is unlawful and threatens the health and safety of Players and other persons. Such conduct is detrimental to the integrity of and public confidence in the NFL and professional football. In addition, the abusive consumption of alcoholic beverages may indicate a substance abuse problem that requires medical attention.

2.2 Violations of Law Involving Alcohol

The Commissioner will review and may impose a fine, suspension, or other appropriate discipline if a Player is convicted of or admits to a violation of the law (including within the context of a diversionary program, deferred adjudication, disposition of supervision, or similar arrangement including but not limited to *nolo contendere*) relating to the use of alcohol. Absent aggravating circumstances, discipline for a first offense will be a suspension without pay for three (3) regular or postseason games. If the Commissioner finds that there were aggravating circumstances, including but not limited to felonious conduct, extreme intoxication (BAC of .15% or more),

property damage or serious injury or death to the Player or a third party, and/or if the Player has had prior drug or alcohol-related misconduct, increased discipline may be imposed. Discipline for a second or subsequent offense, absent aggravating circumstances, will be a suspension without pay for eight (8) regular and/or postseason games as determined by the Commissioner.

2.3 Violations of Law Involving Other Substances of Abuse

Apart from and in addition to any other provisions of this Policy, Players convicted of or admitting to a violation of law (including, within the context of a diversionary program, deferred adjudication, disposition of supervision, or similar arrangement including but not limited to *nolo contendere)* relating to use, possession, acquisition, sale, or distribution of Substances of Abuse other than alcohol, or conspiring to do so, are subject to appropriate discipline as determined by the Commissioner.

Absent aggravating circumstances, discipline for a first offense will be a suspension without pay for up to four (4) regular and/or post-season games. If the Commissioner finds that there were aggravating circumstances, including but not limited to felonious conduct or serious injury or death of third parties, and/or if the Player has had prior drug or alcohol-related misconduct, increased discipline may be imposed. Discipline for a second or subsequent offense, absent aggravating circumstances, will be a suspension without pay for a minimum of six (6) up to ten (10) regular and/or post-season games. A Player's treatment history may be considered by the Commissioner in determining the appropriate level of discipline.

3. Imposition of Fines and Suspensions

3.1 Fines

3.1.1 Computation and Collection of Fines

Computation: Where applicable, any fine amounts imposed pursuant to this Policy shall be calculated using the Player's contract at the time of his failure to comply with the terms of the Policy or his last contract if he was not under contract at the time of his failure to comply. The applicable contract year will be determined by the League Year in which the incident giving rise to the fine occurs. Any deferred compensation attributable to a game missed due to suspension or to a fine period shall be reduced or eliminated as appropriate.

Collection: Fines will be collected in accordance with Article 46, Section 6(a) of the Collective Bargaining Agreement.

Split Seasons/Different Clubs: Should a Club be unable to collect the full amount of the fine during the season of its imposition, the remaining portion of the fine shall be collected the following season(s). If, at the beginning of the next regular season, the Player is under contract to the same Club, the remainder of the fine imposed pursuant to this Policy will be collected by said Club until the fine is paid in full. If, at the beginning of the next regular season, the Player is under contract to a different Club, the remainder of the fine imposed pursuant to this Policy will be collected by the new Club. If, at the beginning of the next regular season, the Player is not under contract to any NFL Club, the remainder of the fine imposed pursuant to this Policy may be recovered from any monies still owing from the NFL or any of its Clubs, including any salary or other form of compensation owed pursuant to Paragraphs 5 or 24 of a prior NFL Player Contract, any deferred compensation, termination pay, or injury protection benefit (but not including performance based pay, severance pay, or any other collectively bargained benefit).

Application to the Policy: Any fines imposed for violations of this Policy shall be applied to the costs of the Policy.

3.1.2 Prohibition Against Club Payment of Fine

No Club shall be permitted to pay any fine imposed pursuant to this Policy for or on behalf of a Player so fined, nor shall a Club be permitted to increase a Player's compensation so as to cover, in whole or in part, the total amount of the fine.

3.2 Suspensions

3.2.1 Suspension Procedures

During any suspension, the Player will not receive any pay, including pay for any post-season game that he misses because of his suspension, except as provided by Article 37 of the CBA. Notwithstanding, if a bye week occurs during a suspension period, the Player will receive his compensation for the bye week in equal installments over the remainder of the season after expiration of his suspension for as long as he is under contract and with the Club that he was under contract with at the time of the commencement of his suspension. The disciplinary period will begin on the date set in the NFL's notification to the Player of his suspension, subject to any appeal. If there are fewer than the prescribed number of games remaining when the suspension begins, including any post-season games for which the Club qualifies, the suspension will continue into the next regular season until the prescribed number of games has been missed. Players who are free agents will serve their suspension as if they had a contract with a Club.

Players suspended pursuant to this Policy may engage in activities as set forth in Appendix G.

A Player banished pursuant to the Policy may not participate with his Club in any way except to see his Treating Clinician for treatment purposes on Club property, but he must vacate the premises immediately following termination of the treatment session with the Treating Clinician. In addition, the Club's Director of Player Engagement may have weekly telephone contact with any banished Player as appropriate.

Any suspension period may be extended if medically necessary, and, if extended, may involve mandatory treatment if required by the Medical Director in his discretion.

3.2.2 Post-Season Treatment of Suspension or Fine

Any suspension without pay imposed pursuant to the terms of this Policy shall include post-season games played by the Player's Club if, at the time of suspension, an insufficient number of games remain in the regular season to complete the suspension. Similarly, any fines remaining owed at the conclusion of the regular season will continue to be deducted from the Player's post-season compensation, if any, in accordance with the provisions of Section 3.1 above, except as provided below. If a Player would otherwise qualify for a payment of post-season compensation pursuant to Article 37 of the CBA, such postseason pay shall not be affected by administrative actions imposed pursuant to the terms of this Policy.

3.2.3 Examination in Connection with Reinstatement

Players who have completed a suspension imposed under this Policy or have been reinstated from banishment must be given a physical examination and physically cleared by the Team Substance Abuse Physician before they may participate in contact drills or in a game. Such examination shall not include drug testing.

3.3 Bonus Forfeiture

Players who are suspended pursuant to this Policy shall be required to forfeit any applicable bonus amounts in accordance with Article 4, Section 9 of the Collective Bargaining Agreement. The Parties acknowledge the inapplicability of "facial invalidity" claims on forfeitures based on violations of this Policy.

4. Appeals

4.1 Arbitration Panel; Appeals Settlement Committee

All appeals under Section 1.5 of this Policy shall be heard by third-party arbitrators not affiliated with the NFL, NFLPA or Clubs.

The Parties shall jointly select and be equally responsible for compensating one or more arbitrators to act as hearing officers for appeals under Section 1.5 of this Policy. Selected arbitrators shall have appropriate expertise in matters under this Policy and shall be active members in good standing of a state bar. Unless the Parties mutually determine otherwise, each arbitrator shall serve a minimum two-year term, after which he or she may be discharged by either Party upon written notice to the arbitrator and other Party. The arbitrators' fees and expenses shall be shared equally by the Parties.

The Parties shall designate a Notice Arbitrator, who also will be responsible for assignment of the appeals. Prior to the first preseason game, the Notice Arbitrator will ensure that at least one arbitrator is assigned to cover every Tuesday of the playing season through the Super Bowl. Appeals will automatically be assigned to the arbitrator assigned to cover the fourth Tuesday following the date on which the Player is notified of discipline. During the off-season, the Parties will coordinate with the Notice Arbitrator to ensure that an arbitrator is available on at least two dates each month between February and June, and on five dates each month in July and August. Off-season hearings will be scheduled within thirty (30) days of the issuance of the notice of discipline unless the Parties agree otherwise.

An Appeals Settlement Committee consisting of the NFL Commissioner and the NFLPA Executive Director or their respective designees shall have authority to resolve any appeal under this Policy, which resolution shall be final and binding. Should the NFLPA believe that "extraordinary circumstances" exist which warrant reduced or vacated discipline, the Executive Director may raise them with the Commissioner. Consideration of an appeal by the Appeals Settlement Committee shall not in any way delay the appeals procedures outlined in this Policy, and no appeal may be resolved by the Appeals Settlement Committee once a decision on the appeal has been issued.

4.2 Appeals

The Management Council shall be responsible for the enforcement of the Policy and prosecution of appeals.

Except as expressly set forth elsewhere in this Policy, any dispute concerning the application, interpretation or administration of this Policy shall be resolved exclusively and finally through the following procedures:

Section 1.5 Appeals. Any Player who is notified by the NFL Management Council that he is subject to a fine or suspension for violation of the terms of this Policy may appeal such discipline

in writing within five (5) business days of receiving notice from the NFL that he is subject to discipline.

During the Playing Season, appeal hearings will be scheduled to take place on the fourth Tuesday following issuance of the notice of discipline. Upon agreement of the Parties, the hearing may be rescheduled to another date. In the absence of an agreement, a party may request a conference call to move for a new date based on extenuating circumstances. In such case, should the arbitrator conclude that a new date is warranted, a new date may be scheduled, but in no instance shall the rescheduled date fall more than one week after the originally scheduled date unless otherwise ordered by the arbitrator.

At the appeal hearing the Player may be accompanied by counsel and may present relevant evidence or testimony in support of his appeal of the charged violation and/or a permissible defense. Additionally, the NFLPA may attend and participate notwithstanding the Player's use of other representation. Hearings will be conducted by conference call unless either Party requests to appear in person.

The decision of the arbitrator will constitute a full, final, and complete disposition of the appeal and will be binding on all parties. The arbitrator shall not, however, have authority to: (1) reduce a sanction below the minimums established under the Policy; or (2) vacate a disciplinary decision unless the arbitrator finds that the charged violation could not be established.

Pending completion of the appeal, the suspension or other discipline will not take effect.
The NFL Management Council may, prior to the conclusion of a Player's appeal, reduce the length of the suspension and corresponding bonus forfeiture by up to 50% when the Player has provided full and complete assistance (including hearing testimony if required) to the Management Council which results in the finding of an additional violation of the Policy by another Player, coach, trainer or other person subject to this Policy.

Section 2 Appeals. Except as set forth below, appeals of discipline issued pursuant to Section 2 of this Policy shall be subject to the same procedures as appeals of discipline issued pursuant to Section 1.5.

Appeals of discipline issued pursuant to Section 2 of this Policy shall be heard by the Commissioner or his designee.

For such appeals, a Player shall have a right to appeal a decision affirming discipline to a member of the Appeals Panel established under Article 15 of the CBA, subject to the provisions of this Section.

This right of appeal ("Due Process Appeal") is limited to claims only in the following circumstances:

(a) The conduct of the appeal or hearing did not comport with one or more of the following established principles of industrial due process: (i) the Player was not provided with notice of the basis for the discipline; (ii) the Player was improperly denied an opportunity to present evidence or testimony in support of his appeal; (iii) the Player was improperly denied the opportunity to cross-examine a witness whose testimony was offered in the Section 2 appeal hearing in support of the discipline imposed; or (iv) the Player was improperly denied access to documents or other evidence in the possession of the League or a Club and unavailable to the Player or his representatives indicating that he did not violate the Policy or that a witness whose testimony was offered in the Section 2 appeal hearing was untruthful; or

(b) The decision affirming the discipline subjected the Player to an increased and disparate sanction when compared to other similarly situated Players and the Hearing Officer failed to reasonably set forth the basis for the variation. Any discipline imposed that falls within a

specified numerical limit set forth in the Policy shall have a rebuttable presumption that it is not disparate.

Procedure: A Due Process Appeal must be noticed within three (3) business days of the appeal decision, and must be initiated in writing to the Appeals Panel with a copy of the hearing transcript by overnight or electronic mail with copies of the notice to the Management Council and NFLPA. The Appeals Panel shall appoint one of its members to preside over the Due Process Appeal. The notice must set forth the specific basis of appeal under (a) or (b) above, with citations to the hearing transcript identifying the challenged decision or ruling. Within two (2) business days following the receipt of the notice, the Management Council and/or NFLPA may submit a responding letter brief. Absent instruction from the appointed Appeals Panel member, no other submissions will be permitted.

The appointed Appeals Panel member shall promptly determine whether to schedule a hearing or decide the Due Process Appeal based on the written submissions. If a hearing is directed, it shall take place via telephone conference call on the first Tuesday following receipt of the responding submissions (or the second Tuesday if the first Tuesday would be impracticable) and shall not include the introduction of any documentary evidence or testimony beyond the record and proffers made in the Section 2 appeal and any proffer of documents or other information alleged to be improperly denied under (a) above. The appointed Appeals Panel member shall render a decision within three (3) business days following receipt of the parties' written submissions or the hearing, whichever is later. The decision may be a summary ruling followed by a formal decision.

Standard of Review; Scope of Relief: To prevail on a Due Process Appeal, the Player must demonstrate that the challenged decision or ruling was clearly erroneous and in manifest disregard of the principles of the Policy and the Player's rights thereunder. The Player's Due Process Appeal right will be deemed waived if no objection regarding the challenged decision or ruling was raised during the Section 2 appeal hearing. If the Due Process Appeal is premised on a matter that: (i) first appeared in the decision itself; or (ii) was discovered after the Section 2 appeal hearing and was unknown, and could not reasonably have been known, by Player and his representatives at that time, the new information and the circumstances surrounding its discovery must be set forth in the notice of appeal or the appeal right will be deemed waived. In any Section 2 appeal or Due Process Appeal, all court records shall be fully admissible and any finding or judgment of a court shall be binding and not subject to challenge.

If the Player establishes his claim as set forth above, the appointed Appeals Panel member shall stay the discipline and remand the matter to the third-party Notice Arbitrator with instructions for further proceedings. The appointed Appeals Panel member shall have no authority to make substantive rulings on any matter addressed by the Policy including, without limitation, issues related to the administration of the Policy, identification of banned substances, a Player's status under the Policy, confidentiality, specimen collection, laboratory procedures and protocols, medical care or clinical assistance, the imposition of sanctions or discipline other than as provided in subsection (b) above and/or the disciplinary authority of the Commissioner or his designee as Hearing Officer.

On remand, the Notice Arbitrator or appointed third-party arbitrator shall decide the Player's claim and any discipline based on the record in the Section 2 appeal and any documents or other information determined to have been improperly denied. Such appeal shall not be *de novo*: the third-party arbitrator shall consider new evidence or testimony only if so directed by the appointed Appeals Panel member. In the event new testimony must be considered by the third-party arbitrator, such testimony must be presented by the first Tuesday immediately following remand (or the second Tuesday if the first Tuesday would be impracticable).

The decision of the appointed Appeals Panel member, and any subsequent decision by a third-party arbitrator on remand, will constitute full, final and complete disposition of the Due Process Appeal under this Section and will be binding upon the parties.

Other Appeals. Any Player who has a grievance over any aspect of the Policy other than discipline under Sections 1.5 or 2 must present such grievance to the NFLPA (with a copy to the Management Council) within five (5) business days of when he knew or should have known of the grievance. The NFLPA will endeavor to resolve the grievance in consultation with the Management Council. Thereafter, the NFLPA may, if it determines the circumstances warrant, present such grievance to: (i) the designated third-party arbitrator selected pursuant to Section 4 of this Policy for final resolution for any disciplinary action; or (ii) the Commissioner for any other matter. Such grievance must be presented no later than thirty (30) calendar days after the Player's presentment of the grievance to the NFLPA.

4.3 Hearings

4.3.1 Burdens and Standards of Proof; Discovery

Burden of Proving the Violation. In any case involving an alleged violation due to a Positive Test, the Management Council shall have the burden of establishing the Positive Test Result and that it was obtained pursuant to a test authorized under the Policy and was conducted in accordance with the Collection Vendor's specimen collection procedures ("Collection Procedures") and the Testing Laboratory's testing and analytical protocols ("Laboratory Procedures"). The Management Council is not required to otherwise establish intent, negligence or knowing use of a Prohibited Substance on the Player's part.

The Management Council may satisfy its burden by introducing analytical findings provided by the testing laboratory and by demonstrating that the test result was for a substance on the NFL Drug Panel as enumerated in Section 1.3 or a substance prohibited by a Player's Treatment Plan at the level required by the Laboratory Procedures. The specimen collectors, Medical Advisor, Chief Forensic Toxicologist and testing laboratories will be presumed to have collected and analyzed the Player's specimen in accordance with the Policy. In that respect, the Management Council may rely solely on the information contained in the laboratory documentation package provided to the parties, which shall be admissible without regard to hearsay challenge, to demonstrate that the specimen was obtained in accordance with the Collection Procedures and that the test was conducted in accordance with the Laboratory Procedures, including, without limitation, that the chain of custody of the specimen was maintained.

Challenges to the Proof of the Violation. The Player may challenge the Management Council's showing by alleging that: (a) the result was not "positive;" (b) the specimen was not obtained pursuant to a test authorized under the Policy; or (c) the specimen was not obtained and analyzed in accordance with the Collection Procedures and Laboratory Procedures. The Player must offer credible evidence in support of any allegation of a deviation from the Collection Procedures or Laboratory Procedures. If done, the Management Council will carry its burden by demonstrating that: (a) there was no deviation; (b) the deviation was authorized by the Parties; or (c) the deviation did not materially affect the accuracy or reliability of the test result.

A Player is not in violation of the Policy if the presence of a substance on the NFL Drug Panel as enumerated in Section 1.3 of this Policy or a substance prohibited by his Treatment Plan in his test result was due to no fault or negligence on his part (*e.g.*, despite all due care, he was sabotaged by a competitor or was administered a Prohibited Substance during an emergency procedure without the opportunity to give consent). The Player has the burden of establishing this defense. The Player

must offer objective evidence in support of his claim. For example, a Player cannot satisfy his burden merely by arguing that he: (i) did not intentionally use a substance on the NFL Drug Panel as enumerated in Section 1.3 or a substance prohibited by his Treatment Plan; (ii) was given the substance by a Player, doctor, trainer, family member or other representative; (iii) took a mislabeled or contaminated product; or (iv) took steps to investigate whether a product contained a Prohibited Substance.

Pre-Hearing Discovery. Within seven (7) business days of issuing a notice of discipline, the NFL Management Council shall provide the Player with an indexed binder containing the relevant correspondence and documentation. Within four (4) business days of receipt of the binder, the Player and NFL Management Council shall make any written requests for additional discovery relevant to the charged violation and/or a permissible defense, including the identity of any witness to be requested pursuant to Section 4.3.2 of this Policy. If there is no objection to the request, documents will be provided within five (5) business days or as soon as the documents are obtained, and the identified witnesses will be permitted to testify at the hearing. Objections and any proffers of evidence, including the proffers required by Section 4.3.2 of this Policy, will be promptly submitted via conference call to the arbitrator for decision.

No later than four (4) business days prior to the hearing, the Player will complete and submit a statement setting forth the specific grounds upon which the appeal is based with supporting facts in the form of proffered testimony or documentary evidence ("Basis of Appeal"). Once submitted, evidence on issues outside the scope of the Basis of Appeal shall not be permitted absent a showing by the requesting party of extraordinary circumstances justifying its inclusion. The Parties shall also be permitted to seek preclusion of evidence or other permissible relief on any issue for which insufficient supporting facts are alleged or for which arbitral precedent previously has been established.

No later than four (4) business days prior to the hearing the NFL Management Council and the Player's representative will exchange copies of any exhibits upon which they intend to rely and a list of witnesses expected to provide testimony. The failure to do so shall preclude the introduction of the late or nonproduced exhibits barring extraordinary circumstances as determined by the arbitrator. (This shall not preclude the introduction of rebuttal evidence in response to the Basis of Appeal.) Following the exchange, the arbitrator may permit the parties to provide further supplementation as appropriate.

Policy Information on Appeal. Only the Management Council and NFLPA may request information from the Policy's personnel. In addition, when presenting an appeal under this Policy a Player is not entitled to production of or access to records, reports or other information concerning other Players or the Policy's bargaining history. Notwithstanding, this provision does not limit the NFLPA's access to appropriate information concerning all violations under this Policy.

Decision; Post-Hearing Briefs. Within three (3) business days after the hearing or the receipt of the transcript (whichever is later), the arbitrator will evaluate the evidence and issue a summary ruling. A formal written opinion shall be issued within ten (10) business days after the hearing or the receipt of the transcript (whichever is later). The failure of the arbitrator to timely issue the ruling and opinion will result in the arbitrator's preclusion from handling further appeals for the remainder of the season in question. Post-hearing briefs will not be permitted, except that an arbitrator may request briefing on a specific issue or issues. If the arbitrator requests such briefing, he/she will set a submission deadline of not more than five (5) business days after the hearing or receipt of the transcript and a page limit of no more than ten (10) pages.

4.3.2 Witnesses

Any professional who interacts with a Player pursuant to the terms of this Program, including, but not limited to Treating Clinicians, Evaluating Clinicians, authorized specimen collectors, or consulting psychiatrists, may not testify at an appeal hearing unless the professional will testify as to matters on which only the professional has substantial knowledge. A Player desirous of having a professional testify at a hearing must proffer to the arbitrator, no later than the deadline for submission of discovery requests: the testimony that the professional is expected to give and an explanation of why that professional is the only one who has substantial knowledge of that information. After the proffer, the arbitrator will consider the views of the Management Council and the NFLPA and then determine whether to permit the professional to testify. The Player and/or his representative may not communicate with any professional who interacts with the Player pursuant to the terms of the Program unless it is determined that the professional may testify at the appeal hearing.

5. Retention and Destruction of Specimens

Unless otherwise agreed by the Parties, the Testing Laboratory will ensure the destruction of negative specimens 90 days following analysis and positive specimens 30 days following final adjudication of a Player's discipline. Any confirmed or suspected failures to adhere to the retention and destruction procedures shall be promptly reported to the Parties for review and action as appropriate.

APPENDIX A

Procedures for Dilute Specimens

The following procedures and standards will be used to determine whether a "dilute" specimen is the equivalent to a Positive Test under Section 1.3.3 of the NFL Policy and Program on Substances of Abuse ("Program").

1. A dilute specimen will be tested to the "limits of detection" to determine if there is a presence of any substance banned by the Program or by an individual Player's Treatment Plan. The presence of such substance, when the specimen is tested to the "limits of detection," shall be referred to as an "LOD Positive;" the absence of such substance shall be referred to as an "LOD Negative."

2. Any Player who provides a dilute specimen during Pre-Employment Testing or Pre-Season Testing (Section 1.3.1) shall enter Stage One of the Intervention Program, as follows:

    a. Players who provide a dilute urine specimen that is an LOD Positive shall enter Stage One of the Intervention Program by Positive Test;

    b. Players who provide a dilute urine specimen that is an LOD Negative shall enter Stage One of the Intervention Program by Behavior.

3. A Player who is in Stage Two of the Intervention Program and provides a dilute urine specimen that is an LOD Positive shall be deemed to have had a Positive Test.

4. Each time a Player enters the Intervention Program, he will be warned the first time he provides a dilute specimen that is LOD Negative after being advanced to Stage Two; however, after this one warning, a Player in Stage Two who provides another dilute specimen that is LOD Negative shall be deemed to have produced a Positive Specimen.

5. "B" bottle testing shall not be afforded to Players who provide a dilute specimen that results in a dilute warning.

Notwithstanding the foregoing, Players suspected by the Collection Vendor of providing a dilute specimen will be scheduled for a re-test as soon as possible but no later than 36 hours following the initial collection. A negative test result from the subsequent specimen will not, however, excuse the initial dilute specimen, if found.

APPENDIX B

Procedures for Reinstatement Following Banishment

Any Player who has been banished may apply for reinstatement no sooner than 60 days before the one-year anniversary date of the effective date of his suspension.

The application should be made in writing to the attention of Management Council and should include all pertinent information about the Player's:

(a) Treatment;
(b) Abstinence from Substances of Abuse throughout the entire period of his banishment as demonstrated through periodic toxicology testing;
(c) Involvement with any Substances of Abuse-related incidents; and
(d) Arrests and/or convictions for any criminal activity, including Substances of Abuse-related offenses.

Set forth below are the procedures to be used when an application is received by the Commissioner.

1. The Player will promptly execute appropriate medical release forms that will enable the Medical Director, Medical Advisor, Management Council and NFLPA to review his substance abuse history, including but not limited to attendance at counseling sessions (individual, group and family); attendance at 12-step and other self-help group meetings; periodic progress reports; and all diagnostic findings and treatment recommendations.

2. The Player will submit to urine testing pursuant to the Policy and Program at a frequency determined by the Medical Advisor. The Player may request to resume testing in advance of submitting his application in order to establish a suitable testing history.

3. Within 45 days of receipt of the application, the Medical Director and the Medical Advisor will conduct a review which may include an interview of the Player, after which a recommendation will be made to the Commissioner with regard to the Player's request for reinstatement.

4. If directed, the Player will meet with the Commissioner or his representative(s) to review his application and discuss potential conditions on which reinstatement would be based.

5. All individuals involved in the process will take steps to enable the Commissioner to render a decision within 60 days of the receipt of the application. If conditions are imposed, the Player will agree to comply with those conditions as part of his reinstatement to the status of an active Player.

APPENDIX C

Policy Personnel
Contact Information

Medical Advisor
Lawrence S. Brown, M.D.
229A Carroll Street
Brooklyn, NY 11231

Tel: 718-522-7363

Email: nflbrown@aol.com

Medical Director
Virgilio Arenas-Bribiesca, M.D.
155 North Michigan
Suite 528
Chicago, IL 60601

Tel: 312-515-3547

Email: Virgilio.Arenas-Bribiesca@CIGNA.com

Administrative Services

CIGNA Behavioral Services
Sara Harper (Program Educator)
3000 Park Lane Drive
Pittsburgh, PA 15275

Tel: 800-880-2376

Email: Sara.Harper@CIGNA.com

Chief Forensic Toxicologist

The Parties agree on an interim basis that the role of Chief Forensic Toxicologist shall be performed by the Director of the SAMHSA Lab or, if unavailable, a director of a laboratory approved for use by the NFL Policy on Performance-Enhancing Substances.

Collection Vendor
Drug Free Sport
Tel: 800-683-9173
Player Location Website: https://apps.nfl.net/pla

The Parties agree that the roles and responsibilities of the Policy Personnel are intended to provide expert medical and scientific oversight of testing procedures to ensure that NFL Players receive the highest level of protection in the administration of the Policy.

APPENDIX D

Abuse of Prescription and Over-The-Counter Drugs

Under the Policy, the abuse of prescription and over-the-counter drugs is prohibited.

Abuse of prescription drugs is defined as either:

a. the use of an otherwise permissible prescription drug without a valid prescription issued to the Player by a licensed healthcare provider specifying when the medication was prescribed and the medical reason for the prescription; or

b. the use of a prescription drug issued to the Player by a licensed healthcare provider more than fourteen (14) days after the expiration date of the prescription or more than thirty (30) days after the prescription was authorized, if no expiration date was provided.

Abuse of over-the-counter drugs is defined as the use of an over-the-counter drug without regard for the directions for use.

The NFL and NFLPA have agreed that the following will apply with respect to positive test results based on the impermissible use of these drugs:

1. Any Player who tests positive due to the abuse of a prescription or over-the-counter drug during Pre-Employment or Pre-Season Testing shall enter Stage One of the Intervention Program by Behavior pursuant to Section 1.4.1 of the Policy.

2. A Player who is in the Intervention Program and who tests positive a *first* time due to the abuse of a prescription or over-the-counter drug will be eligible for a reduction from the applicable discipline unless his entry into the Intervention Program was due to the abuse of a prescription or over-the-counter drug.

3. A Player who tests positive a *second* time due to the abuse of a prescription or over-the-counter drug shall not be eligible for a reduction in discipline.

Club physicians will be directed to ensure that Players receive appropriate education on the proper use and disposal of any medications prescribed.

APPENDIX E

Procedures for Failure to Appear for Testing

All Players in an Intervention Stage who become unavailable for Testing due to travel, temporary or permanent change of residence, prior commitments, or otherwise, are required to notify the Collection Vendor in advance of such unavailability so that testing can be scheduled accordingly if such request is reasonable. If a Player fails to provide an address and telephone number where he can be contacted, and, as a result, such Player cannot be contacted when the Medical Advisor requires that a Test be administered or the Player cannot be contacted at the address and telephone number provided, the Player's failure to provide timely notice or inability to be contacted will be subject to discipline as set forth below.

In addition, Players who are not in an Intervention Stage but who are selected for Pre-Season Testing must present and provide a specimen within the time periods set forth in Section 1.3.3 of this Policy. Players who fail to do so without a valid reason as determined by the Medical Advisor will be subject to discipline as set forth below.

When a Player fails to appear for testing, the Parties, in consultation with the Medical Advisor, will determine the nature of the failure and the degree of the Player's culpability. If the failure is not excusable but does not reflect a deliberate effort to evade or avoid testing, the Player will be subject to the discipline set forth in Section 1.5.2(c).

All disputes in connection with these procedures may only be reviewed as "Other Appeals" as set forth in Section 4.2 of the Policy.

The discipline issued pursuant to these procedures shall not be dependent upon the Player's status within the Intervention Program. A violation of these procedures may, however, be a basis for extending a Player's participation in the Intervention Program at the discretion of the Medical Director.

Nothing in these procedures shall be meant to include failures to cooperate with testing other than the failure to appear for testing within the applicable time period. Deliberate efforts to substitute or adulterate a specimen, alter a Test Result, evade or avoid testing or engage in prohibited doping methods will be subject to the discipline set forth in Section 1.3.3 of the Policy.

APPENDIX F

Therapeutic Use Exemptions

The NFL recognizes that within the list of prohibited substances there are medications that are appropriate for the treatment of specific medical conditions. For athletes who require the use of a prohibited substance to treat an appropriately diagnosed medical problem, a Therapeutic Use Exemption (TUE) may be requested. In reviewing a TUE request, the Independent Administrator of the NFL Policy on Performance-Enhancing Substances and the Medical Advisor for the Policy and Program for Substances of Abuse have sole discretion to require medical evidence beyond that normally necessary to initiate treatment by the medical community.

TUEs may be granted by the Independent Administrator and/or Medical Advisor after review of a player's TUE application. The TUE application should be filled out and submitted by the player's treating physician and should include all pertinent medical records documenting the diagnosis. After review of each case, the advisors may require further diagnostic testing or previous medical records, and/or may utilize the services of expert consultants. The advisors will have the final decision whether to grant a TUE.

The following general requirements apply to all TUE requests:

1. The medication must be necessary and indicated for treatment of the specific medical problem for which it has been requested;
2. Acceptable alternative treatments with medications that are not prohibited were attempted but failed, or reasons for not prescribing these alternative treatments have been presented;
3. Appropriate evaluation has been completed and all medical records documenting the diagnosis have been submitted for review; and
4. The applicant may not begin use of the prohibited substance until after the TUE is granted.

All players granted a TUE for prohibited substances may be subject to expanded testing under the Policy during the year.

A TUE may be granted retroactively only if emergency use of the prohibited substance is necessary to avoid morbidity or mortality of disease or disorder. TUEs for draft-eligible players will continue to be reviewed and granted prior to or following pre-employment tests at Combine or during visits to individual team facilities.

In addition, specific requirements have been established and must be satisfied in order to obtain a TUE for the following conditions:

- ADHD
- hypertension
- hypogonadism

Any player who is being treated by a licensed MD or DO physician for a condition requiring a medication containing a prohibited substance must have the physician file a TUE application with the Independent Administrator via the NFL TUE Portal. The TUE must be approved prior to beginning the medication. If a player tests positive for a prohibited substance without an approved TUE, this positive test will constitute a violation of the Policy and will be referred to the NFL/NFLPA for administrative action.

Required Documentation – Initial Application
NFL Therapeutic Use Exemptions

All TUE Applications are reviewed by a physician. The physician must be able to make the diagnosis from the available documentation and there must be evidence to support the treatment with a prohibited substance. The required documentation serves as a guide. Please add any additional laboratory testing, diagnostic imaging and/or clinical information/documentation that was used to make the diagnosis under Additional Documentation when completing the application on the NFL TUE Portal. All documents must be uploaded as PDF (.pdf) files.

Please note email addresses for both the physician and athlete are required to complete the TUE application. All communication regarding TUE's will be sent directly to the physician and athlete from admin@nfltue.com.

Required Documents for Initial TUE Submission by Diagnosis Category

Diagnosis Category	Required Documents
ADHD – Attention Hyperactivity Deficit Disorder *For draft eligible/college athletes only* All active NFL players or free agent players must complete an evaluation with a psychiatrists certified to complete NFL ADHD evaluations – contact your teams head athletic trainer or Dr. Lombardo.	(1) Initial Evaluation and Testing (i.e. Neuropsych) performed to make the diagnosis (2) Initial Medical Note when medication was prescribed (3) Most Recent Medical Note (4) Copy of Most Recent Prescription
Altitude Illness	(1) Medical Note
Growth Hormone Deficiency	(1) Medical Evaluation (2) Laboratory Results (3) Diagnostic Testing
Hypertension	(1) Medical Evaluation (2) Laboratory Results
Hypogonadism Prior to undergoing an evaluation for hypogonadism contact Dr. Lombardo. The evaluation and laboratory result requirements are very specific. During the evaluation process, drug testing must be scheduled and completed.	(1) Medical Evaluation (2) Laboratory Results
Infertility	(1) Medical Evaluation & Medical Notes (2) Laboratory Results
Obesity	(1) Medical Evaluation & Medical Notes (2) Laboratory Results
Sleep Disorders	(1) Medical Evaluation (2) Sleep Studies
Other	Check with Dr. Lombardo. This will require submission of all documentation to make the diagnosis.

If you have any questions, please contact John Lombardo, MD, Independent Administrator of the NFL Policy on Performance-Enhancing Substances via email at jlombardo@drjalombardo.com

Required Documentation – Renewal Application
NFL Therapeutic Use Exemptions

If an active NFL Player or Free Agent Player has been previously granted a TUE for use of a prohibited substance, use the below table as a guide for required documentation for renewal of the TUE. All TUE Applications are reviewed by a physician. The physician must be able to follow the treatment plan from the available documentation and there must be evidence for treatment with the medication. Please add any additional laboratory testing, diagnostic imaging and/or clinical information/documentation that was done since the previous TUE approval under Additional Documentation when completing the application on the NFL TUE Portal. All documents must be uploaded as PDF (.pdf) files.

Required Documents for Renewal TUE Submission by Diagnosis Category

Diagnosis Category	Required Documents
ADHD – Attention Hyperactivity Deficit Disorder	(1) 2 Medical Notes at least 90 days apart with the most recent within 60 days of submission (2) ASRS Completed with each of the 2 required Medical Notes (3) Submission of all Medical Notes related to ADHD care
Altitude Illness	Not eligible for renewal, submit a new application.
Growth Hormone Deficiency	(1) Medical Notes (2) Laboratory Results
Hypertension	(1) Medical Notes
Hypogonadism	(1) Medical Notes (2) Laboratory Results
Infertility	Not eligible for renewal, submit a new application.
Obesity	(1) Medical Notes
Sleep Disorders	(1) Medical Notes
Other	Not eligible for renewal, submit a new application.

If you have any questions, please contact John Lombardo, MD, Independent Administrator of the NFL Policy on Performance-Enhancing Substances via email at jlombardo@drjalombardo.com.

Using the NFL TUE Portal to Submit a TUE Application to the NFL Policy on Performance-Enhancing Substances

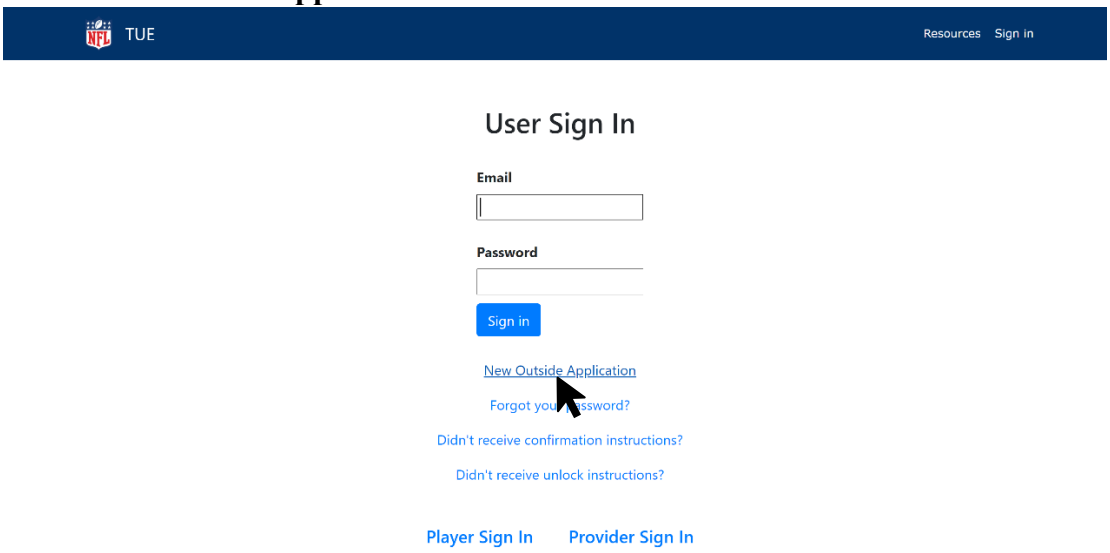
All Therapeutic Use Exemption (TUE) applications for active NFL players, Free Agent players and Draft Eligible/College Players must be submitted through the NFL TUE Portal for Review. As a reminder, **if an athlete tests positive for a prohibited substance prior to being granted a TUE, the positive test will constitute a violation of the Policy with all the ramifications of a violation**.

Review the TUE General Requirements, specific requirements by diagnosis and this document prior to starting the application on the NFL TUE Portal. You must complete the application in one sitting. If you have any questions on TUE requirements, contact John Lombardo, MD, Independent Administrator, NFL Policy on Performance-Enhancing Substances at jlombardo@drjalombardo.com prior to starting an application.

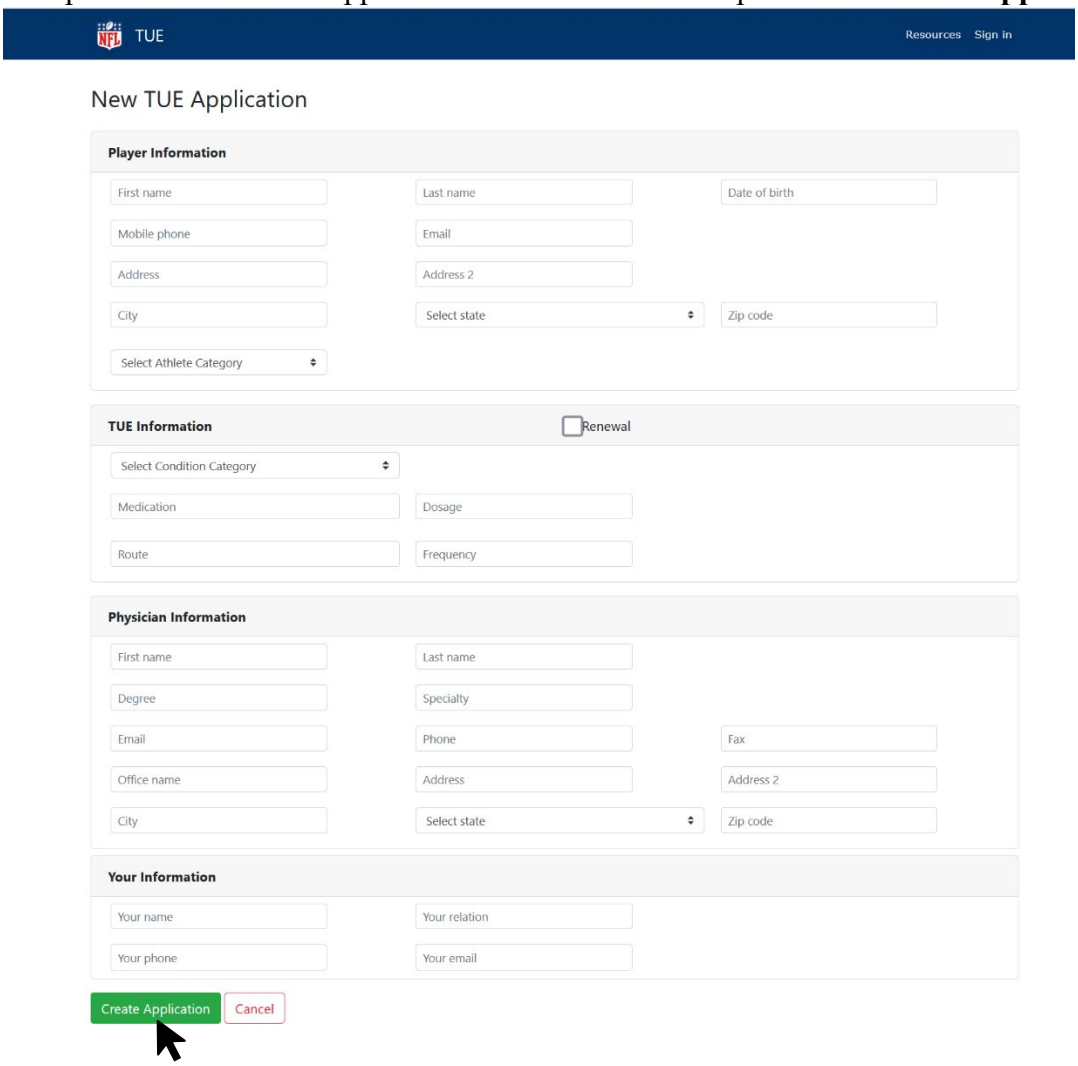
1. Go to **https://nfltue.com**

2. Click on **Sign In**

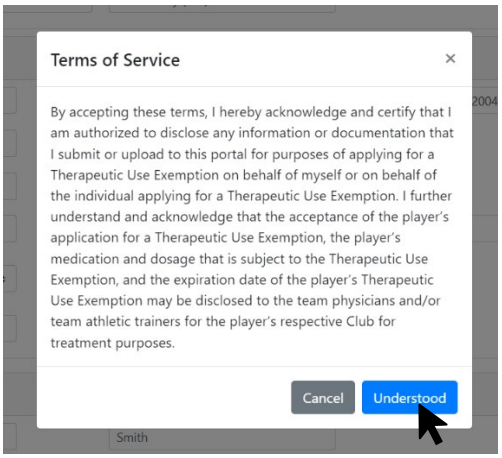
3. Select **New Outside Application**



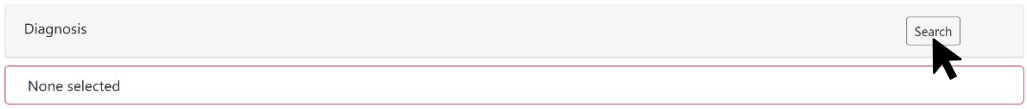
4. Complete the New TUE Application form and when complete click **Create Application**



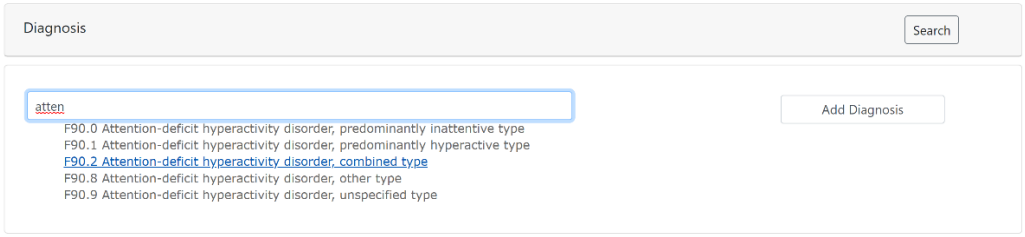
5. Review Terms of Services and click **Understood** to proceed.



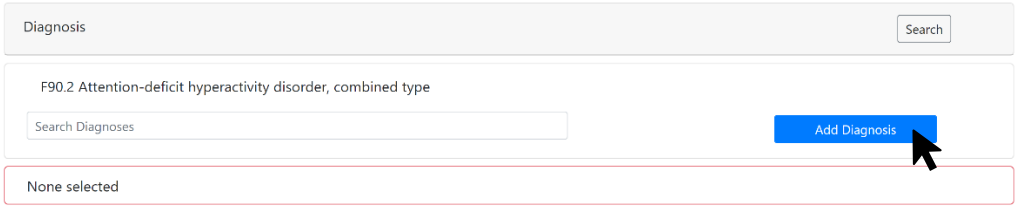
6. On the next form, first you will need to add the official medical diagnosis.
    a. Click on **Search** and then type the official medical diagnosis in the blue bar. Select the correct diagnosis.



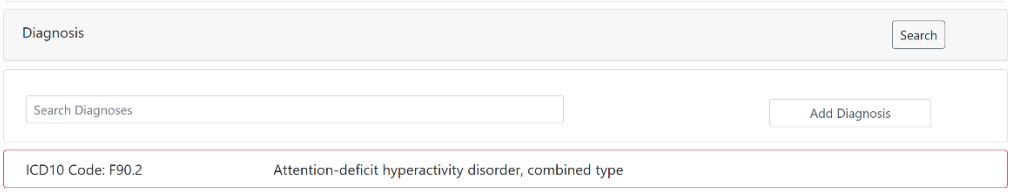
    b. Type the official medical diagnosis in the blue bar and select the correct diagnosis.



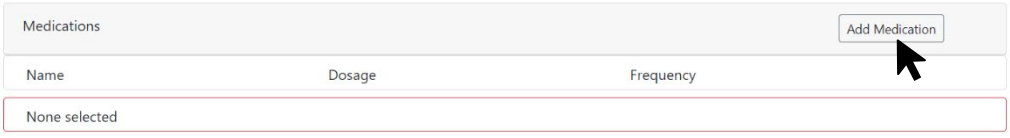
    c. Once the diagnosis is listed, click **Add Diagnosis**.



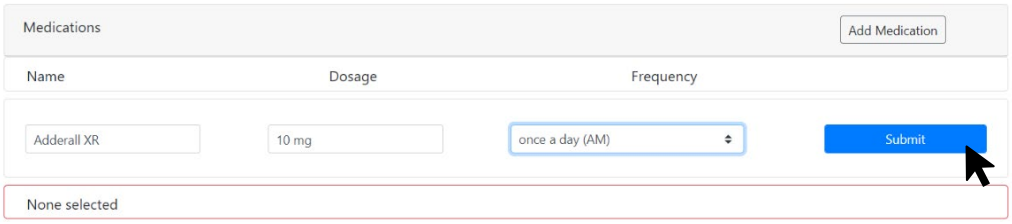
    d. This will add the diagnosis to the application.



7. Next, you will need to add the medication the athlete is requesting a TUE to take.
    a. Click on **Add Medication**, enter the required information (medication name, dosage and frequency).



b. Click **Submit**.

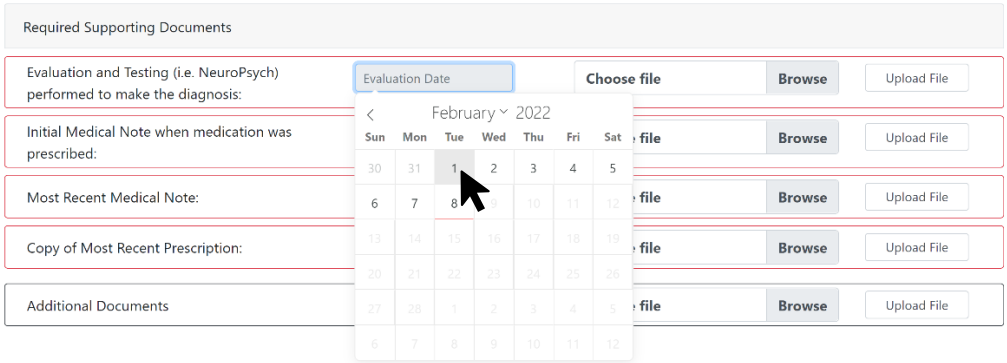


c. This will add the medication to the application.

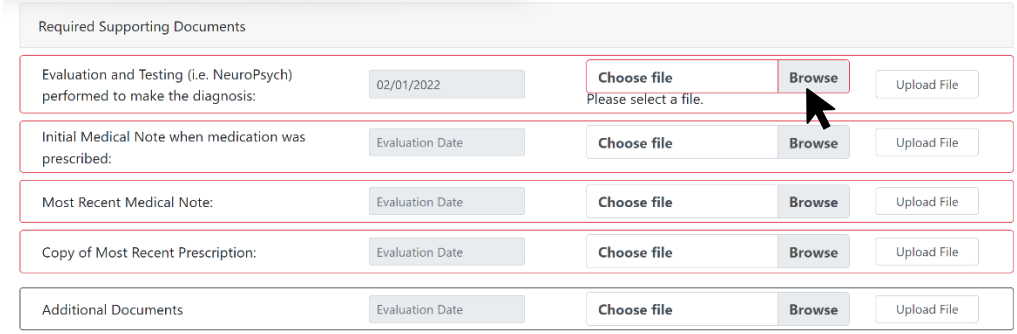
d. If you enter the medication incorrectly, delete the medication by clicking on the red x.

e. If there are multiple medications, repeat this step to add all medications to the application. Remember medications that need to be entered are medications that contain substances banned under the NFL Drug Policies.

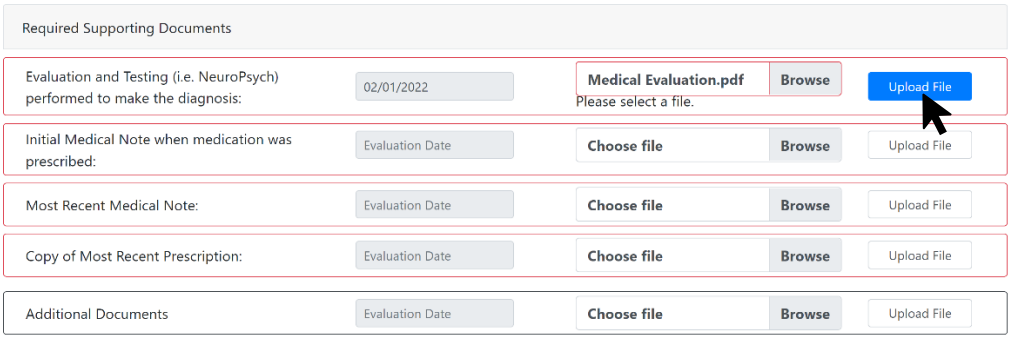
8. Next, go to the required documents section. The required documents based on the diagnosis selected will be circled in red. Each document must be uploaded as a PDF (.pdf). For each document entered, you will need the date of evaluation. The date of evaluation is the date the player was seen by the physician or the date the prescription was written.
   a. Select the Date of Evaluation by clicking on **Date of Evaluation** and use the calendar to select the date.



b. Select the file by clicking **Browse**. Choose the correct file from your computer.

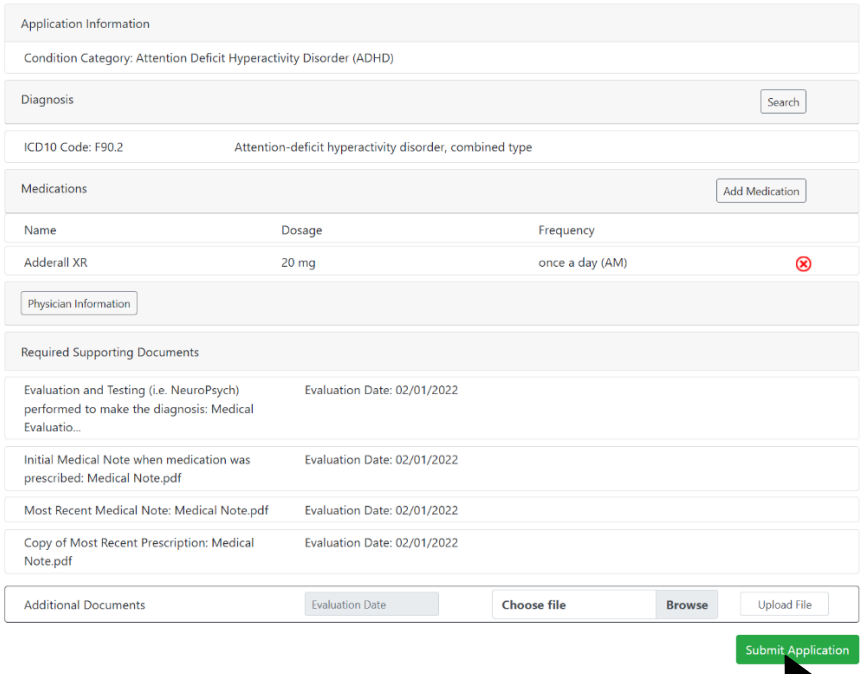


c. Once the correct Date of Evaluation and File have been added, click **Upload File**.

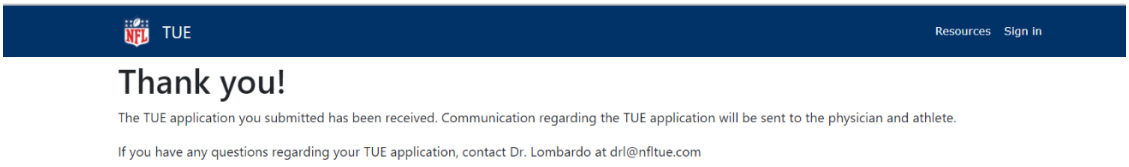


d. Complete this for all required documents along with any additional documents, laboratory results or diagnostic testing.

9. Once you have completed the second form, review the information and when complete click **Submit Application**.



10. Once you have submitted the application, you will see the following screen.



As a reminder, prior to taking medication banned under the NFL Drug Policies, the TUE Application must be reviewed and **if an athlete tests positive for a prohibited substance prior to being granted a TUE, the positive test will constitute a violation of the Policy with all the ramifications of a violation**. Dr. Lombardo will communicate directly with the athlete and physician regarding the TUE application. If you have any questions, please contact Dr. Lombardo via email at jlombardo@drjalombardo.com.

NFL REQUIREMENTS FOR THERAPEUTIC USE EXEMPTION (TUE): Attention Deficit and Attention Deficit Hyperactivity Disorders (ADHD)

ADHD is a neurobehavioral disorder characterized by a persistent pattern of inattention and/or hyperactivity. To determine the diagnosis of ADHD, the medical evaluation must include:

1. Evaluation for co-morbidities, including laboratory tests, neurocognitive testing and appropriate screening tests (there is no one specific test which is diagnostic for ADHD) to determine the diagnosis and treatment plan; and
2. Complete history, including interviews with player and preferably with family member;
3. Establishment of DSM-V criteria met by player for the diagnosis of ADHD through complete evaluation and use of Adult ADHD Clinician Diagnostic Scale (ACDS) v1.2 and Barkley Functional Impairment Scales (BFIS);

Initial TUE Application

As a reminder, all TUE applications must be sent to the Independent Administrator prior to the initiation of treatment.

The following specific requirements must be satisfied in order to grant a TUE for ADHD:

1. Evaluation by a NFL certified psychiatrist.
2. Pertinent and current history, physical examination and testing, which must be reported including:
    a. Complete history and physical examination, which must include a thorough neurological evaluation, including a thorough and complete concussion history with appropriate brain imaging if indicated and any neuropsychological testing performed to distinguish between post concussive symptoms and ADHD;
    b. The presence or absence of other mental health disorders should be established via longitudinal clinical psychiatric history
    c. Any evaluation or testing for medical and mental health co-morbidities (hypothyroidism, depression, etc.), including laboratory tests, imaging studies or neuropsychological testing (does not replace longitudinal psychiatric or concussion history);
    d. ADHD comprehensive diagnostic scale must be completed and submitted assessing symptoms and impairment used to support the diagnosis of ADHD, including:
        i. Adult ADHD Clinician Diagnostic Scale (ACDS) v1.2; and
        ii. Barkley Functional Impairment Scales (BFIS) from player and other individual (parental report is highly recommended if available and if parent not available then other family member) in addition; BFIS are required if needed to document impairments;
    e. Neurocognitive testing as indicated:
        i. Intelligence test;
        ii. Cognitive ability test;
        iii. Specific tests of executive function and impulse control; and
        iv. Appropriate testing to assess learning disabilities as indicated in clinical history.
3. All available records from previous evaluations that document diagnosis, including any previous test results, previous treatments that have been attempted (include doses and duration of treatment) and the results of such treatment trials;
4. Specification of the DSM-V criteria that are present to diagnose ADHD; and
5. Management plan, to include:
    a. Medication prescribed, including dosage and frequency of medication; Treatment with non-prohibited substances should be included; extended release preparations, e.g Adderall

XR, Vyvanse, Concerta, Focalin XR, Methylphenidate LA, Ritalin LA must be utilized unless there is a pressing clinical indication for immediate release medication.

b. Mechanism to be used to document treatment effectiveness (e.g., you may use rating scales, such as the World Health Organization's Adult ADHD Self Report Scale (ASRS v1.1). Symptom Checklist can be given before beginning treatment and at follow-up visits). **These symptom scales can be used for documentation of treatment but not for diagnosis.**
c. Further testing or treatment of co-morbidities; and
d. Plans for follow-up visits.

6. Submit a NFL TUE application via the NFL TUE Portal.

Annual Renewal

All TUEs for ADHD require an annual renewal. The following must be submitted annually prior to July 1:

1. Documentation of all follow-up visits (minimum of 2 with the most recent follow-up visit taking place within 60 days of the TUE renewal application) documenting:
    a. Symptoms as related to ADHD and adverse effects which may occur with the treatment;
    b. Efficacy of treatment;
    c. Pertinent history from previous year - especially related to head injury, other mental health disorders, i.e. anxiety, depression and treatment of co-morbid conditions;
    d. Physical exam with emphasis of blood pressure and cardiovascular system, neurological system.
2. Results of any pertinent testing that was completed during the previous year (may include the mechanism used to document treatment effectiveness (e.g., rating scales such as the World Health Organization's Adult ADHD Self Report Scale (ASRS v1.1)); and
3. Documentation of adequate medication adherence (should include player report, pharmacy records (state medication reporting system should be utilized)
4. Treatment plan for the coming year, including medication(s) prescribed, tests ordered and plans for follow-up visits.
5. Submit a NFL TUE application via the NFL TUE Portal.

NFL REQUIREMENTS FOR THERAPEUTIC USE EXEMPTION (TUE): Diuretics in the Treatment of Hypertension

Systemic hypertension is the most common cardiovascular condition observed in competitive athletes and is defined as a having a blood pressure measurement above 140/90 on two separate occasions. There are many factors or conditions which affect blood pressure including excess body weight, excess sodium intake, renal disease, sleep apnea and other diseases. In addition, certain medications and foods can cause elevated blood pressure including, non-steroidal anti-inflammatory medication, stimulants, corticosteroids, anti-depressant medication and alcohol. Lifestyle, medications and presence of causative diseases should be included in the evaluation and treatment of an individual with hypertension. The use of diuretics as part of the treatment of NFL players with hypertension requires a TUE.

Initial TUE Application

As a reminder, all TUE applications must be sent to the Independent Administrator prior to the initiation of treatment.
The following specific requirements must be satisfied in order to grant a TUE for the use of diuretics for hypertension:

1. History and physical examination with blood pressure measured on at least two independent occasions with an adequate sized cuff;
2. Laboratory testing must include:
    a. 12 lead electrocardiogram
    b. Urinalysis
    c. Electrolytes including Calcium
    d. BUN/Creatinine
    e. Urinalysis
3. Testing as indicated including:
    a. 24 hour urine for protein and creatinine
    b. Renal imaging
    c. Echocardiography
    d. EKG stress testing
4. Management plan including:
    a. Treatments previously attempted including lifestyle modification and medication (including dose, frequency and duration of trial of treatment). Trial with a non-prohibited substance (e.g. ACE-I, ARB, calcium channel blocker, etc.) is required before the use of a diuretic will be approved.
    b. Medication suggested with dose, route and frequency
    c. Plan for monitoring including frequency of visits and follow-up testing
    d. Submit a NFL TUE Application via the NFL TUE Portal.

Annual Renewal

All TUEs for hypertension require annual renewal. The following must be submitted prior to July 1:

1. Documentation of all follow-up visits including effect of treatment, adverse effects and results of all laboratory tests. The latest visit should be within 60 days of renewal; and
2. Management plan for the year, including:
    a. Medication suggested with dose, route and frequency
    b. Plan for monitoring including frequency of visits and follow-up testing.
3. Submit a NFL TUE Application via the NFL TUE Portal.

NFL REQUIREMENTS FOR THERAPEUTIC USE EXEMPTION (TUE): Hypogonadism

Hypogonadism is the absent or decreased function of the testes resulting in decreased production of testosterone and/or decreased production of spermatozoa. Hypogonadism can be primary, a problem in the testes with etiologies such as Klinefelter's syndrome, Leydig cell aplasia, bilateral anorchia, testicular infection, trauma, etc. Hypogonadism can also be secondary with normal testes but lack of the stimulatory signals (gonadatropic hormones LH and/or FSH). Examples of the medical conditions or treatments that may cause hypogonadotropic hypogonadism include isolated LH deficiency, hypopituitarism due to tumor, infection or trauma, medications, etc. The etiology of the hypogonadism is either organic with a pathological change in the structure of an organ or within the hypothalamic-pituitary-testicular axis or functional in which there is no observable pathological change in the structure of an organ or within the hypothalamic-pituitary-testicular axis. TUEs will be granted for organic etiologies of hypogonadism.

Previous use of exogenous androgens may result in decreased pituitary and/or gonadal function and TUE is not indicated for this condition. Additionally, low normal levels of gonadal hormones and/or gonadotropins are not indications for granting a TUE for hypogonadism.

Initial TUE Application

As a reminder, all TUE applications must be sent to the Independent Administrator prior to the initiation of treatment. Additionally because expanded drug testing is required during evaluation process (see below), the Independent Administrator should be notified when diagnosis is being considered.

The following specific requirements must be satisfied in order to grant a TUE for hypogonadism:

1. History and physical examination performed by an endocrinologist and all medical records which document the diagnosis;
2. Laboratory testing must include:
    a. Free (dialysis method) and Total testosterone drawn before 10 AM – repeated 3 times over 4 weeks
    b. LH and FSH – drawn with testosterone each time
    c. Sex hormone binding globulin (SHBG)
    d. TSH and free T4
    e. Estradiol
    f. Prolactin
    g. IGF-1
3. If clinically indicated, testing must include:
    a. Testicular imaging
    b. Semen analysis
4. If hypogonadotropic hypogonadism is the presumptive diagnosis, then stimulation testing and imaging must be performed including:
    a. Glucagon stimulation test or GHRH for HGH
    b. HCG stimulation test
    c. MRI of brain with pituitary (sella) cuts with and without contrast
5. Drug testing under the NFL Policy on Performance Enhancing Substances to coincide with the administration of repeated tests for testosterone (to be arranged through the Independent Administrator)

6. Management plan including:

a. Medication suggested with dose, route and frequency and who will be administering medication
b. Regular testing of serum hormone levels (Total testosterone) with levels not exceeding therapeutic range. Results must be sent to Independent Administrator who may at his sole discretion require additional testing of the player's hormonal level on 24-hour notice; and
c. Regular visits and plans for re-evaluation (e.g. trial off medication with testing)

7. Submit a NFL TUE Application via the NFL TUE Portal.

All players granted a TUE for hypogonadism will be subject to expanded testing under the Policy during the year.

Annual Renewal

All TUEs for hypogonadism require annual renewal. The following must be submitted prior to July 1:

1. Documentation of all follow-up visits including effect of treatment, adverse effects and results of all laboratory tests (latest test must be within 60 days of application);
2. Results of a re-evaluation following removal from the medication with adequate washout period (4-6 weeks) or medical justification why re-evaluation need not be performed.
3. Management plan for the year to include:
    a. Medication suggested with dose, route and frequency and who will be administering medication
    b. Regular testing of hormone levels (Total testosterone)
    c. Regular visits and plans for re-evaluation (e.g. trial off medication with testing)
4. Submit a NFL TUE Application via the NFL TUE Portal.

APPENDIX G

Permitted Activities for Suspended Players

For the first half of any suspension period, Players suspended under this Policy will be prohibited from attending the club facility, engaging in any club activities, or having any contact with club personnel. During the remainder of the suspension period, suspended Players will be permitted to engage in the following activities:

- Have on-site rehabilitation and treatment with medical and athletic training staff.
- Meet with player engagement staff, mental health consultants, team chaplain, treating clinicians, and other professional resources.
- Attend team meetings.
- Meet individually with the head coach, coordinator and position coach.
- Participate in individual workouts with the strength and conditioning coach.
- Take meals in the cafeteria and use team facilities on an individual basis.

While suspended, Players will continue to be prohibited from: attending or participating in group workouts; attending, observing, or participating in practices; attending home or away games; and attending club-sponsored community events, press conferences or other media appearances.

In order to be eligible to participate in these permitted activities while suspended, a Player must request permission from his club, and the club must agree to the Player's participation. The Player may decline to make such request of his club and the club may decline the Player's request. Either party may revoke its agreement at any time.

If the Player is allowed to participate in permitted activities, he is expected to comply with all generally-applicable club rules and policies and is subject to discipline for failure to do so under the club discipline schedule and Article 42 of the CBA.

If the Player participates in activities that are not permitted, both the Player and club will be subject to disciplinary action. A Player may not be disciplined unless discipline is also imposed on the club for the same infraction. The Player may assert as a defense that he did not know that the activities were not permitted when he engaged in them.

The Player must be medically cleared by the advisors before he may petition his club for approval to participate in permitted activities. If, for example, the Player has been directed to inpatient treatment for substance abuse, he must satisfactorily complete that treatment before he will be eligible to participate in activities at the club facility.

The Player must be under contract to the club in order to petition for permission to participate in permitted activities.

The Commissioner retains his authority to permit a Player to participate in practices or other football activities for up to two weeks prior to the conclusion of the suspension.

PERSONAL CONDUCT POLICY
League Policies for Players
2023

It is a privilege to be part of the National Football League. Everyone who is part of the league must refrain from conduct detrimental to the integrity of, or public confidence in, the NFL. This includes owners, coaches, players, other team employees, game officials, and employees of the league office, NFL Films, NFL Network, or any other NFL business.

Conduct that is illegal, violent, dangerous, or irresponsible puts innocent victims at risk, damages the reputation of others associated with the game, and undercuts public respect and support for the NFL. We must endeavor at all times to be people of high character; we must show respect for others inside and outside our workplace; and we must conduct ourselves in ways that favorably reflect on ourselves, our teams, the communities we represent, and the NFL.

To this end, the league provides annual and ongoing education regarding the Policy and related topics such as respect and appropriate behavior, as well as resources for all players to assist them in conforming their behavior to the standards expected of them. Our goal is to prevent violations, but when violations of this Policy do occur, appropriate disciplinary action must follow.

This Policy is issued pursuant to the Commissioner's authority under the Constitution and Bylaws, Collective Bargaining Agreement and NFL Player Contract to define, address, and sanction conduct detrimental to the league and professional football. This Policy applies to players only and is consistent with the disciplinary process specified in Article 46 of the Collective Bargaining Agreement. Non-player personnel, including ownership, are subject to the "Personal Conduct Policy for League and Non-Player Club Employees." The provisions below apply to players under contract; all rookie players selected in the NFL College Draft; all undrafted rookie players following the NFL College Draft; all Draft-eligible players who attend a Scouting Combine or Pro Day or otherwise make themselves available for employment in the NFL; all unsigned veterans who were under contract in the prior League Year; and all other prospective players once they commence negotiations with a club concerning employment or otherwise make themselves available for employment in the NFL. Nothing in this Policy should be read to limit the league's authority to investigate or discipline potential Policy violations alleged to have occurred before a player is under contract or Draft-eligible.

I. Expectations and Standards of Conduct

It is not enough simply to avoid being found guilty of a crime in a court of law. We are all held to a higher standard and must conduct ourselves in a way that is responsible, promotes the values of the NFL, and is lawful.

Players convicted of a crime or subject to a disposition of a criminal proceeding (as defined in this Policy) are subject to discipline. But even if the conduct does not result in a criminal conviction, players found to have engaged in prohibited conduct will be subject to discipline. Prohibited conduct includes but is not limited to the following:

- Actual or threatened physical violence against another person, including dating violence, domestic violence, child abuse, and other forms of family violence;
- Assault and/or battery, including sexual assault or other sex offenses;

- Violent or threatening behavior toward another employee or a third party in any workplace setting;
- Stalking, harassment, or similar forms of intimidation;
- Illegal possession of a gun or other weapon (such as explosives, toxic substances, and the like), or possession of a gun or other weapon in any workplace setting;
- Illegal possession, use, or distribution of alcohol or drugs;
- Possession, use, or distribution of steroids or other performance enhancing substances;
- Crimes involving cruelty to animals as defined by state or federal law;
- Crimes of dishonesty such as blackmail, extortion, fraud, money laundering, or racketeering; Theft-related crimes such as burglary, robbery, or larceny;
- Disorderly conduct;
- Crimes against law enforcement, such as obstruction, resisting arrest, or harming a police officer or other law enforcement officer;
- Conduct that poses a genuine danger to the safety and well-being of another person; and
- Conduct that undermines or puts at risk the integrity of, or public confidence in, the NFL, NFL clubs, or NFL personnel.

II. Evaluation, Counseling, and Services

Any player arrested or charged with violent or threatening conduct that would violate this Policy will be offered a formal clinical evaluation and appropriate follow-up education, counseling, or treatment program, the cost of which will be paid by the league. The evaluation, counseling and other services will be provided on a confidential basis and are not disciplinary but are instead intended to help and assist the player, and the beneficial use of such services will be favorably viewed with respect to any discipline later imposed.

In appropriate cases (for example, cases involving domestic, sexual violence or child abuse), the league will make available assistance to victims and families, as well as the player. This assistance may include providing or direction to appropriate counseling, social and other services, clergy, medical professionals, and specialists in dealing with children and youth. These resources may be provided through specialized Critical Response Teams affiliated with the league office or the club, or other appropriately trained league staff. Assistance will be based on experts' recommendations of appropriate and constructive responses to reported incidents of violence, particularly incidents of domestic violence, child abuse, or sexual assault. Victims and families may be assisted in matters of personal security and other needs following a reported incident. In addition, information about local non-league resources to help victims and family members will be provided to affected parties.

III. Investigations

Whenever the league office becomes aware of a possible violation of the Policy, it will undertake an investigation, the timing and scope of which will be based upon the particular circumstances of the matter. Any such investigation may be conducted by league office personnel, independent parties, or a combination of the two. In cases that are also being investigated by law enforcement officials, the league will continue its separate investigation, and will work to cooperate with law enforcement to avoid any conflict or interference with the law enforcement proceedings.

In conducting investigations, the league office will make reasonable efforts to accommodate

requests for confidentiality from witnesses and others with information. In addition, the league will not tolerate any retaliation against anyone who in good faith reports a possible violation or provides truthful information during an investigation. Any person who directly or indirectly through others interferes in any manner with an investigation, including by retaliating or threatening to retaliate against a victim or witness, will face separate disciplinary action under this Policy. Prohibited interference could include, but is not limited to, an offer or gift of money, property or anything of value, particularly if undisclosed, to either a witness or person having a familial relationship or association with a witness. Prohibited retaliation includes, but is not limited to, threats, intimidation, harassment, or any other adverse action threatened, expressly or impliedly, or taken against anyone who reports a violation or suspected violation of this Policy or who participates in an investigation of a complaint.

In investigating a potential violation, the league may rely on information obtained by law enforcement agencies, court records, or independent investigations conducted at the direction of the NFL. League and team employees including players are required to cooperate in any such investigation and are obligated to be fully responsive and truthful in responding to requests from investigators for information (testimony, documents, physical evidence, or other information) that may bear on whether the Policy has been violated. A failure to cooperate with an investigation or to be truthful in responding to inquiries will be separate grounds for disciplinary action. Players who are interviewed in the course of an investigation may be accompanied by an NFLPA representative as provided by Article 51, Section 11 of the CBA.

Because the Fifth Amendment's protection against self-incrimination does not apply in a workplace investigation, the league will reserve the right to compel a player to cooperate in its investigations even when he is the target of a pending law enforcement investigation or proceeding. A player's refusal to speak to a league investigator under such circumstances will not preclude an investigation from proceeding or discipline from being imposed.

IV. Leave with Pay

A player may be placed on paid administrative leave pursuant to the Commissioner Exempt List under any of the following circumstances:

First, when a player is formally charged with: (1) a felony offense; or (2) a crime of violence, meaning that he is accused of having used physical force or a weapon to injure or threaten a person or animal, of having engaged in a sexual assault by force or against a person who was incapable of giving consent, or having engaged in other conduct that poses a genuine danger to the safety or well-being of another person. The formal charges may be in the form of an indictment by a grand jury, the filing of charges by a prosecutor, or an arraignment in a criminal court.

Second, when an investigation leads the Commissioner to believe that a player may have violated this Policy by committing any of the conduct identified above, he may act where the circumstances and evidence warrant doing so. This decision will not reflect a finding of guilt or innocence and will not be guided by the same legal standards and considerations that would apply in a criminal trial.

Third, in cases in which a violation relating to a crime of violence is alleged but further investigation is required, the Commissioner may place a player on the Commissioner Exempt List on a limited and temporary basis to permit the league to conduct a preliminary investigation. Based on the results of this investigation, the player may be returned to duty, be placed on the Commissioner Exempt List for a longer period or be subject to discipline.

A player who is placed on the Commissioner Exempt List may not practice or attend games, but upon request and with the club's permission he may be present at the club's facility on a reasonable basis for meetings, individual workouts, therapy and rehabilitation, and other permitted non-football activities.

A player placed on the Commissioner Exempt List will be notified promptly in writing with a copy to

the NFLPA. Within three (3) business days following such notification, the player, or the NFLPA with the player's approval, may appeal his placement in writing to the Commissioner. Such appeals will be processed pursuant to Article 46 of the Collective Bargaining Agreement on an expedited basis, and the player will remain on Commissioner Exempt pending the decision on appeal of his placement.

Leave with pay will generally last until the Disciplinary Officer and/or the league makes a disciplinary decision and any appeal from that discipline is fully resolved. Any regular and/or postseason games a player misses while placed on Commissioner Exempt will be credited against any suspension later imposed on him, in which case the player will return any salary proportionate to the credited games.

V. Discipline

A player violates this Policy when he has a disposition of a criminal proceeding (as defined), or if the league's investigation demonstrates that he engaged in conduct prohibited by the Policy. In cases in which a player is not charged with a crime, or is charged but not convicted, he may still be found to have violated the Policy if the credible evidence establishes that he engaged in prohibited conduct.

To oversee the review and assessment of potential violations, the league and NFL Players Association will designate a jointly selected and compensated Disciplinary Officer, who will be a highly qualified individual. Where appropriate, the Disciplinary Officer will follow the process outlined below to assemble evidentiary records and/or reports with factual findings and make disciplinary determinations.

To assist in evaluating a potential violation, expert and independent advisors may be consulted by the Disciplinary Officer, the Commissioner and others as needed. Such advisors may include former players and others with appropriate backgrounds and experience in law enforcement, academia, judicial and public service, mental health, and persons with other specialized subject matter expertise. Any experts or advisors consulted in this respect may provide advice and counsel or testimony as appropriate but will not make any disciplinary determinations.

Players who are subject to discipline will be given notice by the league of the potential violation for which discipline may be imposed. The player, through the NFL Players Association, will be furnished with a copy of any investigatory report, including any transcripts or audio recordings of witness interviews, expert reports and court documents obtained or prepared by the NFL as part of its investigation, and any evidentiary material referenced in the investigative report that was not included as an exhibit. The player will be permitted to submit information in writing to rebut or otherwise respond to the report.

For matters referred to the Disciplinary Officer for consideration, the Disciplinary Officer may request additional argument, require the production of additional evidentiary material and/or conduct an evidentiary hearing pursuant to Article 46 of the CBA as appropriate. In cases where there has been a criminal disposition, the underlying disposition may not be challenged in a disciplinary hearing and the court's judgment and factual findings shall be conclusive and binding, and only the level of discipline will be at issue. Notwithstanding, the player will be free to offer facts regarding the disposition that may mitigate the discipline imposed, as was permitted in previous versions of this Policy.

Following review of the record including the positions of the parties on appropriate disciplinary terms or other conditions, the Disciplinary Officer will promptly communicate the decision to the player regarding any disciplinary action to be taken. Depending on the nature of the violation and the player's record, discipline may be a fine, a suspension for a fixed or an indefinite period of time, a combination of the two, or banishment from the league with an opportunity to reapply. Discipline may also include a probationary period and conditions that must be met for reinstatement and to remain eligible to participate in the league. Players with a prior history of misconduct, including misconduct occurring prior to their association with the NFL, will be subject to enhanced and/or expedited discipline, including banishment from the league with an opportunity to reapply. In determining discipline, the Disciplinary Officer will

consider the nature of all of the circumstances, as well as any aggravating or mitigating factors. Reference also may be made to requirements to seek ongoing counseling, treatment, or therapy where appropriate as well as the imposition of enhanced supervision, which upon satisfactory compliance may serve to mitigate the discipline otherwise imposed.

With regard to violations of the Policy that involve: (i) criminal assault or battery (felony); (ii) domestic violence, dating violence, child abuse and other forms of family violence; or (iii) sexual assault involving physical force or committed against someone incapable of giving consent or involving threats or coercion, a first violation will subject the violator to a baseline suspension without pay of six games, with possible upward or downward adjustments based on any aggravating or mitigating factors. Nothing in this provision precludes the Disciplinary Officer or Commissioner from imposing a suspension without pay of six games or more, including an indefinite suspension, for other types of prohibited conduct. A second violation will result in banishment from the NFL. An individual who has been banished may petition for reinstatement after one year, but there is no presumption or assurance that the petition will be granted.

The presence of aggravating factors may warrant a longer suspension. Possible aggravating factors include, but are not limited to, a prior violation of the Policy, similar misconduct before joining the NFL, a pattern of conduct, offenses that involve planning, violence involving a weapon, choking, repeated striking, or when an act is committed against a particularly vulnerable person, such as a child, a pregnant woman, or an elderly person, or where the act is committed in the presence of a child. Possible mitigating factors include prompt acceptance of responsibility and cooperation with any league investigation, voluntary engagement with appropriate clinical resources and demonstrated compliance with any recommended program of counseling or other therapeutic intervention, and voluntary restitution with the victim. Cooperation with any league investigation is required. Cooperation alone is not a mitigating factor.

VI. Appeals of Discipline

Following communication of the disciplinary decision to a player, either the league (through the Management Council) or player (through the NFL Players Association) may appeal the decision to the Commissioner or his designee. Such appeals will be: (i) processed on an expedited basis; (ii) limited to consideration of the terms of discipline imposed; and (iii) based upon a review of the existing record without reference to evidence or testimony not previously considered by the Disciplinary Officer. No additional evidence or testimony shall be presented to or accepted by the Commissioner or his designee. Any factual findings and evidentiary determinations of the Disciplinary Officer will be binding to the parties on appeal, and the decision of the Commissioner or his designee, which may overturn, reduce, modify or increase the discipline previously issued, will be final and binding on all parties.

VII. Reporting

Clubs and players are obligated to promptly report any matter that comes to their attention (through, for example, victim or witness reports, law enforcement, civil litigation, media reports or social media) that may constitute a violation of this Policy. Clubs are expected to educate their employees on this obligation to report. Club reports should be made to NFL Security or the Management Council legal staff. Questions about whether an incident triggers a reporting obligation should be directed to the league's Special Counsel for Conduct or Special Counsel for Investigations.

Failure to report an incident will be grounds for disciplinary action. This obligation to report is broader than simply reporting an arrest; it requires reporting to the league any incident that comes to the club's or player's attention which, if the allegations were true, would constitute a violation of the Policy. In addition, active and prospective players have an obligation to promptly disclose any such incidents to their club or the league office before signing a contract with a club.

It is important to remember that the obligation to report is a continuing one and is not satisfied

simply by making an initial report of an incident. The obligation includes reporting on a timely basis all information of which a club or player becomes aware. If a club learns additional information, including but not limited to information regarding the nature of an incident, the identity of witnesses, statements regarding the incident (including by the accused), or the existence of evidentiary material (such as documents, electronic communications such as emails or text messages, medical reports, photographs, audio or video recordings, or social media activity), it must promptly report that information to the league office. Clubs and players are required to preserve any and all evidentiary materials that may be relevant to any matter that may constitute a violation of this Policy.

Any player with questions regarding either the reporting obligation or any other aspect of this Policy may contact his club's Director of Security, Director of Player Engagement, the NFLPA, or the NFL Management Council.

Anyone who believes that he or she is a victim of conduct that violates the Policy or who learns of or witnesses such conduct is strongly encouraged to report the matter to the club or the league office.

VIII. Conduct Committee

To ensure that this policy remains current and consistent with best practices and evolving legal and social standards, the Commissioner has named a Conduct Committee. This committee will be made up of NFL club owners, who will review this policy periodically and recommend any appropriate changes to investigatory practices, disciplinary levels or procedures, or service components. The committee will receive regular reports from the league office, and may seek advice from current and former players, as well as a broad and diverse group of outside experts regarding best practices in academic, business, and public sector settings, and will review developments in similar workplace policies in other settings.

IX. Definitions

"Disposition of a Criminal Proceeding" – Includes an adjudication of guilt or admission to a criminal violation; a plea to a lesser included offense; a plea of nolo contendere or no contest; or the disposition of the proceeding through a diversionary program, deferred adjudication, disposition of supervision, conditional dismissal, adjournment in contemplation of dismissal, pretrial intervention or similar arrangement.

"Probationary Period" – Players found to have violated this Policy may be placed on a period of probation, during which restrictions on certain activities, limitations on participation in Club activities, or other conditions may be imposed. Failure to comply with such conditions may result in additional discipline including an extension of the period of suspension.

"Workplace Setting" – The workplace setting means any location, conveyance, or system used in connection with NFL activities, including the club facility, training camp, stadium, locker room, video or teleconference systems, or other location at which a club-sponsored event takes place, and while traveling on team or NFL-related business.

NFL PLAYERS
ASSOCIATION

NATIONAL FOOTBALL LEAGUE

POLICY ON
PERFORMANCE-ENHANCING
SUBSTANCES
2023

as agreed by the
National Football League Players Association
and the
National Football League Management Council

NATIONAL FOOTBALL LEAGUE
POLICY ON PERFORMANCE-ENHANCING SUBSTANCES
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NATIONAL FOOTBALL LEAGUE
POLICY ON PERFORMANCE-ENHANCING SUBSTANCES

1. GENERAL STATEMENT OF POLICY

The National Football League Management Council and NFL Players Association ("NFLPA") (collectively, the "Parties") have jointly developed this Policy on Performance-Enhancing Substances (the "Policy") to prohibit and prevent the use of anabolic/androgenic steroids (including exogenous testosterone), stimulants, human or animal growth hormones, whether natural or synthetic, and related or similar substances. For convenience, these substances, as well as masking agents or diuretics used to hide their presence, will be referred to as "Prohibited Substances."[1] These substances have no legitimate place in professional football. This Policy specifically means that:

-- **Players**[2] may not, in the absence of a valid therapeutic use exemption (*see* Appendix I), have Prohibited Substances in their systems or supply or facilitate the distribution of Prohibited Substances to other Players.

-- **Coaches, Athletic Trainers, Club Personnel, or Certified Contract Advisors** may not condone, encourage, supply, or otherwise facilitate in any way the use of Prohibited Substances.

-- **Team Physicians** may not prescribe, supply, or otherwise facilitate a Player's use of Prohibited Substances.

-- **All Persons**, including Players, are subject to discipline for violation of this Policy.

The Parties are concerned with the use of Prohibited Substances based on three primary factors:

First, these substances threaten the fairness and integrity of the athletic competition on the playing field. Players may use these substances for the purpose of becoming bigger, stronger, and faster than they otherwise would be. As a result, their use threatens to distort the results of games and League standings. Moreover, Players who do not wish to use these substances may feel forced to do so in order to compete effectively with those who do. This is obviously unfair to those Players and provides sufficient reason to prohibit their use.

Second, the Parties are concerned with the adverse health effects of using Prohibited Substances. Although research is continuing, the use of anabolic agents including anabolic/androgenic steroids and selective androgenic receptor modulators (SARMs), human growth hormone and releasing proteins and secretogues and stimulants has been linked to a number of physiological, psychological, orthopedic, reproductive, and other serious health problems, including heart disease, liver cancer, musculoskeletal growth defects, strokes, and infertility.

Third, the use of Prohibited Substances by Players sends the wrong message to young people who may be tempted to use them. NFL Players should not by their own conduct suggest that such use is either acceptable or safe, whether in the context of sports or otherwise.

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[1] The list of Prohibited Substances is attached to this Policy at Appendix A. If the Parties mutually agree to modify the Prohibited Substances under this Policy, the Parties will immediately amend the list at Appendix A.

[2] Unless specified otherwise herein, the term Player shall include the categories set forth in the Preamble to the Collective Bargaining Agreement as well as Players attending the annual scouting combines.

The NFL Player Contract specifically prohibits the use of drugs in an effort to alter or enhance performance. The NFL Player Contract and the League's Constitution and Bylaws require each Player to avoid conduct detrimental to the NFL and professional football or to public confidence in the game or its Players. The use of Prohibited Substances violates both these provisions. In addition, the Commissioner is authorized to protect the integrity of and public confidence in the game. This authorization includes the authority to forbid use of the substances prohibited by this Policy.

The Parties recognize that maintaining competitive balance among NFL clubs requires that all NFL Players be subject to the same rules and procedures regarding drug testing. The rules and procedures set forth herein are designed to protect the confidentiality of information associated with this Policy and to ensure the accuracy of test results, and the Parties intend that the Policy meets or exceeds all applicable laws and regulations related thereto. The Parties also recognize the importance of clarity in the Policy's procedures, including the scientific methodologies that underlie the Policy, the appeals process and the basis for discipline imposed, and reaffirm their commitment to deterrence, discipline and a fair system of adjudication.

2. ADMINISTRATION OF THE POLICY

The Policy is conducted under the auspices of the NFL Management Council, which shall be responsible for the enforcement of the Policy and prosecution of appeals.

2.1 Independent Administrator

The Policy will be directed by the Independent Administrator on Performance-Enhancing Substances ("Independent Administrator"), a person or entity to be jointly selected by the Parties and for whose compensation (salary) the Parties shall have equal responsibility.

Subject to the terms of this Policy, the Independent Administrator shall have the sole discretion to make determinations, consistent with the terms of this Policy, concerning the:

(a) method by which Players will be subjected to testing each week;

(b) selection of Players to be tested each week and the dates on which tests will be administered;

(c) number and frequency of reasonable cause tests to be administered (subject to a maximum of 24 urine and/or blood tests per Player per year);

(d) number and timing of off-season tests to be administered (subject to a maximum of six urine and/or blood tests per Player);

(e) analysis of test results data over time;

(f) scheduling of medical evaluations associated with the possible use of Prohibited Substances;

(g) review and approval of "therapeutic use exemptions;"[3]

(h) communication with and oversight of the Collection Vendor;

(i) finding that a Player has failed to cooperate with testing, attempted to dilute, tamper with, or substitute a specimen to defeat testing, or otherwise violated protocols; and

(j) certification of violations for disciplinary or administrative action.

In addition, the Independent Administrator will be available for consultation with Players and Club physicians; oversee the development of educational materials; participate in anti-doping

[3] See Appendix I.

research; and confer with the Chief Forensic Toxicologist.

Neither the NFL, the NFLPA, nor any NFL Member Club shall direct the specific testing schedule, decide which Players will be tested, or influence the Independent Administrator's determination whether a potential violation has occurred and should be referred for further action.

The Independent Administrator (and any persons employed thereby) shall be a neutral party, and shall act in good faith and with equal obligation to the NFLPA and NFL. The Independent Administrator shall report equally, promptly and contemporaneously to both the NFLPA and NFL regarding all correspondence and relevant information, and seek guidance from both parties when exercising responsibilities under the Policy.

See Appendix B for further information on the Policy's personnel.

2.2 Chief Forensic Toxicologist

The Chief Forensic Toxicologist shall be jointly selected by the Parties, and the Parties shall have equal responsibility for his or her compensation (salary).

Consistent with the terms of this Policy, the Chief Forensic Toxicologist shall:

(a) audit the operation of the testing laboratories, including the implementation of procedures, laboratory analysis of specimens and documentation;

(b) consult with the Independent Administrator and Collection Vendor as appropriate;

(c) review and certify laboratory results; and

(d) provide advice and consultation to the Parties in connection with other matters including existing and proposed analytical methods and anti-doping research.

At the request of either Party, and upon notice to and approval from the other Party, the Chief Forensic Toxicologist may direct laboratory analysis of sports nutrition products or other substances. The Chief Forensic Toxicologist shall ensure that the results of such analysis shall be made known promptly, equally and contemporaneously to both the NFL and NFLPA. The Chief Forensic Toxicologist may also request permission from the Parties to direct laboratory analysis of sports nutrition products or other substances, and upon approval from the Parties, direct such analysis. The Chief Forensic Toxicologist shall ensure that the results of such analysis shall be made known promptly, equally and contemporaneously to both the NFL and NFLPA.

The Chief Forensic Toxicologist (and any persons employed thereby) shall be a neutral party, and shall act in good faith and with equal obligation to the NFLPA and NFL. The Chief Forensic Toxicologist shall report equally, promptly and contemporaneously to both the NFLPA and NFL regarding all correspondence and relevant information, and seek guidance from both parties when exercising responsibilities under the Policy.

See Appendix B for further information on the Policy's personnel.

2.3 Collection Vendor

The NFL and NFLPA shall jointly agree upon a Collection Vendor to be responsible for specimen collection, storage and transportation to the designated laboratory. The Collection Vendor's written protocols and chain-of-custody documents must ensure that best practices are utilized at all times in a manner consistent with generally accepted scientific principles relevant to the collection and storage of the types of substances tested for under this Policy. The collection protocols and chain-of-custody documents, together with any material modifications thereto, shall be reviewed and approved by the Parties with the advice and recommendation of the Chief Forensic Toxicologist and Independent Administrator.

The Collection Vendor shall implement a training and certification process for all employees or agents involved in the collection of any sample under this Policy.

2.4 Accounting

Any service provider whose fees are shared by the Parties shall have an agreement setting forth with specificity the services being provided, the persons providing the services and any related fees or costs. The providers for which the NFLPA will equally share the salary costs are the Independent Administrator and the Chief Forensic Toxicologist. The Parties will equally share the costs and fees of the independent arbitrators. Each provider will periodically furnish the Parties with an itemization of the services provided and fees incurred. In addition, the NFL Management Council will provide on an annual basis documentation verifying that all fines imposed under the Policy were applied to the costs of the Policy.

2.5 Term, Discharge and New Appointments

Unless the Parties mutually determine otherwise, the Independent Administrator and Chief Forensic Toxicologist each shall serve a minimum three-year term. Notwithstanding, either or both may be discharged by either Party at any time provided that written notice is given by the discharging party one year prior to discharge.

As soon as practicable, but no later than six months after issuance of a notice of intent to discharge or notice of intent to resign the appointment by the Independent Administrator or Chief Forensic Toxicologist, the Parties will each identify a minimum of three successor candidates. All timely identified candidates will then promptly be ranked by the Parties, with input from personnel for the Policy and the Policy and Program on Substances of Abuse. Within sixty days, the top three candidates will be interviewed by the Parties, with participation by the Policy personnel if requested. Absent agreement on a successor, the Parties will alternately strike names from said list, with the Party striking first to be determined by the flip of a coin.

Should a Party fail to identify, rank, interview or strike candidates in a timely manner, that Party shall forfeit its rights with respect to that step of the appointment process, including selection of the ultimate successor if that Party fails to participate in alternate striking.

Where necessary, the Parties will endeavor to name an interim appointee for any vacant positions pending selection of a successor.

3. TESTING FOR PROHIBITED SUBSTANCES

3.1 Types of Testing

All testing of Players for Prohibited Substances, including any pre-employment testing, is to be conducted pursuant to this Policy. All specimens will be collected by an authorized specimen collector under the authority of the Collection Vendor and analyzed at the appropriate laboratory (see Sections 3.2 and 3.4). As is the case in the employment setting, Players testing positive in a pre-employment setting will be subject to medical evaluation and clinical monitoring as set forth in Sections 3.1 and 4.3, and to the disciplinary steps outlined in Section 6.

Urine testing will take place under the following circumstances:

Pre-Employment: Pre-employment tests may be administered to free agent Players (whether rookies or veterans). In addition, testing will be conducted at the annual scouting combines.

Annual: All Players will be tested for Prohibited Substances at least once per League Year. Such testing will occur at training camp prior to the Club's first preseason game or whenever the

Player reports thereafter, and will be deemed a part of his preseason physical.

Preseason/Regular Season: Each week during the preseason and regular season, ten (10) Players on every Club will be tested. By means of a computer program, the Independent Administrator will randomly select the Players to be tested from the Club's active roster, practice squad list, and reserve list who are not otherwise subject to ongoing reasonable cause testing for performance-enhancing substances. The number of Players selected for testing on a particular day will be determined in advance on a uniform basis. Players will be required to provide a specimen whenever they are selected, without regard to the number of times they have previously been tested consistent with the limits set forth in the Policy.

Postseason: Ten (10) Players on every Club qualifying for the playoffs will be tested weekly so long as the Club remains active in the postseason. Players to be tested during the postseason will be selected on the same basis as during the regular season.

Off-Season: Players under contract who are not otherwise subject to reasonable cause testing may be tested during the off-season months at the discretion of the Independent Administrator, subject to the collectively bargained maximum of six (including blood tests) off-season tests. Players to be tested in the off-season will be selected on the same basis as during the regular season, irrespective of their off-season locations. Any Player selected for testing during the off-season will be required to furnish a urine specimen at a convenient location acceptable to the Independent Administrator, subject to the qualification set forth in Section 3.2 for specimen collections occurring away from the Club facility. Only Players who advise in writing that they have retired from the NFL will be removed from the testing pool. If, however, a Player thereafter signs a contract with a Club, he will be placed back in the testing pool.

Reasonable Cause Testing For Players With Prior Positive Tests Or Under Other Circumstances: Any Player testing positive for a Prohibited Substance, including a Player who tested positive or for whom there is sufficient credible evidence[4] of steroid involvement up to two football seasons prior to his applicable college draft or at a scouting combine, will be subject to evaluation by the Independent Administrator, after which the Independent Administrator may in his or her discretion place the Player into the reasonable cause testing program. Players placed into the program will be subject to testing both in-season and during the off-season at a frequency and duration determined by the Independent Administrator consistent with this Policy. Reasonable cause testing may also be required when, in the opinion of the Independent Administrator, he receives credible, verifiable documented information providing a reasonable basis to conclude that a Player may have violated the Policy or may have a medical condition that warrants further monitoring. If either Party asks the Independent Administrator for explanation of his/her decision to place a Player on reasonable cause testing based on credible information, he or she will promptly and fully provide the explanation to the Parties.

If a Player is placed into the reasonable cause testing program, the Independent Administrator in his or her discretion shall determine the type of testing (*e.g.*, urine, blood, or both) and frequency of testing to which the Player will be subject consistent with this Policy. If the Independent Administrator recommends more than one blood test per week, he shall provide the Parties with a written explanation regarding why this frequency of testing is warranted prior to commencement of such testing.

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[4] As used in this Policy, sufficient credible evidence includes but is not limited to: criminal convictions or plea arrangements; admissions, declarations, affidavits, authenticated witness statements, corroborated law enforcement reports or testimony in legal proceedings; authenticated banking, telephone, medical or pharmacy records; or credible information obtained from Players who provide assistance pursuant to Section 10 of the Policy.

Players who are placed into the reasonable cause program based on a violation of the Policy must remain in the program a minimum of one full testing season (first day of training camp to the following first day of training camp), after which the Independent Administrator shall notify the Player in writing (with copies to the Parties) before or during the second training camp either that he has been discharged from the program or that he will remain in the program subject to review at a later date. For avoidance of doubt, a Player in the reasonable cause program remains in that status unless or until he is discharged in writing by the Independent Administrator. Players who enter the program based on other reasons may be discharged at any time but shall be advised in writing during training camp if they are required to remain in the program for all or part of that testing season.

No Club may require any Player to submit to any form of testing not authorized by this Policy. In addition, Players on reasonable cause testing may be removed from their Club's active roster and placed in the category of *Reserve/Non-Football Illness* if, after consultation with the Club physician and NFLPA Medical Director, it is the Independent Administrator's opinion that such a step is medically necessary.

3.2 Notification and Collection Procedures

Urine specimens may be collected on any day of the week. The collection of blood specimens is prohibited on game days prior to or during a game. Urine and/or blood collections may occur following the conclusion of the game. To ensure that specimens are properly collected and accurately attributable to the selected Player, and to prevent evasive techniques, specimens will be collected, stored and transported to the testing laboratory according to the protocols referenced in Section 2.3. Except in specifically authorized circumstances by the Parties, in order to protect the privacy and confidentiality of the process for all stakeholders, recording of the collection process via any media (audio or visual) is not permitted.

Specimen collections occurring at a Club facility, stadium or scouting combine venue will be conducted at the discretion of the Independent Administrator and Collection Vendor without advance notice to the Player. Upon notification that he has been selected for testing, the Player shall furnish a specimen to the authorized specimen collector as soon as possible, but in no event more than three (3) hours following notification. Until the specimen is provided, the collector shall maintain specific knowledge of the Player's whereabouts and the Player may not leave the premises for any reason. If the collector reasonably believes that the Player is evading testing, he shall report the matter to the Collection Vendor and/or Independent Administrator for disciplinary review.

For specimen collections occurring away from the Club facility, the Independent Administrator and Collection Vendor may in their discretion contact the Player by telephone, voicemail or text message to notify him that he has been selected and schedule a collection time within twenty-four (24) hours at a site not more than forty-five (45) miles from the Player's location. Players must maintain accurate contact information in the form of a cellphone number, email address, physical address and travel plans for the Independent Administrator on the NFL Drug Policies Contact Information website.

The Parties recognize that the collection protocols, policies and procedures exist for the purpose of ensuring the accuracy of test results and confidence in the testing methodology and processes.

3.3 Failure or Refusal to Test/Efforts to Manipulate Specimen or Test Result

An unexcused failure or refusal to appear for required testing, or to cooperate fully in the collection process, will warrant disciplinary action. (See Appendix H.) Any effort to substitute, dilute or adulterate a specimen, or to manipulate a test result to evade detection will be considered

a violation of the Policy and may result in more severe discipline than would have been imposed for a positive test.

3.4 Testing Laboratories

The Independent Administrator will determine the most appropriate laboratory or laboratories to perform testing under the Policy. Currently, the UCLA Olympic Analytical Laboratory in Los Angeles and the Sports Medicine Research and Testing Laboratory in Salt Lake City have been approved to analyze specimens collected for Prohibited Substances. These laboratories have been accredited by ISO and the World Anti-Doping Association for anti-doping analysis and perform testing for the NCAA, the United States Anti-Doping Agency and other sports organizations.

Screening and confirmatory tests will be done on state-of-the-art equipment and will principally involve use of GC/MS or LC/MS equipment. In addition, testing will be done for masking agents (including diuretics) as appropriate. The Parties shall, with the advice and consultation of the Chief Forensic Toxicologist and/or other advisors, endeavor to review the analytical methods to be utilized and make modifications as necessary in furtherance of the Policy.

Either Party will have the right to discharge a testing laboratory provided that written notice is provided by the discharging party six months prior to discharge. Upon issuance of a discharge notice, the Chief Forensic Toxicologist and/or Independent Administrator will recommend one or more potential successor laboratories after which the Management Council, with appropriate consultation with and reasonable approval of the NFLPA, will promptly select and engage the successor laboratory.

3.5 Unknowing Administration of Prohibited Substances

Players are responsible for what is in their bodies and a positive test will not be excused because a Player was unaware that he was taking a Prohibited Substance. Questions concerning dietary supplements should be directed to the Independent Administrator and/or the NFL Players Association's Director of Drug Policies at (800)-372-2000. **Having a Player's or Club's medical or athletic training staff member approve or indicate that a supplement's list of ingredients does not appear to contain a Prohibited Substance will not excuse a positive test result.**

4. Procedures in Response to Positive Tests or Other Evaluation

4.1 Notice to Player

Once a positive result is confirmed, the Independent Administrator will match the control identification number with the Player's name, notify the Player in writing via electronic or overnight delivery of the positive result and request that the Player contact him to discuss the result.

4.2 "B" Sample Analysis

The NFLPA shall maintain a non-exclusive list of approved, independent board-certified forensic toxicologists ("Observing Toxicologists"), which shall be compiled in consultation with the Chief Forensic Toxicologist and which may not include any person affiliated with a commercial laboratory. If the Player wishes to have an independent toxicologist who is not on the NFLPA list observe the "B" bottle analysis, the independent toxicologist must sign an appropriate nondisclosure and confidentiality agreement with the applicable testing laboratory prior to scheduling the "B" sample analysis. Any Player who receives written notification of an "A" positive may either accept the result and discipline, await the results of the scheduled "B" sample

analysis, or have an Observing Toxicologist witness the "B" sample analysis if he makes a written request to the Independent Administrator within five (5) business days of receiving the notification.

If timely observation is requested, the Independent Administrator will coordinate with the laboratory and designated Observing Toxicologist to schedule the "B" sample analysis to occur within seven (7) business days of the Player's request. If observation is not requested, the laboratory will conduct the analysis as soon as is practicable.

The "B" sample analysis will be performed at the same laboratory that did the "A" sample analysis according to established analytical procedures. The results will be reported to the Independent Administrator, who may review them with the Chief Forensic Toxicologist and the laboratory director as appropriate.

If the "B" sample analysis generates a positive result, and the Chief Forensic Toxicologist certifies that result, the Independent Administrator will provide written notice, together with appropriate supporting documentation, to the Parties. (If the "B" bottle test does not confirm a positive result, only the Player will be notified.) If the Player is subject to disciplinary action, the Management Council will notify him in writing via electronic or overnight delivery with a copy to the NFLPA.

With respect to Pre-Employment Testing, the procedure set forth above shall apply, except that: (a) the "B" test will be performed as soon as possible with no Observing Toxicologist permitted; and (b) upon confirmation of the positive test result, the Independent Administrator shall promptly notify the NFL Management Council and: (i) all Clubs in the case of a Combine test, or (ii) the requesting Club(s) in the case of a Free Agent test.

4.3 Medical Examination

The Independent Administrator may, in his or her sole discretion, require a medical examination such as outlined in Appendix C of any Player who tests positive. The Independent Administrator will arrange for the examination, and the results will be reported to the Player, the Independent Administrator and the Club physician. If medical treatment (including counseling or psychological treatment) is indicated, it may be offered to the Player. Players with a confirmed positive test result will also be placed on reasonable cause testing at a frequency and duration to be determined by the Independent Administrator consistent with this Policy.

The Player is responsible for seeing that he complies with the arrangements of the Independent Administrator for a medical examination as soon as practicable after notification of a positive test. This requirement is in effect throughout the year.

5. Violations of Law and Other Documented Evidence-Based Violations

Players or other persons within the NFL who: are convicted of or otherwise admit to a violation of law (including within the context of a diversionary program, deferred adjudication, disposition of supervision, or similar arrangement) relating to use, possession, acquisition, sale, or distribution of steroids, growth hormones, stimulants or related substances, or conspiring to do so; or are found through sufficient credible documented evidence (see footnote 4) to have used, possessed or distributed performance-enhancing substances, are subject to discipline at the discretion of the Commissioner, including suspension up to six games for a first violation or, if appropriate, termination of the individual's affiliation with an NFL Club.

Any suspension shall be without pay and served pursuant to the rules set forth below. Longer suspensions may be imposed for repeat offenders. In addition, Players violating this Policy under this Section will be appropriately placed or advanced to the next disciplinary step. In this respect, Players

are reminded of federal legislation which criminalizes possession and distribution of steroids. (See Appendix F.)

6. SUSPENSION AND RELATED DISCIPLINE

Players

Players who violate the Policy will be subject to discipline by the Commissioner as outlined below.

Step One: The first time a Player violates this Policy by testing positive for a Prohibited Substance; attempting to substitute, dilute or adulterate a specimen; or manipulating a test result, he will be suspended without pay pursuant to the following schedule:

> Positive Test Result for Stimulant, Diuretic or Masking Agent -- *two* regular and/or postseason games.
>
> Positive Test Result for Anabolic Agent -- *six* regular and/or postseason games.
>
> Positive Test Result for Prohibited Substance plus Diuretic or Masking Agent / Attempt to Substitute, Dilute or Adulterate Specimen / Attempt to Manipulate Test Result / Violation of Section 5 -- *eight* regular and/or postseason games.

In addition, the Player may be subject to evaluation and counseling if, in the opinion of the Independent Administrator, such assistance is warranted.

Step Two: The second time a Player violates this Policy by testing positive for an Anabolic Agent; attempting to substitute, dilute or adulterate a specimen; manipulating a test result; or by violation of Section 5, he will be suspended without pay for *seventeen* regular and/or postseason games. The second time a Player violates this Policy by testing positive for a Stimulant, Diuretic or Masking Agent, he will be suspended without pay for *five* regular and/or postseason games.

Step Three: The third time a Player violates the Policy by testing positive for a Prohibited Substance; attempting to substitute, dilute or adulterate a specimen; manipulating a test result; or by violation of Section 5, he will be banished from the NFL for a period of at least *two* seasons, subject to any appeal. Such a Player may petition the Commissioner for reinstatement after 24 months. Reinstatement, and any terms and conditions thereof, shall be matters solely within the Commissioner's sound discretion.

All suspensions under this Policy will begin when the Player accepts discipline or the decision on appeal becomes final. If fewer than the imposed number of games remains in the season, including any postseason games for which the Club qualifies, the suspension will carry over to the next regular season until the total number of games has been missed.

If the imposition of a suspension occurs prior to or during the preseason, the Player will be permitted to engage in all preseason activities. Upon the posting of final rosters, however, he will be suspended for the imposed number of regular-season games.

Players who are suspended under this Policy will be placed on the *Reserve/Commissioner Suspension* list. During the suspension period the Player will not be paid. Before a Player is reinstated following a suspension, he must test negative for all Prohibited Substances under this Policy in order to be approved for return to play by the Independent Administrator. In addition, the Player must be examined and approved as fit to play by the Club physician before he may participate in contact drills or in a game.

In addition to the suspension imposed on him, any Player suspended for a violation of the Policy

will be ineligible for selection to the Pro Bowl, or to receive any other honors or awards from the League or the Players Association,[5] for the season in which the violation is upheld (*i.e.,* following any appeals) and in which the suspension is served.

Other Violators

Any coach, athletic trainer, Club physician or Club employee who uses, condones, encourages, supplies, or otherwise facilitates the improper use of Prohibited Substances shall be subject to discipline by the Commissioner. Any NFLPA Certified Contract Advisor or other person within the NFLPA's authority who engages in such conduct shall be subject to discipline by the NFLPA Executive Director.

7. PROCEDURES REGARDING TESTOSTERONE, OFF-SEASON STIMULANTS, BLOOD TESTING

Testosterone

The Independent Administrator is authorized to subject a percentage of all specimens (not to exceed 15%) to Carbon Isotope Ratio (CIR) testing to detect the use of exogenous steroids. Confirmation of the exogenous administration of testosterone shall be governed by the currently-applicable WADA Technical Document or Guideline governing the detection of endogenous anabolic androgenic steroids.

If the introduction of testosterone or the use or manipulation of any other substance results in increasing the ratio of the total concentration of testosterone to that of epitestosterone in the urine to greater than 4:1, the test will be considered presumptively positive and will be subjected to CIR analysis. If CIR testing confirms the presence of an exogenous steroid, the result will be referred for discipline. In addition, if a Player's epitestosterone level exceeds 200 ng/mL, it will be considered a positive test result regardless of the Player's T:E ratio.

Notwithstanding, when information available to the Independent Administrator suggests but is not conclusive of steroid use, the Independent Administrator may require the Player to submit to ongoing reasonable cause testing and shall order other medical procedures including CIR testing or other diagnostic tests to confirm whether an exogenous steroid has been used in violation of the Policy. The Independent Administrator must inform the Parties if he/she intends to place a Player on reasonable cause testing on this basis prior to commencement of the reasonable cause testing. In addition, the Independent Administrator will be entitled to review any available past and/or current medical or testing records.

Such discipline may be imposed within the season of the year in which the positive test occurred, or, if the Independent Administrator prescribes follow-up measures that entail delay in the final determination, in a subsequent season.

Off-Season Stimulants

If a test administered to a Player outside of the Playing Season generates a positive result for a stimulant listed on Appendix A, the Player will not be subject to discipline under this Policy, but will instead be referred and processed under the Policy and Program on Substances of Abuse as if the test had been administered pursuant to that policy, including any disciplinary consequences if applicable. The Playing Season shall be defined as the period beginning with the Player's first preseason game of

[5] Awards and honors for which a suspended Player is ineligible shall include Super Bowl MVP, Most Valuable Player, Offensive/Defensive Player of the Year and Offensive/Defensive Rookie of the Year, as well as the Walter Payton Man of the Year, Art Rooney Sportsmanship, Salute to Service, Comeback Player of the Year and Alan Page Community Service awards.

the season and ending the week following his final regular or post-season game. For free agents, the Playing Season shall run from the League's first preseason game and end upon the conclusion of the Super Bowl.

Blood Testing

All Players shall be eligible to be tested for growth hormones through dried blood spot analysis.

Players who are not in reasonable cause testing shall not be subject to more than six blood tests per calendar year.

Blood testing will take place under the following circumstances:

Annual: The Independent Administrator will, by means of a computer program, randomly assign twenty percent (20%) of each Club's Players selected for Annual Testing under Section 3.1 to receive bloodtesting in addition to urine testing.

Preseason/Regular Season: Each week during the preseason and regular season, by means of a computer program, two (2) Players from each Club who are selected for Preseason/Regular Season Testing under Section 3.1 will receive bloodtesting in addition to urine testing. Players will be required to submit to testing whenever they are selected, without regard to the number of times they have previously been tested consistent with the limits set in this Policy.

Postseason: Five (5) of the ten (10) Players selected for testing under Section 3.1 on every Club qualifying for the playoffs will receive bloodtesting in addition to urine testing as long as the Club remains active in the postseason.

Off-Season: By means of a computer program, the Independent Administrator will randomly assign ten percent (10%) of each Club's Players selected for Off-Season Testing under Section 3.1 to receive bloodtesting. Such testing may be in lieu of urine testing at the Independent Administrator's discretion.

Pre-Employment: Pre-employment tests may be administered to free agent Players (whether rookies or veterans). In addition, blood testing (in addition to urine testing) will be conducted at the League's annual scouting combines.

Reasonable Cause Testing: Any Player subject to Reasonable Cause Testing pursuant to Section 3.1 shall be eligible for blood testing at the discretion of the Independent Administrator (subject to the collectively-bargained maximum of 24 urine and/or blood tests per Player per year).

Players who test positive under this Section will be subject to discipline as set forth in Sections 3, 6 and 12 of the Policy.

Before discipline is imposed, Players will have the appeal rights set forth in Sections 10 and 11 of the Policy.

8. MASKING AGENTS AND SUPPLEMENTS

The use of so-called "blocking" or "masking" agents is prohibited by this Policy. These include diuretics or water pills, which have been used in the past by some Players to reach an assigned weight.

In addition, a positive test will not be excused because it results from the use of a dietary supplement, rather than from the intentional use of a Prohibited Substance. Players are responsible for what is in their bodies. For more information concerning dietary supplements, see Appendices D and E.

9. ARBITRATION PANEL; APPEALS SETTLEMENT COMMITTEE

All appeals under Section 6 of this Policy shall be heard by third-party arbitrators not affiliated with the NFL, NFLPA or Clubs.

The Parties shall jointly select and be equally responsible for compensating one or more arbitrators to act as hearing officers for appeals under Section 6 of this Policy. Selected arbitrators shall have appropriate expertise in matters under this Policy and shall be active members in good standing of a state bar. Unless the Parties mutually determine otherwise, each arbitrator shall serve a minimum two-year term, after which he or she may be discharged by either Party upon written notice to the arbitrator and other Party. The arbitrators' fees and expenses shall be shared equally by the Parties.

The Parties shall designate a Notice Arbitrator, who also will be responsible for assignment of the appeals. Prior to the first preseason game, the Notice Arbitrator will ensure that at least one arbitrator is assigned to cover every Tuesday of the Playing Season through the Super Bowl. Appeals will automatically be assigned to the arbitrator assigned to cover the fourth Tuesday following the date on which the Player is notified of discipline. During the off-season, the Parties will coordinate with the Notice Arbitrator to ensure that an arbitrator is available on at least two dates each month between February and June, and on five dates each month in July and August. Off-season hearings will be scheduled within thirty (30) days of the issuance of the notice of discipline unless the Parties agree otherwise.

An Appeals Settlement Committee consisting of the NFL Commissioner and the NFLPA Executive Director or their respective designees shall have authority to resolve any appeal under this Policy, which resolution shall be final and binding. Should the NFLPA believe that "extraordinary circumstances" exist which warrant reduced or vacated discipline, the Executive Director may raise them with the Commissioner. Consideration of an appeal by the Appeals Settlement Committee shall not in any way delay the appeals procedures outlined in this Policy, and no appeal may be resolved by the Appeals Settlement Committee once a decision on the appeal has been issued.

10. APPEALS

Except as expressly set forth elsewhere in this Policy, any dispute concerning the application, interpretation or administration of this Policy shall be resolved exclusively and finally through the following procedures:

Section 5 Appeals. Except as noted below, appeals under this section will be subject to the procedures applicable to Section 6 appeals.

Appeals of discipline issued pursuant to Section 5 of this Policy shall be heard by the Commissioner or his designee.

For such appeals, a Player shall have a right to appeal a decision affirming discipline to a member of the Appeals Panel established under Article 15 of the CBA, subject to the provisions of this Section.

This right of appeal ("Due Process Appeal") is limited to claims only in the following circumstances:

(a) The conduct of the appeal or hearing did not comport with one or more of the following established principles of industrial due process: (i) the Player was not provided with notice of the basis for the discipline; (ii) the Player was improperly denied an opportunity to present evidence or testimony in support of his appeal; (iii) the Player was improperly denied the opportunity to cross-examine a witness whose testimony was offered in the Section 5 appeal hearing in support of the discipline imposed; or (iv) the Player was improperly denied access to documents or other evidence in the possession of the League or a Club and unavailable to the Player or his representatives indicating that he did not

violate the Policy or that a witness whose testimony was offered in the Section 5 appeal hearing was untruthful; or

(b) The decision affirming the discipline subjected the Player to an increased and disparate sanction when compared to other similarly situated Players and the Hearing Officer failed to reasonably set forth the basis for the variation. Any discipline imposed that falls within a specified numerical limit set forth in the Policy shall have a rebuttable presumption that it is not disparate.

Procedure: A Due Process Appeal must be noticed within three (3) business days of the appeal decision, and must be initiated in writing to the Appeals Panel with a copy of the hearing transcript by overnight or electronic mail with copies of the notice to the Management Council and NFLPA. The Appeals Panel shall appoint one of its members to preside over the Due Process Appeal. The notice must set forth the specific basis of appeal under (a) or (b) above, with citations to the hearing transcript identifying the challenged decision or ruling. Within two (2) business days following the receipt of the notice, the Management Council and/or NFLPA may submit a responding letter brief. Absent instruction from the appointed Appeals Panel member, no other submissions will be permitted.

The appointed Appeals Panel member shall promptly determine whether to schedule a hearing or decide the Due Process Appeal based on the written submissions. If a hearing is directed, it shall take place via telephone conference call on the first Tuesday following receipt of the responding submissions (or the second Tuesday if the first Tuesday would be impracticable) and shall not include the introduction of any documentary evidence or testimony beyond the record and proffers made in the Section 5 appeal and any proffer of documents or other information alleged to be improperly denied under (a) above. The appointed Appeals Panel member shall render a decision within three (3) business days following receipt of the parties' written submissions or the hearing, whichever is later. The decision may be a summary ruling followed by a formal decision.

Standard of Review; Scope of Relief: To prevail on a Due Process Appeal, the Player must demonstrate that the challenged decision or ruling was clearly erroneous and in manifest disregard of the principles of the Policy and the Player's rights thereunder. The Player's Due Process Appeal right will be deemed waived if no objection regarding the challenged decision or ruling was raised during the Section 5 appeal hearing. If the Due Process Appeal is premised on a matter that: (i) first appeared in the decision itself; or (ii) was discovered after the Section 5 appeal hearing and was unknown, and could not reasonably have been known, by the Player and his representatives at that time, the new information and the circumstances surrounding its discovery must be set forth in the notice of appeal or the appeal right will be deemed waived. In any Section 5 appeal or Due Process Appeal, all court records shall be fully admissible and any finding or judgment of a court shall be binding and not subject to challenge.

If the Player establishes his claim as set forth above, the appointed Appeals Panel member shall stay the discipline and remand the matter to the third-party Notice Arbitrator with instructions for further proceedings. The appointed Appeals Panel member shall have no authority to make substantive rulings on any matter addressed by the Policy including, without limitation, issues related to the administration of the Policy, identification of banned substances, a Player's status under the Policy, confidentiality, specimen collection, laboratory procedures and protocols, medical care or clinical assistance, the imposition of sanctions or discipline other than as provided in subsection (b) above and/or the disciplinary authority of the Commissioner or his designee as hearing officer.

On remand, the Notice Arbitrator or appointed third-party arbitrator shall decide the Player's claim and any discipline based on the record in the Section 5 appeal and any documents or other information determined to have been improperly denied. Such appeal shall not be *de novo*: the third-party arbitrator shall consider new evidence or testimony only if so directed by the appointed Appeals

Panel member. In the event new testimony must be considered by the third-party arbitrator, such testimony must be presented by the first Tuesday immediately following remand (or the second Tuesday if the first Tuesday would be impracticable).

The decision of the appointed Appeals Panel member, and any subsequent decision by a third-party arbitrator on remand, will constitute full, final and complete disposition of the Due Process Appeal under this Section and will be binding upon the parties.

Section 6 Appeals. Any Player who is notified by the NFL Management Council that he is subject to a fine or suspension for violation of the terms of this Policy may appeal such discipline in writing within five (5) business days of receiving notice via electronic or overnight delivery from the NFL that he is subject to discipline.

During the Playing Season, appeal hearings will be scheduled to take place on the fourth Tuesday following issuance of the notice of discipline. Upon agreement of the Parties, the hearing may be rescheduled to another date. In the absence of an agreement, a party may request a conference call to move for a new date based on extenuating circumstances. In such case, should the arbitrator conclude that a new date is warranted, a new date may be scheduled, but in no instance shall the rescheduled date fall more than one week after the originally scheduled date unless otherwise ordered by the arbitrator.

At the appeal hearing the Player may be accompanied by counsel and may present relevant evidence or testimony in support of his appeal of the charged violation and/or a permissible defense. Additionally, the NFLPA may attend and participate notwithstanding the Player's use of other representation. Hearings will be conducted by conference call unless either Party requests to appear in person.

The decision of the arbitrator will constitute a full, final, and complete disposition of the appeal and will be binding on all parties. The arbitrator shall not, however, have authority to: (1) reduce a sanction below the minimums established under the Policy; or (2) vacate a disciplinary decision unless the arbitrator finds that the charged violation could not be established.

Pending completion of the appeal, the suspension or other discipline will not take effect.

The NFL Management Council may, prior to the conclusion of a Player's appeal, reduce the length of the suspension and corresponding bonus forfeiture by up to 50% when the Player has provided full and complete assistance (including hearing testimony if required) to the Management Council which results in the finding of an additional violation of the Policy by another Player, coach, trainer or other person subject to this Policy.

Other Appeals. Any Player who has a grievance over any aspect of the Policy other than discipline under Sections 5 or 6, including but not limited to suspensions and fines for failure to appear for testing (see Appendix H), must present such grievance to the Players Association (with a copy to the Management Council) within five (5) business days of when he knew or should have known of the grievance. The NFLPA will endeavor to resolve the grievance in consultation with the Management Council. Thereafter, the NFLPA may, if it determines the circumstances warrant, present such grievance to: (i) the designated third party arbitrator selected pursuant to Section 9 for final resolution for any disciplinary action; or (ii) the Commissioner for any other matter. Such appeal must be presented no later than thirty (30) calendar days after the Player's presentment of the grievance to the NFLPA.

11. BURDENS AND STANDARDS OF PROOF; DISCOVERY

Burden of Proving the Violation. In any case involving an alleged violation due to a Positive Test, the Management Council shall have the burden of establishing the Positive Test Result and that it was obtained pursuant to a test authorized under the Policy and was conducted in accordance with the

Collection Vendor's specimen collection procedures ("Collection Procedures") and the Testing Laboratory's testing and analytical protocols ("Laboratory Procedures"). The Management Council is not required to otherwise establish intent, negligence or knowing use of a Prohibited Substance on the Player's part.

The Management Council may satisfy its burden by introducing analytical findings provided by the testing laboratory and verified by the Chief Forensic Toxicologist, and by demonstrating that the test result was for a Prohibited Substance as identified in Appendix A of the Policy at the level required by the Laboratory Procedures. The specimen collectors, Independent Administrator, Chief Forensic Toxicologist and testing laboratories will be presumed to have collected and analyzed the Player's specimen in accordance with the Policy. The Management Council may rely solely on the information contained in the standard laboratory documentation package (see Appendix G) provided to the Parties, which shall be admissible without regard to hearsay challenge, to demonstrate that the specimen was obtained in accordance with the Collection Procedures and that the test was conducted in accordance with the Laboratory Procedures, including, without limitation, that the chain of custody of the specimen was maintained.

Challenges to the Proof of the Violation. The Player may challenge the Management Council's showing by alleging that: (a) the result was not "positive;" (b) the specimen was not obtained pursuant to a test authorized under the Policy; or (c) the specimen was not obtained and analyzed in accordance with the Collection Procedures and Laboratory Procedures. The Player must offer credible evidence in support of any allegation of a deviation from the Collection Procedures or Laboratory Procedures: if done, the Management Council will carry its burden by demonstrating that: (a) there was no deviation; (b) the deviation was authorized by the Parties; or (c) the deviation did not materially affect the accuracy or reliability of the test result.

In any case involving a positive test result for hGH, the Player has a right to challenge any aspect of the science of the isoforms test, including but not limited to challenges to the decision limits and any population studies used to establish them, but neither the absence of a joint NFLPA/NFL population study nor the election to forgo such a study shall be relevant or admissible for any purpose or imposed as a remedy by the hearing officer in any appeal.

A Player is not in violation of the Policy if the presence of the Prohibited Substance in his test result was due to no fault or negligence on his part (*e.g.*, despite all due care, he was sabotaged by a competitor or was administered a Prohibited Substance during an emergency procedure without the opportunity to give consent). The Player has the burden of establishing this defense and must offer objective evidence in support of his claim. For example, a Player cannot satisfy his burden merely by arguing that he: (i) did not intentionally use a Prohibited Substance; (ii) was given the substance by a Player, doctor, trainer, family member or other representative; (iii) took a mislabeled or contaminated product; or (iv) took steps to investigate whether a product contained a Prohibited Substance.

A Player may challenge a positive test result at any time on the basis of newly-discovered scientific evidence that questions the accuracy or reliability of the result. Such a challenge may be brought even if the result previously has been upheld on appeal. Such a challenge may not be based on a decision by the Parties to employ a different testing technology at a later time. Should such a challenge be upheld, the arbitrator may direct a payment to a Player to make him whole for lost salary at the time the suspension was served. Any such payment will count against the total Player Cost for the year in which the payment is made.

Pre-Hearing Discovery. Within seven (7) business days of issuing a notice of discipline, the League shall provide the Player with an indexed binder containing the relevant correspondence and documentation relevant to the charged violation. Within four (4) business days of receipt of the binder, the Player and League shall make any written requests for additional discovery relevant to the charged violation and/or a permissible defense. Within this period, the Player must also advise if he

seeks the testimony of any Policy Personnel at the appeal hearing. If there is no objection to the request, documents will be provided within five (5) business days or as soon as the documents are obtained, and the requested witnesses will be made available for the hearing. Objections will be promptly submitted via conference call to the arbitrator for decision.

No later than four (4) business days prior to the hearing, the Player will complete and submit a statement setting forth the specific grounds upon which the appeal is based with supporting facts in the form of proffered testimony or documentary evidence ("Basis of Appeal"). Once submitted, evidence on issues outside the scope of the Basis of Appeal shall not be permitted absent a showing by the requesting party of extraordinary circumstances justifying its inclusion. The Parties shall also be permitted to seek preclusion of evidence or other permissible relief on any issue for which insufficient supporting facts are alleged or for which arbitral precedent previously has been established.

No later than four (4) business days prior to the hearing, the League and Player's representative will exchange copies of any exhibits upon which they intend to rely and a list of witnesses expected to provide testimony. The failure to do so shall preclude the introduction of the late or non-produced exhibits barring extraordinary circumstances as determined by the arbitrator. (This shall not preclude the introduction of rebuttal evidence in response to the Basis of Appeal.) Following the exchange, the arbitrator may permit the parties to provide further supplementation as appropriate.

Policy Information on Appeal. Only the Management Council and NFLPA may request information from the Policy's Personnel. In addition, when presenting an appeal under this Policy a Player is not entitled to production of or access to records, reports or other information concerning other Players or the Policy's bargaining history. Notwithstanding, this provision does not limit the Players Association's access to appropriate information concerning all violations under this Policy.

Decision; Post-Hearing Briefs. Within three (3) business days after the hearing or the receipt of the transcript (whichever is later), the arbitrator will evaluate the evidence and issue a summary ruling. A formal written opinion shall be issued within ten (10) business days after the hearing or the receipt of the transcript (whichever is later). The failure of the arbitrator to timely issue the ruling and opinion will result in the arbitrator's preclusion from handling further appeals for the remainder of the season in question. Post-hearing briefs will not be permitted, except that an arbitrator may request briefing on a specific issue or issues. If the arbitrator requests such briefing, he/she will set a submission deadline of not more than five (5) business days after the hearing or receipt of the transcript and a page limit of no more than ten (10) pages.

12. CONFIDENTIALITY

12.1 Scope

All Players (including authorized representatives), NFL employees, Club employees, NFLPA employees, Certified Contract Advisors, and persons involved in the administration of the Policy are subject to the confidentiality provisions of this Policy. The confidentiality of the matters under this Policy shall be protected. Except as allowed in this Policy or otherwise agreed to by the Parties, public disclosure, directly or indirectly, of information concerning positive tests, appeals or other violations of this Policy is not permitted.

The Management Council may publicly announce or acknowledge disciplinary action against a Player when a suspension is upheld or if the allegations relating to a Player's violation of the Policy previously are made public through a source other than the Management Council or a Club (or their respective employees or agents).

In addition, the Parties jointly may publicly disclose information relating to a Player to maintain

confidence in the credibility of the Policy and Policy Personnel or to correct inaccurate public claims made by that Player or his representatives about the operation of the Policy, discipline, underlying facts or appeals process.

Finally, the Parties and Independent Administrator will prepare and disseminate an Annual Report, which will provide de-identified, aggregated information (including the nature of violations and/or substances involved) and address other issues relevant to the administration of the Policy.

12.2 Discipline for Breach

The Parties may, in appropriate cases, agree to retain an independent investigator to investigate and report on alleged breaches of confidentiality.

Any Player, Club or Club employee who breaches the confidentiality provisions of this Policy shall be subject to a fine of up to $500,000 by the Commissioner.

Any NFLPA employee or other person subject to the Executive Director's authority who breaches these provisions shall be subject to a fine of up $500,000 by the Executive Director. Any Certified Contract Advisor who breaches these provisions shall be subject to discipline under the NFLPA Regulations for Certified Contract Advisors.

Any other person involved in the administration of this Policy who breaches these provisions shall be subject to termination of services or other appropriate action.

The provisions of this Section shall be the sole remedy available to a Player or other party aggrieved by an alleged violation of the Policy's confidentiality provisions.

13. Fine Money

Fines will be collected in accordance with Article 46, Section 6 of the Collective Bargaining Agreement.

14. Bonus Forfeiture

Players who are suspended pursuant to this Policy shall be required to forfeit any applicable bonus amounts in accordance with Article 4, Section 9 of the Collective Bargaining Agreement. The Parties acknowledge the inapplicability of "facial invalidity" claims on forfeitures based on violations of the Policy.

15. Players Suspended by Other Organizations; Permitted Activities

Any person who has been suspended from competition by a recognized sports testing organization based on: (a) a positive test result reported by a World Anti-Doping Agency accredited laboratory for a substance banned under this Policy; (b) an effort to substitute, manipulate or otherwise fail to cooperate fully with testing; or (c) a violation of law or admission involving the use of steroids or other performance-enhancing substances, shall be permitted to enter into an NFL Player Contract or Practice Contract. Such person, however, will be placed on reasonable cause testing.

Players suspended pursuant to this Policy may engage in activities during the suspension period as set forth in Appendix J.

16. Retention and Destruction of Specimens

Unless otherwise agreed by the Parties, the testing laboratories will ensure the destruction of negative specimens 90 days following analysis and positive specimens 30 days following final adjudication of a Player's discipline. Blood specimens may not be used for any purpose other than the testing delineated in this Policy. Certification of destruction of blood samples (dried blood spots) in

compliance with the Policy must be sent to the Parties semi-annually. Any confirmed or suspected failures to adhere to the retention and destruction procedures shall be promptly reported to the Parties for review and action as appropriate.

APPENDIX A

List of Prohibited Substances

[last update: August 8, 2022]

The following substances and methods are prohibited by the National Football League:

I. ANABOLIC AGENTS

A. ANABOLIC/ANDROGENIC STEROIDS

Generic Name	Brand Names (Examples)
Androstenediol	Androstederm
Androstenedione	Androstan, Androtex
Androsterone	---
1-Androstenediol	1-AD
1-Androstenedione	---
5α-androst-2-ene-17-one	---
Bolandiol	---
Bolasterone	Myagen
Boldenone	Equipoise, Parenabol
Boldione	---
Calusterone	---
Clostebol	Turinabol, Steranabol
Danazol	Cyclomen, Danatrol
Dehydrochloromethyltestosterone^	Oral-Turinabol
Dehydroepiandrosterone	DHEA, Prasterone
Desoxymethyltestosterone	DMT, Madol
Dihydrotestosterone	DHT, Stanolone
Drostanolone	Drolban
Epiandrosterone	---
1-Epiandrosterone	---
Epi-dihydrotestosterone	---
Epitestosterone	---
Ethylestrenol	Maxibolin, Orabolin
Etiocholanolone	---
Fluoxymesterone	Halotestin
Formebolone	Esiclene, Hubernol
Furazabol	Miotolon
Gestrinone	Tridomose
17-Hydroxypregnenedione	---
17-Hydroxyprogesterone	---
Hydroxytestosterone	---
4-Hydroxytestosterone	---
7-Keto DHEA	---
Mestanolone	---
Methasterone	---
Mesterolone	Proviron
Methandienone	Danabol, Dianabol
Methandriol	Androdiol
Methandrostenolone	Dianabol
Methenolone	Primobolan
Methylclostebol	---

Methyldienolone	---
Methylstenbolone	---
Methyltestosterone	Metandren
Methyl-1-testosterone	M1T
7α-Methyl-19-nortestosterone	MENT
Methylnortestosterone	---
Methyltrienolone	---
Mibolerone	Testorex
Nandrolone	---
19-Norandrostenediol	19-Diol
19-Norandrostenedione	19 Nora Force
19-Norandrosterone	---
Norboletone	Genabol
Norclostebol	---
Norethandrolone	Nilevar
19-Noretiocholanolone	---
Normethandrolone	---
Oxabolone	---
Oxandrolone	Anavar, Lonovar
6-Oxoandrostenedione (4-androstene-3,6,17 trione)	6-Oxo
Oxymesterone	Oranabol
Oxymetholone	Anadrol
Prostanozol	---
Quinbolone	Anabolicum Vister
Progesterone	---
Stanozolol	Stromba, Winstrol
Stenbolone	---
Testosterone	Andronate
1-Testosterone	---
Tetrahydrogestrinone	THG
Trenbolone	Finaject
and other substances with a similar chemical structure and similar biological effect(s)	
B. PROTEIN AND PEPTIDE HORMONES	
Generic Name	Brand Names (Examples)
Human Growth Hormone (hGH)	Saizen, Humatrope, Nutropin AQ
Animal Growth Hormones	---
Human Chorionic Gonadotropin (hCG)	Novarel, Menotropins
Insulin Growth Factor (IGF-1)	---
Erythropoietin (EPO)	---
Growth Hormone Releasing Hormones (GHRH)	CJC 1293, CJC-1295, Sermorelin, Tesamorelin
Growth Hormone Secretagogues (GHS)	Ghrelin, Ghrelin mimetics (Anamorelin,Ipamorelin), Ibutamoren, Macimorelin, Tabimorelin
Growth Hormone Releasing Peptides (GHRP)	Alexamorelin, GHRP-6, Hexarelin, Pralmorelin (GHRP-2), GHRP-1, GHRP-3, GHRP-4, GHRP-5
BPC-157	---

C. OTHER ANABOLIC AGENTS (INCLUDING BETA-2-AGONISTS)	
Generic Name	Brand Names (Examples)
Clenbuterol^	---
Clomiphene	Clomid
Tibolone	---
D. ANTI-ESTROGENIC AGENTS	
Generic Name	Brand Names (Examples)
Aminoglutethimide	Cytadren
Anastrozole	Arimidex
Androsta-3,5-diene-7,17-dione	Arimistane
Bazedoxifene	---
Cyclofenil	---
Exemestane	Aromastin
Fadrozole	Afema
Formestane	Lentarone
Fulvestrant	Faslodex
17β-hydroxy-androst-1,4,6-trien-3-one	Androstatrienedione
Letrozole	Femara
Ospemifene	---
Raloxifene	Evista
Tamoxifen	---
Testolactone	Teslac
Toremifene	Acapodene
Vorazole	Rivizor
E. SELECTIVE ANDROGEN RECEPTOR MODULATORS (SARMS)	
Developmental Code	Brand Names (Examples)
Enobosarm	Ostarine
GTx-007, S-4	Andarine, S-4
LGD-4033	Ligandrol
RAD-140	Testolone
and other substances with a similar chemical structure and similar biological effect(s)	

II. MASKING AGENTS

DIURETICS	
Generic Name	Brand Names (Examples)
Acetazolamide	Amilco
Amiloride	Midamor
Bendroflumethiazide	Aprinox
Benzthiazide	Aquatag
Bumetanide	Burine
Canrenone	---
Chlorothiazide	Diuril
Chlorthalidone	---
Cyclothiazide	Anhydron
Ethacrynic Acid	Edecrin
Flumethiazide	---
Furosemide	Lasix

Hydrochlorothiazide	Aprozide
Hydroflumethiazide	Leodrine
Indapamide	Lozol, Natrilix
Methyclothiazide	Aquatensen
Metolazone	Zaroxolyn
Polythiazide	Renese
Probenecid	Benemid
Quinethazone	Hydromox
Spironolactone	Aldactone
Triamterene	Jatropur, Dytac
Trichlormethiazide	Anatran
and other substances with a similar chemical structure and similar biological effect(s)	

III. STIMULANTS

Generic Name	Brand Names (Examples)
Adrafinil	---
Adrenaline	---
Amfepramone	---
Amiphenazole	---
Amphetamine^	Greenies, Speed, Adderall
Amphetaminil	---
Armodafinil	Nuvigil
Benfluorex	---
Benzphetamine	---
Benzylpiperazine	---
Bromantan	---
Cathine	---
Clobenzorex	---
Cropropamide	---
Crotetamide	---
Dimethylamphetamine	---
Ephedrine^	Ma Huang, Chi Powder
Etamivan	---
Etilamphetamine	---
Etilefrine	---
Famprofazone	---
Fenbutrazate	---
Fencamfamin	---
Fencamine	---
Fenetylline	---
Fenfluramine	Phen-Fen, Redux Fenetylline
Fenproporex	---
Furfenorex	---
Heptaminol	---
Isometheptene	---
Levmetamfetamine	---
Lisdexamfetamine	Vyvanse
Meclofenoxate	---
Mefenorex	---
Mephentermine	---

Mesocarb	---
Methamphetamine^	---
2-amino-6-methylheptane	Octodrine
P-Methylamphetamine	---
Methylephedrine	---
Methylhexaneamine (Dimethylpentylamine)	---
3-Methylhexan-2-amine (1,2-Dimethylpentylamine)	---
4-Methylhexan-2-amine (1,3 Dimethylpentylamine)	---
5-Methylhexan-2-amine (1,4 Dimethylpentylamine)	---
Methylphenidate	Ritalin, Daytrana, Metadate, Methylin
Modafinil	Provigil
Nikethamide	---
Norfenefrine	---
Norfenfluramine	---
Octopamine	---
Oxilofrine	---
Parahydroxyamphetamine	---
Pemoline	---
Pentetrazol	---
Phendimetrazine	---
Phenmetrazine	---
Phenpromethamine	---
Phentermine	Fastin, Adipex, Ionamin Prenylamine
4-Phenylpiracetam	Carphedon
Prenylamine	---
Prolintane	---
Propylhexedrine	---
Pseudoephedrine^*	Sudafed, Actifed
Selegiline	---
Sibutramine	---
Strychnine	---
Tuaminoheptane	---

^ *subject to minimum analytical thresholds as determined by the Parties*
* *except as properly prescribed by Club medical personnel*

IV. DOPING METHODS

A. GENERAL

Introduction of a Prohibited Substance into the body by any means, including but not limited to the introduction of a Prohibited Substance, or the ingestion or injection of a supplement or other product containing a Prohibited Substance.

Pharmacological, chemical or physical manipulation by, for example, catheterization, urine substitution, tampering, or inhibition or renal excretion by, for example, probenecid and related compounds.

B. ENHANCEMENT OF OXYGEN TRANSFER

The following are prohibited:

1. Blood doping, including the use of autologous, homologous, or heterologous blood or red blood cell products of any origin. (This prohibition is not intended to prohibit the use of platelet replacement procedures, except as they involve the use of a Prohibited Substance.)
2. Artificially enhancing the uptake, transport, or delivery of oxygen, including, but not limited to, perfluorochemicals, efaproxiral (RSR13) and modified haemoglobin products (e.g. haemoglobin-based blood substitutes, microencapsulated haemoglobin products), excluding supplemental oxygen.

C. CHEMICAL AND PHYSICAL MANIPULATION

The following are prohibited:

1. Any effort to substitute, dilute or adulterate or otherwise tamper with a specimen, or to manipulate a test result to evade detection will be considered a violation of this Policy. These include but are not limited to catheterization and urine substitution.
2. Intravenous infusions are prohibited except for those legitimately received, medically indicated and administered under the supervision of a licensed physician (MD/DO)s. Any other use of intravenous infusions requires a TUE.
3. Sequential withdrawal, manipulation, and reinfusion of whole blood into the circulatory system is prohibited.

D. GENE DOPING

The following, with the potential to enhance sport performance, are prohibited:

1. The transfer of nucleic acids or nucleic acid sequences;
2. The use of normal or genetically modified cells;
3. The use of agents that directly or indirectly affect functions known to influence performance by altering gene expression. For example, Peroxisome Proliferator Activated Receptor δ (PPARδ) agonists (e.g. GW 1516) and PPARδ-AMP-activated protein kinase (AMPK) axis agonists (e.g. AICAR) are prohibited.

APPENDIX B

Personnel

The Independent Administrator of the NFL Policy on Performance-Enhancing Substances is Dr. John Lombardo, who was previously Professor and Chair of the Department of Family Medicine at the Ohio State University College of Medicine, Medical Director of Ohio State University Sports Medicine, and Head Team Physician for the Ohio State University Athletic Department. He is a past member of the World Anti-Doping Agency Therapeutic Use Exemption Expert Group. He also was previously a member of the faculty at the Sports Medicine Center of the Cleveland Clinic and has served as team physician to the Cleveland Cavaliers of the NBA and as an advisor on steroid issues to both the NCAA and the U.S. Olympic Committee.

Pursuant to agreement of the Parties, on an interim basis, the function and designated responsibilities of the Chief Forensic Toxicologist shall be performed by the Directors of the UCLA Olympic Laboratory and the Sports Medicine Research and Testing Laboratory.

The Parties agree that the roles and responsibilities of the Independent Administrator and Chief Forensic Toxicologist are intended to provide expert medical and scientific oversight of testing procedures to ensure that NFL Players receive the highest level of protection permitted in the administration of the Policy.

APPENDIX C

Examples of Medical Evaluations

A. Initial Positive Test

History and Physical

Emphasize:
- Cardiovascular
- Abdominal
- Genitourinary (testicle, prostate, impotence, sterility)
- Psychological (aggressiveness, paranoia, dependency, mental status)
- Immune system (masses, infections, lymphadenopathy)

Testing

- CBC with Differential
- General chemistry panel
  - Electrolytes, BUN/Creatinine, Glucose, Liver enzymes
- Lipid Assay
  - Triglycerides/cholesterol, HDL-C, LDL-C
- Urinalysis
- Cardiovascular
  - EKG
  - Chest X-ray
  - Stress test
  - Echocardiogram
- Semen analysis
- Endocrine Profile
  - TSH, LH, FSH, T4, TBG, Testosterone, SHBG (TBG), Cortisol, ACTH, Serum, Beta hCG
- Liver scan (either MRI or CT or Ultrasound or liver/spleen Scan)
- CT scan of chest/abdomen
- MRI of brain (with attention to pituitary gland)
- Ultrasound of testes

B. Repeat Positive Test Evaluation+

History and Physical - as above

Testing - Lab as above

- CV, Liver scan } As indicated by time since last test and by history and physical

APPENDIX D

POLICY ON PERFORMANCE-ENHANCING SUBSTANCES
-Use of Supplements-

Over the past several years, we have made a special effort to educate and warn Players about the risks involved in the use of "nutritional supplements." Despite these efforts, several Players have been suspended even though their positive test result may have been due to the use of a supplement. Subject to your right of appeal, **if you test positive or otherwise violate the Policy, you *will* be suspended.** You and you alone are responsible for what goes into your body. Claiming that you used only legally available nutritional supplements will not help you in an appeal.

As the Policy clearly warns, supplements are not regulated or monitored by the government. This means that, even if they are bought over-the-counter from a known establishment, there is currently no way to be sure that they:

(a) contain the ingredients listed on the packaging;

(b) have not been tainted with prohibited substances; or

(c) have the properties or effects claimed by the manufacturer or salesperson.

Therefore, if you take these products, you do so AT YOUR OWN RISK! For your own health and success in the League, we strongly encourage you to avoid the use of supplements altogether, or at the very least to be extremely careful about what you choose to take.

Take care and good luck this season.

APPENDIX E

NATIONAL FOOTBALL LEAGUE

Supplements

Dietary supplements are marketed as products that will enhance your health, your stamina, your performance, etc. **Dietary supplements are not approved by the FDA as to effectiveness, adverse effects or label accuracy**. When supplements combine multiple ingredients, there has been no research as to the benefits or risks of these mixtures of ingredients.

The NFL Policy on Performance-Enhancing Substances is a strict liability policy - **you are responsible for what is in your body**.

Since the ingredients of supplements are not tested by the FDA or any independent agency, you cannot be certain that the supplement you take contains the ingredients listed on the label. **Prohibited substances have been found in supplements that were not listed on the label in many research studies**.

Although there is no way to be completely certain supplements do not contain banned substances, players have the following resources available concerning supplements:

1. NSF Certified for Sport for list of supplements tested for ingredients and prohibited substances: **http://www.nsfsport.com/listings/certified_products.asp**
2. USADA supplement website: **http://www.usada.org/supplement411**
3. Independent Administrator, John Lombardo, MD (jlombardo@drjalombardo.com)

I encourage you to avoid these products, but if you are considering taking a supplement use the resources available to gain further information before making your decision. **Remember, you are responsible for what is in your body**.

If you have any questions, please contact me via email at jlombardo@drjalombardo.com or via phone/text message at 614-620-6052.

John A. Lombardo, M.D.
Independent Administrator of the NFL Policy on
Performance-Enhancing Substances

2023

U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator *Washington, D.C. 20537*

July 15, 2008

Mr. Roger Goodell
Commissioner
National Football League
280 Park Avenue
New York, New York 10017

Dear Commissioner Goodell:

Thank you for your concern regarding the policies of the Drug Enforcement Administration (DEA) in enforcing the Anabolic Steroid Control Act of 1990, as amended in 2004, and the National Football League's (NFL) policies to eliminate the use of anabolic steroids in the NFL.

Your program of random and reasonable cause testing for steroids reinforces the provisions of the Anabolic Steroid Control Act. Under this law, DEA has the responsibility to regulate all aspects of the legitimate steroid industry, including doctors and pharmacists.

To those who use anabolic steroids, including professional athletes, I should emphasize that under the Act, possession of even personal use quantities not validly prescribed by a doctor is a federal crime. The maximum penalty for simple possession (possession not for sale), is one year in a federal prison and a minimum $1,000 fine.

DEA will also investigate and prosecute violations involving the unlawful manufacture, distribution, and importation of anabolic steroids. Doctors who prescribe anabolic steroids for other than legitimate purposes will be prosecuted. Pharmacists who dispense anabolic steroids without a doctor's prescription or with one that they know is fraudulent or not issued for a legitimate medical purpose will also be prosecuted.

While DEA's primary focus is law enforcement, we also recognize the importance of public education on matters such as these. I would thus appreciate it if you would make this letter directly available to each NFL team, its players, physicians, trainers, and other personnel.

Sincerely,

Michele M. Leonhart
Acting Administrator

APPENDIX G

Standard Form of Documentation Package

Tab	Item(s)
1.	Cover Sheet
2.	Table of Contents
3.	General Overview of Laboratory Procedures
4.	Custody and Control Forms
	a. External Chain of Custody Form
	b. Specimen Chain of Custody (Bottle and Aliquot)
5.	Initial Test Information (A-Bottle)
6.	Confirmation Test Information
	a. Confirmation Test Description
	b. Chain of Custody Documents
	c. Confirmation Aliquot Chain of Custody Log
	d. Specimen ID Verification Report
	e. Analytical Data
7.	Certification Information
	a. Pending Positive Report (Certifying Scientist Worksheet)
	b. Laboratory Report
8.	Re-Test Information (B-Bottle)
	a. Chain of Custody Pull List
	b. Confirmation Aliquot Chain of Custody Log
	c. Specimen ID Verification Report
	d. Analytical Data
9.	Re-Test Certification Information
	a. Pending Positive Report (Certifying Scientist Worksheet)
	b. Laboratory Report

APPENDIX H

Procedures for Failure to Appear for Testing

Players who are selected for Testing must present and provide a specimen within the time periods set forth in Section 3.2 of this Policy. Players who fail to do so without a valid reason as determined by the Independent Administrator will be subject to discipline as set forth below.

When a Player fails to appear for testing, the Parties, in consultation with the Independent Administrator, will determine the nature of the failure and the degree of the Player's culpability. If the failure to appear is determined to have been a deliberate effort to evade or avoid testing, then the failure will be treated as a Section 6 violation, subject to appeal. For other cases, the failure will be treated as follows:

Unless a warning is issued, the *first* time a Player fails to appear for testing, he will be fined up to $25,000 under his NFL Player Contract and will be placed into the reasonable cause testing program.

A *second* failure to appear for testing will result in a fine of 2 weeks' pay.

A *third* violation will result in a 2-game suspension without pay.

All disputes in connection with these procedures may only be reviewed pursuant to the Other Appeals procedures set forth in Section 10 of the Policy.

Nothing in these procedures shall be meant to include failures to cooperate with testing other than the failure to appear for testing within the applicable time period. Deliberate efforts to substitute or adulterate a specimen, alter a Test Result, evade testing or engage in prohibited doping methods will be considered Positive Tests and will be subject to the discipline set forth in Section 6 of the Policy.

APPENDIX I

Therapeutic Use Exemptions

The NFL recognizes that within the list of prohibited substances there are medications that are appropriate for the treatment of specific medical conditions. For athletes who require the use of a prohibited substance to treat an appropriately diagnosed medical problem, a Therapeutic Use Exemption (TUE) may be requested. In reviewing a TUE request, the Independent Administrator of the NFL Policy on Performance-Enhancing Substances and the Medical Advisor for the Policy and Program for Substances of Abuse have sole discretion to require medical evidence beyond that normally necessary to initiate treatment by the medical community.

TUEs may be granted by the Independent Administrator and/or Medical Advisor after review of a player's TUE application. The TUE application should be filled out and submitted by the player's treating physician and should include all pertinent medical records documenting the diagnosis. After review of each case, the advisors may require further diagnostic testing or previous medical records, and/or may utilize the services of expert consultants. The advisors will have the final decision whether to grant a TUE.

The following general requirements apply to all TUE requests:

1. The medication must be necessary and indicated for treatment of the specific medical problem for which it has been requested;
2. Acceptable alternative treatments with medications that are not prohibited were attempted but failed, or reasons for not prescribing these alternative treatments have been presented;
3. Appropriate evaluation has been completed and all medical records documenting the diagnosis have been submitted for review; and
4. The applicant may not begin use of the prohibited substance until after the TUE is granted.

All players granted a TUE for prohibited substances may be subject to expanded testing under the Policy during the year.

A TUE may be granted retroactively only if emergency use of the prohibited substance is necessary to avoid morbidity or mortality of disease or disorder. TUEs for draft-eligible players will continue to be reviewed and granted prior to or following pre-employment tests at Combine or during visits to individual team facilities.

In addition, specific requirements have been established and must be satisfied in order to obtain a TUE for the following conditions:

- ADHD
- hypertension
- hypogonadism

Any player who is being treated by a licensed MD or DO physician for a condition requiring a medication containing a prohibited substance must have the physician file a TUE application with the Independent Administrator via the NFL TUE Portal. The TUE must be approved prior to beginning the medication. If a player tests positive for a prohibited substance without an approved TUE, this positive test will constitute a violation of the Policy and will be referred to the NFL/NFLPA for administrative action.

Required Documentation – Initial Application
NFL Therapeutic Use Exemptions

All TUE Applications are reviewed by a physician. The physician must be able to make the diagnosis from the available documentation and there must be evidence to support the treatment with a prohibited substance. The required documentation serves as a guide. Please add any additional laboratory testing, diagnostic imaging and/or clinical information/documentation that was used to make the diagnosis under Additional Documentation when completing the application on the NFL TUE Portal. All documents must be uploaded as PDF (.pdf) files.

Please note email addresses for both the physician and athlete are required to complete the TUE application. All communication regarding TUE's will be sent directly to the physician and athlete from admin@nfltue.com.

Required Documents for Initial TUE Submission by Diagnosis Category

Diagnosis Category	Required Documents
ADHD – Attention Hyperactivity Deficit Disorder *For draft eligible/college athletes only* All active NFL players or free agent players must complete an evaluation with a psychiatrists certified to complete NFL ADHD evaluations – contact your teams head athletic trainer or Dr. Lombardo.	(1) Initial Evaluation and Testing (i.e. Neuropsych) performed to make the diagnosis (2) Initial Medical Note when medication was prescribed (3) Most Recent Medical Note (4) Copy of Most Recent Prescription
Altitude Illness	(1) Medical Note
Growth Hormone Deficiency	(1) Medical Evaluation (2) Laboratory Results (3) Diagnostic Testing
Hypertension	(1) Medical Evaluation (2) Laboratory Results
Hypogonadism Prior to undergoing an evaluation for hypogonadism contact Dr. Lombardo. The evaluation and laboratory result requirements are very specific. During the evaluation process, drug testing must be scheduled and completed.	(1) Medical Evaluation (2) Laboratory Results
Infertility	(1) Medical Evaluation & Medical Notes (2) Laboratory Results
Obesity	(1) Medical Evaluation & Medical Notes (2) Laboratory Results
Sleep Disorders	(1) Medical Evaluation (2) Sleep Studies
Other	Check with Dr. Lombardo. This will require submission of all documentation to make the diagnosis.

If you have any questions, please contact John Lombardo, MD, Independent Administrator of the NFL Policy on Performance-Enhancing Substances via email at jlombardo@drjalombardo.com.

Required Documentation – Renewal Application
NFL Therapeutic Use Exemptions

If an active NFL Player or Free Agent Player has been previously granted a TUE for use of a prohibited substance, use the below table as a guide for required documentation for renewal of the TUE. All TUE Applications are reviewed by a physician. The physician must be able to follow the treatment plan from the available documentation and there must be evidence for treatment with the medication. Please add any additional laboratory testing, diagnostic imaging and/or clinical information/documentation that was done since the previous TUE approval under Additional Documentation when completing the application on the NFL TUE Portal. All documents must be uploaded as PDF (.pdf) files.

Required Documents for Renewal TUE Submission by Diagnosis Category

Diagnosis Category	Required Documents
ADHD – Attention Hyperactivity Deficit Disorder	(1) 2 Medical Notes at least 90 days apart with the most recent within 60 days of submission (2) ASRS Completed with each of the 2 required Medical Notes (3) Submission of all Medical Notes related to ADHD care
Altitude Illness	Not eligible for renewal, submit a new application.
Growth Hormone Deficiency	(1) Medical Notes (2) Laboratory Results
Hypertension	(1) Medical Notes
Hypogonadism	(1) Medical Notes (2) Laboratory Results
Infertility	Not eligible for renewal, submit a new application.
Obesity	(1) Medical Notes
Sleep Disorders	(1) Medical Notes
Other	Not eligible for renewal, submit a new application.

If you have any questions, please contact John Lombardo, MD, Independent Administrator of the NFL Policy on Performance-Enhancing Substances via email at jlombardo@drjalombardo.com.

Using the NFL TUE Portal to Submit a TUE Application to the NFL Policy on Performance-Enhancing Substances

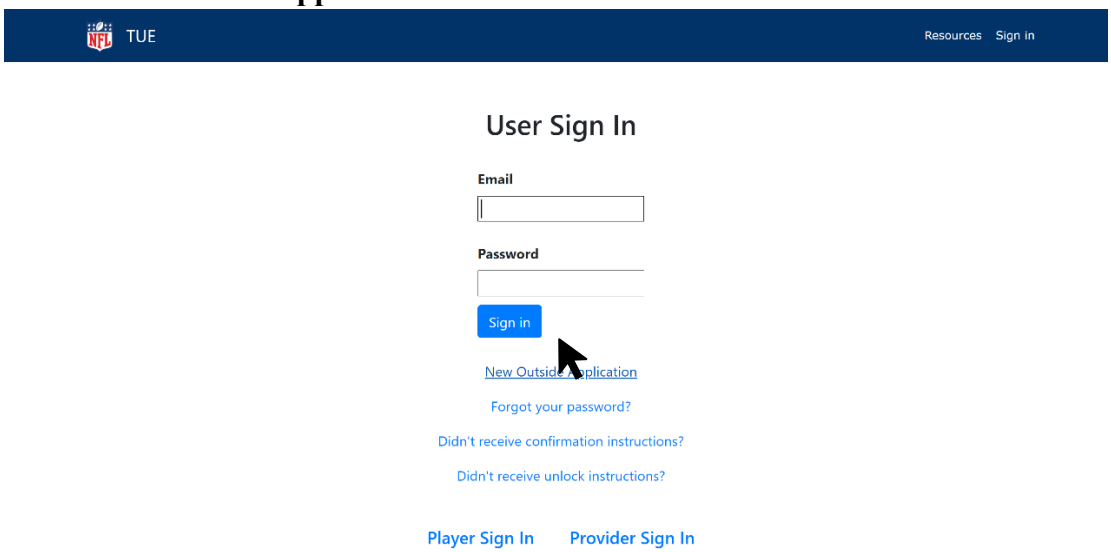
All Therapeutic Use Exemption (TUE) applications for active NFL players, Free Agent players and Draft Eligible/College Players must be submitted through the NFL TUE Portal for Review. As a reminder, **if an athlete tests positive for a prohibited substance prior to being granted a TUE, the positive test will constitute a violation of the Policy with all the ramifications of a violation**.

Review the TUE General Requirements, specific requirements by diagnosis and this document prior to starting the application on the NFL TUE Portal. You must complete the application in one sitting. If you have any questions on TUE requirements, contact John Lombardo, MD, Independent Administrator, NFL Policy on Performance-Enhancing Substances at jlombardo@drjalombardo.com prior to starting an application.

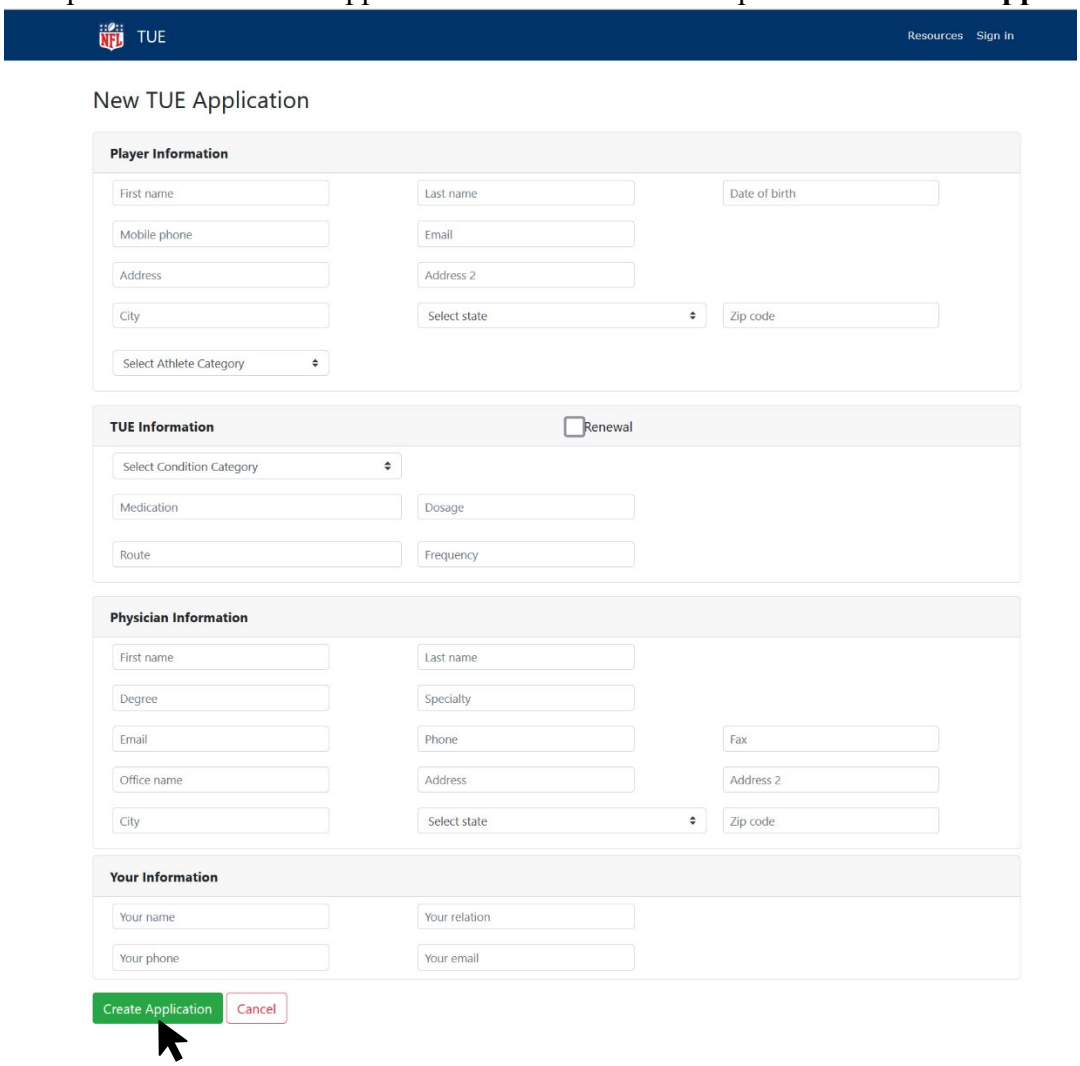
1. Go to **https://nfltue.com**

2. Click on **Sign In**

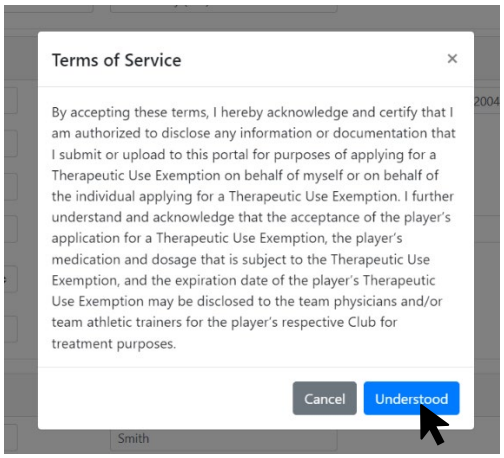
3. Select **New Outside Application**



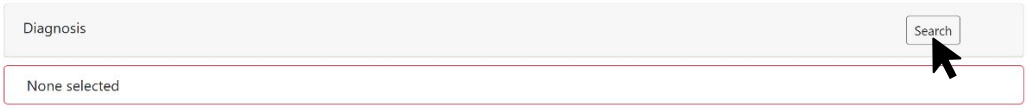
4. Complete the New TUE Application form and when complete click **Create Application**



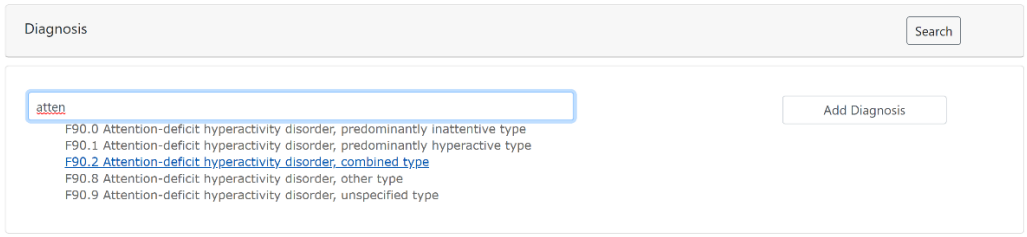
5. Review Terms of Services and click **Understood** to proceed.



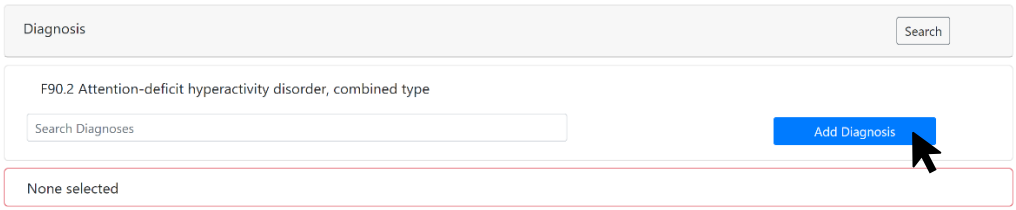
6. On the next form, first you will need to add the official medical diagnosis.
    a. Click on **Search** and then type the official medical diagnosis in the blue bar. Select the correct diagnosis.



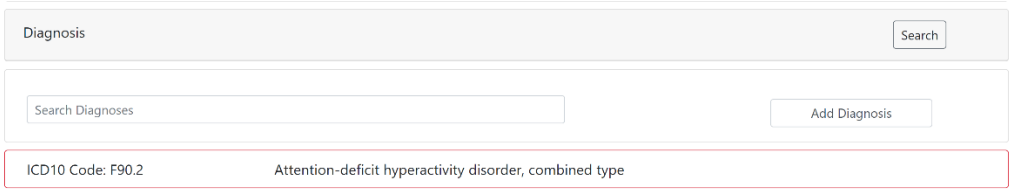
    b. Type the official medical diagnosis in the blue bar and select the correct diagnosis.



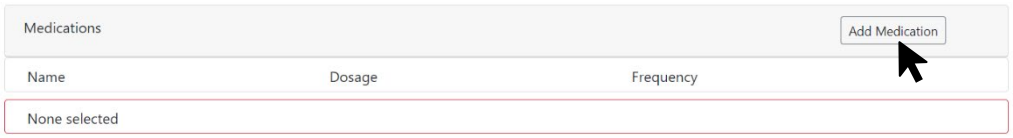
    c. Once the diagnosis is listed, click **Add Diagnosis**.



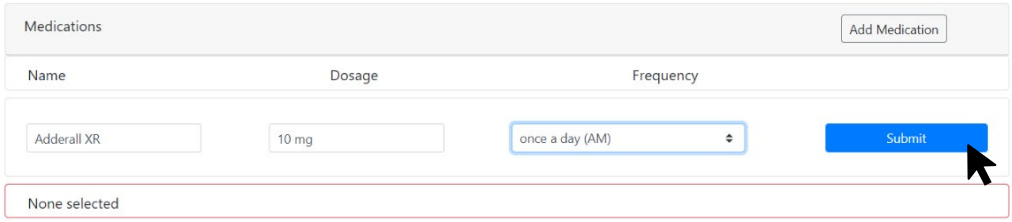
d. This will add the diagnosis to the application.



7. Next, you will need to add the medication the athlete is requesting a TUE to take.
   a. Click on **Add Medication**, enter the required information (medication name, dosage and frequency).



   b. Click **Submit**.



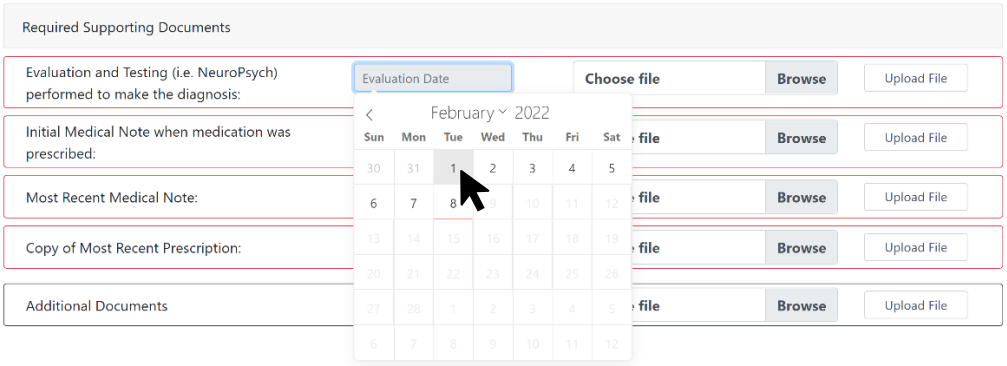
   c. This will add the medication to the application.

   d. If you enter the medication incorrectly, delete the medication by clicking on the red x.

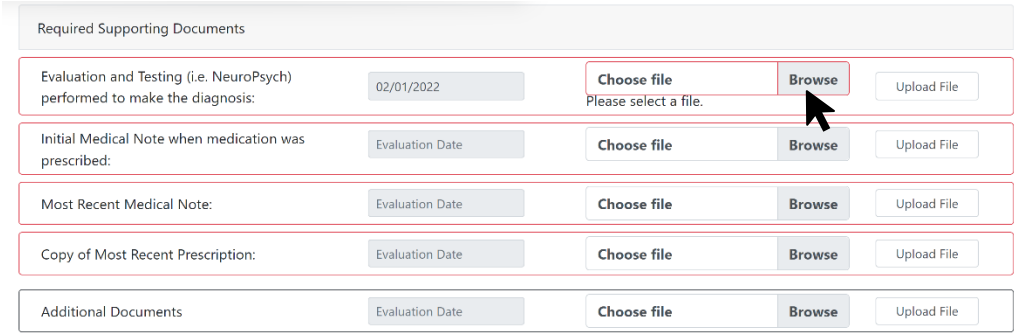
   e. If there are multiple medications, repeat this step to add all medications to the application. Remember medications that need to be entered are medications that contain substances banned under the NFL Drug Policies.

8. Next, go to the required documents section. The required documents based on the diagnosis selected will be circled in red. Each document must be uploaded as a PDF (.pdf). For each document entered, you will need the date of evaluation. The date of evaluation is the date the player was seen by the physician or the date the prescription was written.

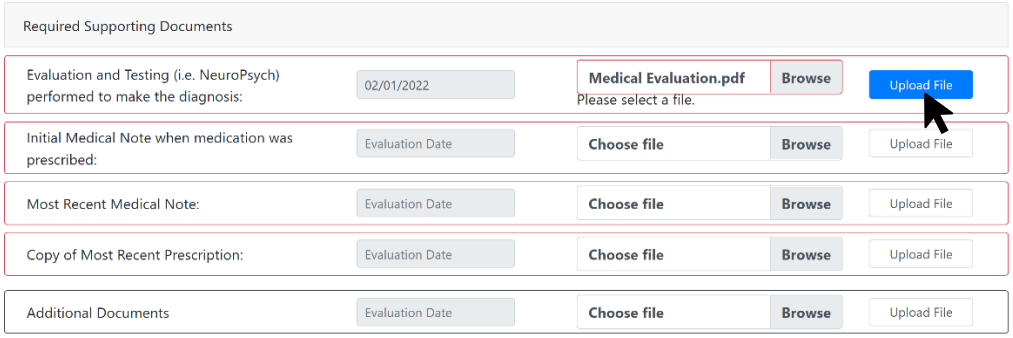
a. Select the Date of Evaluation by clicking on **Date of Evaluation** and use the calendar to select the date.



b. Select the file by clicking **Browse**. Choose the correct file from your computer.

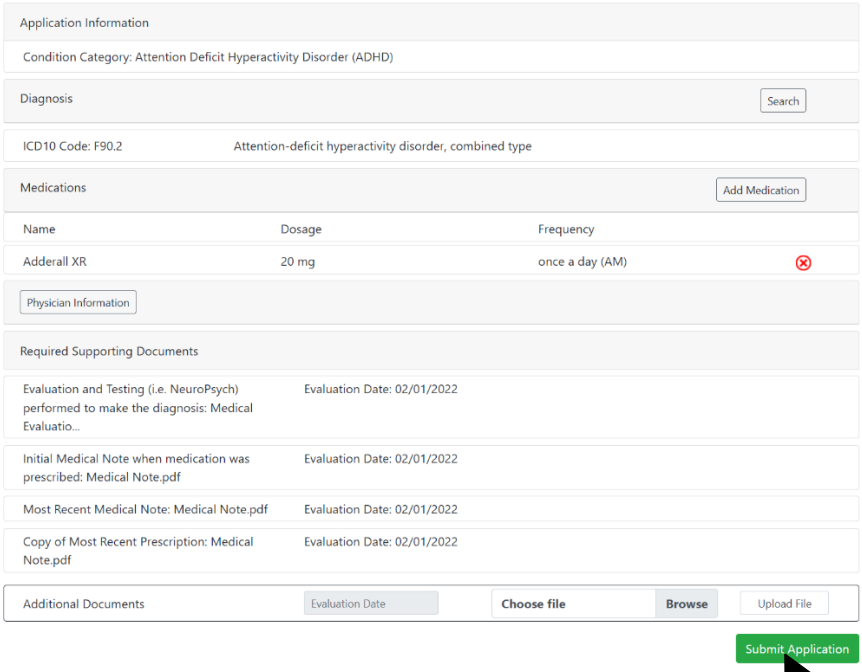


c. Once the correct Date of Evaluation and File have been added, click **Upload File**.

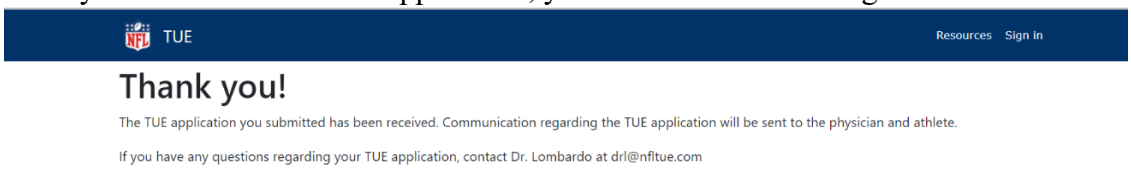


d. Complete this for all required documents along with any additional documents, laboratory results or diagnostic testing.

9. Once you have completed the second form, review the information and when complete click **Submit Application**.



10. Once you have submitted the application, you will see the following screen.



As a reminder, prior to taking medication banned under the NFL Drug Policies, the TUE Application must be reviewed and **if an athlete tests positive for a prohibited substance prior to being granted a TUE, the positive test will constitute a violation of the Policy with all the ramifications of a violation**. Dr. Lombardo will communicate directly with the athlete and physician regarding the TUE application. If you have any questions, please contact Dr. Lombardo via email at jlombardo@drjalombardo.com.

NFL REQUIREMENTS FOR THERAPEUTIC USE EXEMPTION (TUE):

Attention Deficit and Attention Deficit Hyperactivity Disorders (ADHD)

ADHD is a neurobehavioral disorder characterized by a persistent pattern of inattention and/or hyperactivity. To determine the diagnosis of ADHD, the medical evaluation must include:

1. Evaluation for co-morbidities, including laboratory tests, neurocognitive testing and appropriate screening tests (there is no one specific test which is diagnostic for ADHD) to determine the diagnosis and treatment plan; and
2. Complete history, including interviews with player and preferably with family member;
3. Establishment of DSM-V criteria met by player for the diagnosis of ADHD through complete evaluation and use of Adult ADHD Clinician Diagnostic Scale (ACDS) v1.2 and Barkley Functional Impairment Scales (BFIS);

Initial TUE Application

As a reminder, all TUE applications must be sent to the Independent Administrator prior to the initiation of treatment.

The following specific requirements must be satisfied in order to grant a TUE for ADHD:

1. Evaluation by a NFL certified psychiatrist.
2. Pertinent and current history, physical examination and testing, which must be reported including:
    a. Complete history and physical examination, which must include a thorough neurological evaluation, including a thorough and complete concussion history with appropriate brain imaging if indicated and any neuropsychological testing performed to distinguish between post concussive symptoms and ADHD;
    b. The presence or absence of other mental health disorders should be established via longitudinal clinical psychiatric history
    c. Any evaluation or testing for medical and mental health co-morbidities (hypothyroidism, depression, etc.), including laboratory tests, imaging studies or neuropsychological testing (does not replace longitudinal psychiatric or concussion history);
    d. ADHD comprehensive diagnostic scale must be completed and submitted assessing symptoms and impairment used to support the diagnosis of ADHD, including:
        i. Adult ADHD Clinician Diagnostic Scale (ACDS) v1.2; and
        ii. Barkley Functional Impairment Scales (BFIS) from player and other individual (parental report is highly recommended if available and if parent not available then other family member) in addition; BFIS are required if needed to document impairments;
    e. Neurocognitive testing as indicated:
        i. Intelligence test;
        ii. Cognitive ability test;
        iii. Specific tests of executive function and impulse control; and
        iv. Appropriate testing to assess learning disabilities as indicated in clinical history.
3. All available records from previous evaluations that document diagnosis, including any previous test results, previous treatments that have been attempted (include doses and duration of treatment) and the results of such treatment trials;
4. Specification of the DSM-V criteria that are present to diagnose ADHD; and
5. Management plan, to include:
    a. Medication prescribed, including dosage and frequency of medication; Treatment with

non-prohibited substances should be included; extended release preparations, e.g Adderall XR, Vyvanse, Concerta, Focalin XR, Methylphenidate LA, Ritalin LA must be utilized unless there is a pressing clinical indication for immediate release medication.

b. Mechanism to be used to document treatment effectiveness (e.g., you may use rating scales, such as the World Health Organization's Adult ADHD Self Report Scale (ASRS v1.1). Symptom Checklist can be given before beginning treatment and at follow-up visits). **These symptom scales can be used for documentation of treatment but not for diagnosis.**
c. Further testing or treatment of co-morbidities; and
d. Plans for follow-up visits.

6. Submit a NFL TUE application via the NFL TUE Portal.

Annual Review

All TUEs for ADHD require an annual renewal. The following must be submitted annually prior to July 1:

1. Documentation of all follow-up visits (minimum of 2 with the most recent follow-up visit taking place within 60 days of the TUE renewal application) documenting:
    a. Symptoms as related to ADHD and adverse effects which may occur with the treatment;
    b. Efficacy of treatment;
    c. Pertinent history from previous year - especially related to head injury, other mental health disorders, i.e. anxiety, depression and treatment of co-morbid conditions;
    d. Physical exam with emphasis of blood pressure and cardiovascular system, neurological system.
2. Results of any pertinent testing that was completed during the previous year (may include the mechanism used to document treatment effectiveness (e.g., rating scales such as the World Health Organization's Adult ADHD Self Report Scale (ASRS v1.1)); and
3. Documentation of adequate medication adherence (should include player report, pharmacy records (state medication reporting system should be utilized)
4. Treatment plan for the coming year, including medication(s) prescribed, tests ordered and plans for follow-up visits.
5. Submit a NFL TUE application via the NFL TUE Portal

NFL REQUIREMENTS FOR THERAPEUTIC USE EXEMPTION (TUE): Diuretics in the Treatment of Hypertension

Systemic hypertension is the most common cardiovascular condition observed in competitive athletes and is defined as a having a blood pressure measurement above 140/90 on two separate occasions. There are many factors or conditions which affect blood pressure including excess body weight, excess sodium intake, renal disease, sleep apnea and other diseases. In addition, certain medications and foods can cause elevated blood pressure including, non-steroidal anti-inflammatory medication, stimulants, corticosteroids, anti-depressant medication and alcohol. Lifestyle, medications and presence of causative diseases should be included in the evaluation and treatment of an individual with hypertension. The use of diuretics as part of the treatment of NFL players with hypertension requires a TUE.

Initial TUE Application

As a reminder, all TUE applications must be sent to the Independent Administrator prior to the initiation of treatment.

The following specific requirements must be satisfied in order to grant a TUE for the use of diuretics for hypertension:

1. History and physical examination with blood pressure measured on at least two independent occasions with an adequate sized cuff;
2. Laboratory testing must include:
    a. 12 lead electrocardiogram
    b. Urinalysis
    c. Electrolytes including Calcium
    d. BUN/Creatinine
    e. Urinalysis
3. Testing as indicated including:
    a. 24 hour urine for protein and creatinine
    b. Renal imaging
    c. Echocardiography
    d. EKG stress testing
4. Management plan including:
    a. Treatments previously attempted including lifestyle modification and medication (including dose, frequency and duration of trial of treatment). Trial with a non-prohibited substance (e.g. ACE-I, ARB, calcium channel blocker, etc) is required before the use of a diuretic will be approved.
    b. Medication suggested with dose, route and frequency
    c. Plan for monitoring including frequency of visits and follow-up testing
    d. Submit a NFL TUE Application via the NFL TUE Portal

Annual Renewal

All TUEs for hypertension require annual renewal. The following must be submitted prior to July 1:

1. Documentation of all follow-up visits including effect of treatment, adverse effects and results of all laboratory tests. The latest visit should be within 60 days of renewal; and
2. Management plan for the year, including:
    a. Medication suggested with dose, route and frequency
    b. Plan for monitoring including frequency of visits and follow-up testing.
3. Submit a NFL TUE Application via the NFL TUE Portal

NFL REQUIREMENTS FOR THERAPEUTIC USE EXEMPTION (TUE): Hypogonadism

Hypogonadism is the absent or decreased function of the testes resulting in decreased production of testosterone and/or decreased production of spermatozoa. Hypogonadism can be primary, a problem in the testes with etiologies such as Klinefelter's syndrome, Leydig cell aplasia, bilateral anorchia, testicular infection, trauma, etc. Hypogonadism can also be secondary with normal testes but lack of the stimulatory signals (gonadatropic hormones LH and/or FSH). Examples of the medical conditions or treatments that may cause hypogonadotropic hypogonadism include isolated LH deficiency, hypopituitarism due to tumor, infection or trauma, medications, etc. The etiology of the hypogonadism is either organic with a pathological change in the structure of an organ or within the hypothalamic-pituitary-testicular axis or functional in which there is no observable pathological change in the structure of an organ or within the hypothalamic-pituitary-testicular axis. TUEs will be granted for organic etiologies of hypogonadism.

Previous use of exogenous androgens may result in decreased pituitary and/or gonadal function and TUE is not indicated for this condition. Additionally, low normal levels of gonadal hormones and/or gonadotropins are not indications for granting a TUE for hypogonadism.

Initial TUE Application

As a reminder, all TUE applications must be sent to the Independent Administrator prior to the initiation of treatment. Additionally because expanded drug testing is required during evaluation process (see below), the Independent Administrator should be notified when diagnosis is being considered.

The following specific requirements must be satisfied in order to grant a TUE for hypogonadism:

1. History and physical examination performed by an endocrinologist and all medical records which document the diagnosis;
2. Laboratory testing must include:
    a. Free (dialysis method) and Total testosterone drawn before 10 AM – repeated 3 times over 4 weeks
    b. LH and FSH – drawn with testosterone each time
    c. Sex hormone binding globulin (SHBG)
    d. TSH and free T4
    e. Estradiol
    f. Prolactin
    g. IGF-1
3. If clinically indicated, testing must include:
    a. Testicular imaging
    b. Semen analysis
4. If hypogonadotropic hypogonadism is the presumptive diagnosis, then stimulation testing and imaging must be performed including:
    a. Glucagon stimulation test or GHRH for HGH
    b. HCG stimulation test
    c. MRI of brain with pituitary (sella) cuts with and without contrast
5. Drug testing under the NFL Policy on Performance Enhancing Substances to coincide with the administration of repeated tests for testosterone (to be arranged through the Independent Administrator)
6. Management plan including:
    a. Medication suggested with dose, route and frequency and who will be administering medication
    b. Regular testing of serum hormone levels (Total testosterone) with levels not exceeding

therapeutic range. Results must be sent to Independent Administrator who may at his sole discretion require additional testing of the player's hormonal level on 24-hour notice; and

c. Regular visits and plans for re-evaluation (e.g. trial off medication with testing)

7. Submit a NFL TUE Application via the NFL TUE Portal

All players granted a TUE for hypogonadism will be subject to expanded testing under the Policy during the year.

Annual Renewal

All TUEs for hypogonadism require annual renewal. The following must be submitted prior to July 1:

1. Documentation of all follow-up visits including effect of treatment, adverse effects and results of all laboratory tests (latest test must be within 60 days of application);
2. Results of a re-evaluation following removal from the medication with adequate washout period (4-6 weeks) or medical justification why re-evaluation need not be performed.
3. Management plan for the year to include:
    a. Medication suggested with dose, route and frequency and who will be administering medication
    b. Regular testing of hormone levels (Total testosterone)
    c. Regular visits and plans for re-evaluation (e.g. trial off medication with testing)
4. Submit a NFL TUE Application via the NFL TUE Portal

APPENDIX J

Permitted Activities for Suspended Players

For the first half of any suspension period, Players suspended under this Policy will be prohibited from attending the club facility, engaging in any club activities, or having any contact with club personnel. During the remainder of the suspension period, suspended Players will be permitted to engage in the following activities:

- Receive on-site rehabilitation and treatment with medical and athletic training staff.
- Meet with player engagement staff, mental health consultants, team chaplain, treating clinicians, and other professional resources.
- Attend team meetings.
- Meet individually with the head coach, coordinator and position coach.
- Participate in individual workouts with the strength and conditioning coach.
- Take meals in the cafeteria and use team facilities on an individual basis.

While suspended, Players will continue to be prohibited from: attending or participating in group workouts; attending, observing, or participating in practices; attending home or away games; and attending club-sponsored community events, press conferences or other media appearances.

In order to be eligible to participate in these permitted activities while suspended, a Player must request permission from his club, and the club must agree to the Player's participation. The Player may decline to make such request of his club and the club may decline the Player's request. Either party may revoke its agreement at any time.

If the Player is allowed to participate in permitted activities, he is expected to comply with all generally-applicable club rules and policies and is subject to discipline for failure to do so under the club discipline schedule and Article 42 of the CBA.

If the Player participates in activities that are not permitted, both the Player and club will be subject to disciplinary action. A Player may not be disciplined unless discipline is also imposed on the club for the same infraction. The Player may assert as a defense that he did not know that the activities were not permitted when he engaged in them.

The Player must be medically cleared by the advisors before he may petition his club for approval to participate in permitted activities. If, for example, the Player has been directed to inpatient treatment for substance abuse, he must satisfactorily complete that treatment before he will be eligible to participate in activities at the club facility.

The Player must be under contract to the club in order to petition for permission to participate in permitted activities.

The Commissioner retains his authority to permit a Player to participate in practices or other football activities for up to two weeks prior to the conclusion of the suspension.

COLLECTIVE BARGAINING AGREEMENT

2020

NFLPA

ARTICLE 15
SYSTEM ARBITRATOR

Section 1. **Appointment:** The parties agree that the System Arbitrator shall have exclusive jurisdiction to enforce the terms of Articles 1, 4, 6–19, 26–28, 31, or 65–67 of this Agreement (except as provided in those Articles with respect to disputes determined by the Impartial Arbitrator, the Accountants, or another arbitrator).

Section 2. **Scope of Authority:**

(a) The System Arbitrator shall make findings of fact and determinations of relief including, without limitation, damages (including damages referred to in Article 17, Section 9), injunctive relief, fines, and specific performance.

(b) The Appeals Panel shall accept the System Arbitrator's findings of fact unless clearly erroneous and the System Arbitrator's recommendations of relief unless based upon clearly erroneous findings of fact, incorrect application of the law, or abuse of discretion, except that, as to any finding concerning Article 17, any imposition of a fine of $1 million or more, or any finding that would permit termination of this Agreement, review shall be de novo.

(c) Subject to Subsections (a) and (b) above, the Appeals Panel shall determine all points of law and finally make the award of all relief including, without limitation, contract damages, injunctive relief, fines, and specific performance.

(d) Except for any matters for which the Appeals Panel has de novo review of the System Arbitrator's determinations, rulings of the System Arbitrator shall upon their issuance be binding upon and followed by the parties unless stayed, reversed, or modified by the Appeals Panel. In entertaining a request for a stay of a ruling of the System Arbitrator, the Appeals Panel shall apply the standard that the United States Court of Appeals for the Second Circuit would apply to a request for a stay of a ruling of a district court within that Circuit. If and when a decision of the System Arbitrator is reversed or modified, the effect of such reversal or modification shall be deemed by the parties to be retroactive to the time of issuance of the ruling of the System Arbitrator.

(e) The System Arbitrator's and Appeals Panel's authority shall be limited to the terms of Articles 1, 4, 6–19, 26–28, 31, or 65-67 of this Agreement (except as provided in those Articles with respect to disputes determined by the Impartial Arbitrator, the Accountants, or another arbitrator).

(f) **Statute of Limitations.** Unless otherwise specified in this Agreement, a three year statute of limitations shall apply to the initiation of proceedings before the System Arbitrator, which statute begins to apply on the date upon which the facts giving rise to the proceeding are known or reasonably should have been known to the party bringing the proceeding.

Section 3. **Discovery:** In any of the disputes described in this Agreement over which the System Arbitrator has authority, the System Arbitrator shall grant reasonable and expedited discovery upon the application of any party where, and to the extent, he determines it is reasonable to do so. Such discovery may include the production of documents and the taking of depositions. Subject to rules to be agreed to by the parties, in any proceeding

to review any alleged violation of Article 12 of this Agreement regarding any AR issue, the System Arbitrator shall have the authority, upon good cause shown, to direct any Club to produce any tax materials disclosing any income figures for such Club or Club Affiliate (non-income figures may be redacted) which in his or her judgment relates to any such alleged violation, including but not limited to portions of any tax returns or other documents submitted to the Internal Revenue Service. Subject to rules to be agreed to by the parties, in any proceeding to review any alleged violation of Article 13 and/or Article 7 of this Agreement regarding any Salary paid to any player(s), the System Arbitrator shall have the authority, upon good cause shown, to direct any such player(s) to produce any tax materials disclosing any income figures for any such player or Player Affiliate (non-income figures may be redacted) which in his or her judgment relates to any such alleged violation, including but not limited to portions of any tax returns or other documents submitted to the Internal Revenue Service. In each case the System Arbitrator shall not release such tax materials to the general public, and any such tax materials shall be treated as strictly confidential under an appropriate protective order.

Section 4. **Compensation:** The compensation and costs of retaining the System Arbitrator and the Appeals Panel shall be equally borne by the NFL and the NFLPA. In no event shall any party be liable for the attorneys' fees incurred in any such enforcement proceeding by any other party, except as set forth in Article 17.

Section 5. **Procedures:** All matters in enforcement proceedings before the System Arbitrator shall be heard and determined in an expedited manner. An enforcement proceeding may be commenced upon 72 hours written notice (or upon shorter notice if ordered by the System Arbitrator) served upon the party against whom the enforcement proceeding is brought and filed with the System Arbitrator. All such notices and all orders and notices issued and directed by the System Arbitrator shall be served upon the NFL and the NFLPA, in addition to any counsel appearing for individual NFL players or individual NFL Clubs. The NFL and the NFLPA shall have the right to participate in all such enforcement proceedings, and the NFLPA may appear in any enforcement proceedings on behalf of any NFL player who has given authority for such appearance. Unless otherwise agreed, all hearings will be transcribed.

Section 6. **Selection of System Arbitrator:**

(a) In the event that the NFL and NFLPA cannot agree on the identity of a System Arbitrator, the parties agree to ask the CPR Institute (or such other organization(s) as the parties may agree) for a list of eleven attorneys (none of whom shall have nor whose firm shall have represented within the past five years players, player representatives, clubs or owners in any professional sport). If the parties cannot within thirty days of receipt of such list agree to the identity of the System Arbitrator from among the names on such list, they shall alternately strike names from said list, until only three names remain, at which point the parties shall make reasonable efforts to interview the remaining candidates. After those interviews, and if the parties cannot agree on the selection, the striking process shall resume until only one name remains, and that person shall be the System Arbitrator. The first strike shall be determined by a coin flip. Upon selection, the System Arbitrator shall

serve for an initial eighteen-month term commencing on the date of entry of the order of appointment. Thereafter, the System Arbitrator shall continue to serve for successive two-year terms unless notice to the contrary is given either by the NFL or the NFLPA. Such notice shall be given to the other party and the System Arbitrator within the ninety days preceding the end of any term, but no later than thirty days prior to the end of such term. Following the giving of such notice, a new System Arbitrator shall be selected in accordance with the procedures set forth in this Section 6. The NFL and the NFLPA may dismiss the System Arbitrator at any time and for any reason upon their mutual consent. Unless the parties otherwise agree, a discharged System Arbitrator shall retain jurisdiction for any proceeding which has been commenced prior to such discharge.

(b) In the event of the absence (or vacancy) of the System Arbitrator, one of the members of the Appeals Panel (to be chosen by the parties, confidentially using the strike system) shall serve as the System Arbitrator until a new System Arbitrator is chosen pursuant to Subsection (a) above.

Section 7. **Selection of Appeals Panel:**

(a) There shall be a three-member Appeals Panel, at least one of whom must be a former judge. In the event the NFL and NFLPA cannot agree upon the members of such a panel, the parties will jointly ask the CPR Institute (or such other organization(s) as the parties may agree) to submit to the parties a list of fifteen (15) attorneys (none of whom shall have, nor whose firm shall have, represented within the past five (5) years any professional athletes; agents or other representatives of professional athletes; labor organizations representing athletes; sports leagues, governing bodies, or their affiliates; sports teams or their affiliates; or owners in any professional sport). If the parties cannot within fifteen (15) days from the receipt of such list agree to the identity of the Appeals Panel from among the names on such list, they shall meet and alternate striking one (1) name at a time from the list until three (3) names on the list remain. The first strike will be assigned to the party that received the second strike in the selection of the System Arbitrator, or a coin flip, if striking was not used in selecting the System Arbitrator. The three (3) remaining names on the list shall comprise the Appeals Panel. The compensation of the members of the Appeals Panel and the costs of proceedings before the Appeals Panel shall be borne equally by the parties to this Agreement; provided, however, that each participant in an Appeals Panel proceeding shall bear its own attorneys' fees and litigation costs.

(b) In the event that there is a vacancy on the Appeals Panel, or in the event that an appeal is taken from a decision of a member of the Appeals Panel serving as the System Arbitrator pursuant to Subsection 6(b) above, the parties shall select another member to the Panel, using the procedures set forth in Subsection 7(a) above.

Section 8. **Procedure for Appeals:**

(a) Any party seeking to appeal (in whole or in part) an award of the System Arbitrator must serve on the other party and file with the System Arbitrator a notice of appeal within ten (10) days of the date of the award appealed from.

(b) Following the timely service and filing of a notice of appeal, the NFLPA and NFL shall attempt to agree upon a briefing schedule. In the absence of such agreement, and subject to Subsection (d) below, the briefing schedule shall be set by the Appeals Panel; provided, however, that any party seeking to appeal (in whole or in part) from an award of the System Arbitrator shall be afforded no less than fifteen (15) and no more than twenty-five (25) days from the date of the issuance of such award, or the date of the issuance of the System Arbitrator's written opinion, whichever is latest, to serve on the opposing party and file with the Appeals Panel its brief in support thereof; and provided further that the responding party or parties shall be afforded the same aggregate amount of time to serve and file its or their responding brief(s).

(c) The Appeals Panel shall schedule oral argument on the appeal(s) no less than five (5) and no more than ten (10) days following the service and filing of the responding brief(s), and shall issue a written decision within thirty (30) days from the date of argument. The Appeals Panel shall have the discretion to permit a reply brief.

(d) For good cause, either party may seek to accelerate the briefing, hearing, and decision schedule set forth in Subsections (b) and (c) above.

(e) The decision of the Appeals Panel shall constitute full, final, and complete disposition of the dispute. If there is no timely appeal of a decision of the System Arbitrator, the System Arbitrator's decision shall constitute the full, final and complete disposition of the dispute.

Section 9. **Decision:** Any decision issued by the System Arbitrator or the Appeals Panel may be enforced only against a Club or Clubs or the League, as applicable, found to have violated this Agreement. In no event may the System Arbitrator or Appeals Panel order relief, or assess any monetary award, against an individual Club owner, officer, or non-player employee.

Section 10. **Confidentiality:** Unless the parties agree otherwise, proceedings before the System Arbitrator and Appeals Panel, other than their decisions, shall be confidential, and may not be disclosed to persons other than counsel, senior executives of the NFL and any involved Club, senior executives of the NFLPA, the NFLPA Executive Committee, NFLPA Player Representatives, and any involved player(s), player agent(s), or Club or League personnel. The foregoing does not prejudice the right of any party to seek any additional confidentiality restrictions (including as to the decision) from the System Arbitrator or Appeals Panel, if such party demonstrates just cause.

ARTICLE 43
NON-INJURY GRIEVANCE

Section 1. **Definition:** Any dispute (hereinafter referred to as a "grievance") arising after the execution of this Agreement and involving the interpretation of, application of, or compliance with, any provision of this Agreement, the NFL Player Contract, the Practice Squad Player Contract, or any applicable provision of the NFL Constitution and Bylaws or NFL Rules pertaining to the terms and conditions of employment of NFL players, will be resolved exclusively in accordance with the procedure set forth in this Article, except wherever another method of dispute resolution is set forth elsewhere in this Agreement.

Section 2. **Initiation:** A grievance may be initiated by a player, a Club, the Management Council, or the NFLPA. A grievance must be initiated within fifty (50) days from the date of the occurrence or non-occurrence upon which the grievance is based, or within fifty (50) days from the date on which the facts of the matter became known or reasonably should have been known to the party initiating the grievance, whichever is later. A player need not be under contract to a Club at the time a grievance relating to him arises or at the time such grievance is initiated or processed.

Section 3. **Filing:** Subject to the provisions of Section 2 above, a player or the NFLPA may initiate a grievance by filing a written notice by certified mail, fax, or electronically via .pdf with the Management Council and furnishing a copy of such notice to the Club(s) involved; a Club or the Management Council may initiate a grievance by filing written notice by certified mail, fax, or electronically via .pdf with the NFLPA and furnishing a copy of such notice to the player(s) involved. The notice will set forth the specifics of the alleged action or inaction giving rise to the grievance. If a grievance is filed by a player without the involvement of the NFLPA, the Management Council will promptly send copies of the grievance and answer to the NFLPA. The party to whom a Non-Injury Grievance has been presented will answer in writing by certified mail, fax, or electronically via .pdf within ten (10) days of receipt of the grievance. The answer will set forth admissions or denials as to the facts alleged in the grievance. If the answer denies the grievance, the specific grounds for denial will be set forth. The answer may also raise the special defenses set forth in Article 30, Section 3, Article 45, Section 6(b) and Article 45, Section 10(b) of this Agreement, if applicable. The answering party will provide a copy of the answer to the player(s) or Club(s) involved and the NFLPA or the Management Council as may be applicable. See also Section 14 below regarding electronic exchange of Standard Grievance Correspondence.

Section 4. **Ordinary and Expedited Appeal:** If a grievance is not resolved after it has been filed and answered, either the player(s) or Club(s) involved, or the NFLPA, or the Management Council may appeal such grievance by filing a written notice of appeal with the Notice Arbitrator and mailing copies thereof to the party or parties against whom such appeal is taken, and either the NFLPA or the Management Council as may be appropriate. If the grievance involves a suspension of a player by a Club, the player or NFLPA will have the option to appeal it immediately upon filing to the Notice Arbitrator and a hearing

will be held by an arbitrator designated by the Notice Arbitrator within seven (7) days of the filing of the grievance. The NFLPA and the NFL will engage in good faith efforts to schedule grievances involving suspension of a player by a Club prior to the Club's next scheduled game. In addition, the NFLPA and the Management Council will each have the right of immediate appeal and hearing within seven (7) days with respect to four (4) grievances of their respective choice each calendar year. The arbitrator(s) designated to hear such grievances will issue their decision(s) within five (5) days of the completion of the hearing. Pre-hearing briefs may be filed by either party and, if filed, will be exchanged prior to hearing.

Section 5. **Discovery and Prehearing Procedures:**

(a)(i) Any party may seek bifurcation of a grievance to assert a claim of untimeliness. Bifurcation motions shall be presented in writing to the other party and the arbitrator in the moving party's answer or at any time no later than seven (7) days prior to the scheduled hearing on the merits of the grievance. If an arbitrator has not yet been assigned to hear the grievance then the moving party shall file the motion with the Notice Arbitrator, who will decide the motion or assign it to a member of the Non-Injury Grievance Arbitration panel. A party's decision to pursue a bifurcated hearing may not delay the processing of a hearing scheduled on the merits of the grievance. For any motions made at least thirty (30) days before a hearing on the merits of the grievance, the parties will use their best efforts to bifurcated hearing at least ten (10) days before the scheduled hearing on the merits of the grievance. In any case where a timely motion for bifurcation is made, but a bifurcated hearing is not held, the arbitrator shall decide the issue of timeliness during the hearing on the merits.

(ii) If a defense of untimeliness is not raised at least seven (7) days before the scheduled hearing on the merits of the grievance, the parties will be precluded from arguing that defense. However, where a party learns of facts supporting the defense fewer than seven days prior to the hearing, during the hearing, or in a post-hearing deposition, the party must present the defense to the opposing party and arbitrator within seven (7) days of when the facts supporting the defense became known or reasonably should have been known to the party. An assertion at the hearing, or subsequent to the hearing, of a newly-discovered untimeliness defense will enable either party to present additional testimony, including the opportunity to recall witnesses or call new witnesses.

(iii) If a grievance is ultimately dismissed based on a finding of untimeliness, the arbitrator shall issue a written decision limited to that issue, and such ruling shall be final.

(b) No later than fourteen (14) days prior to the date set for any hearing, each party will submit to the other copies of all documents, reports and records relevant to the dispute. Failure to submit such documents, reports and records no later than fourteen (14) days prior to the hearing will preclude the non-complying party from submitting such documents, reports and records into evidence at the hearing, but the other party will have the opportunity to examine such documents, reports and records at the hearing and to introduce those it desires into evidence, except that relevant documents submitted to the opposing party less than fourteen (14) days before the hearing will be admissible provided that the proffering party and the custodian(s) of the documents made a good faith effort

to obtain (or discover the existence of) said documents or that the document's relevance was not discovered until the hearing date. In the case of an expedited grievance pursuant to Section 4, such documentary evidence shall be exchanged on or before two (2) days prior to the date set for the hearing unless the arbitrator indicates otherwise.

Section 6. **Arbitration Panel:** There will be a panel of four (4) arbitrators, whose appointment must be accepted in writing by the NFLPA and the Management Council. The parties will designate the Notice Arbitrator within ten (10) days of the execution of this Agreement. In the event of a vacancy in the position of Notice Arbitrator, the senior arbitrator in terms of service as a Non-Injury Grievance Arbitrator will succeed to the position of Notice Arbitrator, and the resultant vacancy on the panel will be filled according to the procedures of this Section. Either party to this Agreement may discharge a member of the arbitration panel by serving written notice upon the arbitrator and the other party to this Agreement from July 10 through July 20 of each year, but at no time shall such discharges result in no arbitrators remaining on the panel. If an arbitrator has been discharged, he or she shall retain jurisdiction for any case in which the hearing has commenced. If either party discharges an arbitrator, the other party shall have two (2) business days to discharge any other arbitrator. If the parties are unable to agree on a new arbitrator within thirty (30) days of any vacancy, the Notice Arbitrator shall submit a list of ten (10) qualified and experienced arbitrators to the NFLPA and the Management Council. Within fourteen (14) days of the receipt of the list, the NFLPA and the Management Council shall select one arbitrator from the list by alternately striking names until only one remains, with a coin flip determining the first strike. The next vacancy occurring will be filled in similar fashion, with the party who initially struck first then striking second. The parties will alternate striking first for future vacancies occurring thereafter during the term of this Agreement. If either party fails to cooperate in the striking process, the other party may select one of the nominees on the list and the other party will be bound by such selection.

Section 7. **Hearing:**

(a) Each arbitrator will designate a minimum of twelve (12) hearing dates per year, exclusive of the period July 1 through September 10 for non-expedited cases, for use by the parties to this Agreement. Upon being appointed, each arbitrator will, after consultation with the Notice Arbitrator, provide to the NFLPA and the Management Council specified hearing dates for such ensuing period, which process will be repeated on a regular basis thereafter. The parties will notify each arbitrator thirty (30) days in advance of which dates the following month are going to be used by the parties. The designated arbitrator will set the hearing on his next reserved date in the Club city unless the parties agree otherwise. If a grievance is set for hearing and the hearing date is then postponed by a party within thirty (30) days of the hearing, the postponement fee of the arbitrator will be borne by the postponing party unless the arbitrator determines that the postponement was for good cause. Should good cause be found, the parties will bear any postponement costs equally. If the arbitrator in question cannot reschedule the hearing within thirty (30) days of the postponed date, the case may be reassigned by the Notice Arbitrator to another panel member who has a hearing date available within the thirty (30) day period. At the hearing, the parties to the grievance and the NFLPA and Management Council will have

the right to present, by testimony or otherwise, and subject to Section 5, any evidence relevant to the grievance. All hearings will be transcribed.

(b) If a witness is unable to attend the hearing, the party offering the testimony shall inform the other party of the identity and unavailability of the witness to attend the hearing. At the hearing or within fourteen (14) days thereafter, the parties will agree upon dates to take testimony of unavailable witnesses, which dates will be within forty-five (45) days of the parties' receipt of the hearing transcript. The record should be closed sixty (60) days after the hearing date unless mutually extended notwithstanding any party's failure to present post-hearing testimony within the above-mentioned time period. If a witness is unavailable to attend the hearing, the witness' testimony may be taken by telephone conference call if the parties agree. In instances in which the parties agree that the material facts giving rise to the grievance are not in dispute, the arbitrator shall have the authority to decide the merits of the case solely on the written submissions of the parties. In cases where the amount claimed is less than $25,000, the parties may agree to hold the hearing by telephone conference call. If either party requests post-hearing briefs, the parties shall prepare and simultaneously submit briefs except in grievances involving non-suspension Club discipline where less than $25,000 is at issue, in which cases briefs will not be submitted, unless requested by the arbitrator.

(c) In each instance in which briefs are not submitted, within fourteen (14) days of the closing of the record, either party may submit to the Arbitrator prior opinions for the arbitrator's consideration in issuing the decision. Briefs must be submitted to the arbitrator no later than sixty (60) days after receipt of the last transcript.

Section 8. **Arbitrator's Decision and Award:** The arbitrator will issue a written decision within thirty (30) days of the submission of briefs, but in no event shall he or she consider briefs filed by either party more than sixty (60) days after receipt of the last transcript, unless the parties agree otherwise. The decision of the arbitrator will constitute full, final and complete disposition of the grievance, and will be binding upon the player(s) and Club(s) involved and the parties to this Agreement, provided, however, that the arbitrator will not have the jurisdiction or authority: (a) to add to, subtract from, or alter in any way the provisions of this Agreement or any other applicable document; or (b) to grant any remedy other than a money award, an order of reinstatement, suspension without pay, a stay of suspension pending decision, a cease and desist order, a credit or benefit award under the Bert Bell/Pete Rozelle NFL Player Retirement Plan, or an order of compliance with a specific term of this Agreement or any other applicable document, or an advisory opinion pursuant to Article 39, Section 5(f). In the event the arbitrator finds liability on the part of any party, he or she shall award Interest beginning one year from the date of the last regular season game of the season of the grievance.

Section 9. **Time Limits:** Each of the time limits set forth in this Article may be extended by mutual written agreement of the parties involved. If any grievance is not processed or resolved in accordance with the prescribed time limits within any step, unless an extension of time has been mutually agreed upon in writing, either the player, the NFLPA, the Club

or the Management Council, as the case may be, after notifying the other party of its intent in writing, may proceed to the next step.

Section 10. **Representation:** In any hearing provided for in this Article, a player may be accompanied by counsel of his choice and/or a representative of the NFLPA. In any such hearing, a Club representative may be accompanied by counsel of his choice and/or a representative of the Management Council.

Section 11. **Costs:** Subject to Section 7, all costs of arbitration, including the fees and expenses of the arbitrator and the transcript costs, will be borne equally between the parties. Notwithstanding the above, if the hearing occurs in the Club city and if the arbitrator finds liability on the part of the Club, the arbitrator shall award the player reasonable expenses incurred in traveling to and from his residence to the Club city, lodging, and meal expenses in accordance with Article 34.

Section 12. **Payment:** If an award is made by the arbitrator, payment will be made within thirty (30) days of the receipt of the award to the NFL or Club, to the player, or jointly to the player and the NFLPA provided the player has given written authorization for such joint payment. The time limit for payment may be extended by mutual consent of the parties or by a finding of good cause for the extension by the arbitrator. Where payment is unduly delayed beyond thirty (30) days, double Interest will be assessed from the date of the decision. The arbitrator shall retain jurisdiction of the case for the purpose of awarding post-hearing interest pursuant to this Section.

Section 13. **Grievance Settlement Committee:** A grievance settlement committee consisting of representatives of the NFLPA and representatives of the Management Council shall meet annually between the end of the regular season and the annual arbitration scheduling conference. The committee shall engage in good faith efforts to settle or bifurcate any pending grievances. No evidence will be taken at such meetings, except parties involved in the grievance may be contacted to obtain information about their dispute. If the committee resolves any grievance by mutual agreement of its members, such resolution will be made in writing and will constitute full, final and complete disposition of the grievance and will be binding upon the player(s) and the Club(s) involved and the parties to this Agreement.

Section 14. **Standard Grievance Correspondence:**

(a) Standard Grievance Correspondence is defined as and includes the following documents: Injury and Non-Injury Grievance filings; answers; appeals; arbitration selection letters; hearing setup letters; discovery letters and documents; correspondence regarding neutral physician examination(s), including requests by the neutral physician for tests, films or other documents; hearing, deposition, or other general scheduling letters; withdrawal letters; pre- and post-hearing briefs; and settlement and release agreements.

(b) Standard Grievance Correspondence may be sent via .pdf e-mail; all parties shall use their best efforts to send Standard Grievance Correspondence via e-mail.

(c) The NFL and NFLPA will provide each other with a list of designated e-mail addresses for the receipt of Standard Grievance Correspondence. The subject line of any Standard Grievance Correspondence sent via e-mail shall include the full name of the player(s), the name of the Club(s) involved and the date of filing.

(d) The parties shall agree to additional procedures to govern the electronic transmission of Standard Grievance Correspondence, as may be warranted.

ARTICLE 44
INJURY GRIEVANCE

Section 1. **Definition:** An "Injury Grievance" is a claim or complaint that, at the time a player's NFL Player Contract or Practice Squad Player Contract was terminated by a Club, the player was physically unable to perform the services required of him by that contract because of an injury incurred in the performance of his services under that contract. All time limitations in this Article may be extended by mutual agreement of the parties.

Section 2. **Filing:** Any player and/or the NFLPA must present an Injury Grievance in writing to a Club, with a copy to the Management Council, within twenty-five (25) days from the date it became known or should have become known to the player that his contract had been terminated. The grievance will set forth the approximate date of the alleged injury and its general nature. If a grievance is filed by a player without the involvement of the NFLPA, the Management Council will promptly send copies of the grievance and the answer to the NFLPA.

Section 3. **Answer:**

(a) The Club to which an Injury Grievance has been presented will answer in writing within ten (10) days. If the answer contains a denial of the claim, the general grounds for such denial will be set forth. The answer may raise any special defense, including but not limited to the following:

(1) That the player did not pass the physical examination administered by the Club physician at the beginning of the preseason training camp for the year in question. This defense will not be available if: (i) the Player was injured during offseason workouts at the club facility under the direction of a club official prior to not passing the physical examination or (ii) the player participated in any team drills following his physical examination or in any preseason or regular season game; provided, however, that the Club physician may require the player to undergo certain exercises or activities, not team drills, to determine whether the player will pass the physical examination;

(2) That the player failed to make full and complete disclosure of his known physical or mental condition when questioned during a physical examination by the Club;

(3) That the player's injury occurred prior to the physical examination and the player knowingly executed a waiver or release prior to the physical examination or his commencement of practice for the season in question which specifically pertained to such prior injury;

(4) That the player's injury arose solely from a non-football-related cause subsequent to the physical examination;

(5) That subsequent to the physical examination the player suffered no new football-related injury;

(6) That subsequent to the physical examination the player suffered no football-related aggravation of a prior injury reducing his physical capacity below the level existing at the time of his physical examination as contemporaneously recorded by the Club physician.

(b) The Club or the Management Council must advise the grievant and the NFLPA in writing no later than seven (7) days before the hearing of any special defense to be raised at the hearing. Failure to provide such notice will preclude the Club and Management Council from arguing that defense. However, where the Club and Management Council learn of facts supporting a special defense fewer than seven days prior to the hearing, during the hearing or in a post-hearing deposition, the Club and the Management Council must present notice of that special defense to the arbitrator and opposing party within seven (7) days of when the facts supporting that defense became known or reasonably should have become known to the Club and/or Management Council. An assertion at the hearing, or subsequent to the hearing, of a newly-discovered special defense will enable either party to present additional testimony, including the opportunity to recall witnesses or call new witnesses.

Section 4. **Neutral Physician:**

(a) The player must present himself for examination by a neutral physician in the Club city or the Club city closest to the player's residence within twenty (20) days from the date of the filing of the grievance. This time period may be extended by mutual consent if the neutral physician is not available. Neither Club nor player may submit any medical records to the neutral physician, nor may the Club physician or player's physician communicate with the neutral physician. The neutral physician will not become the treating physician nor will the neutral physician examination involve more than one office visit without the prior approval of both the NFLPA and Management Council. The neutral physician may not review any objective medical tests unless all parties mutually agree to provide such results. The neutral physician may not perform any diagnostic tests unless all parties consent. The neutral physician is required to submit to the parties a detailed medical report of his examination.

(b) In cases in which the player alleges that he suffered a closed head injury or concussion with resulting cognitive deficit, somatic symptoms and/or other concussion symptoms, the player must present himself for cognitive functioning testing and/or other appropriate testing and examination by a neutral neuropsychologist in either the city nearest the player's residence or the Club city. Absent medical limitations, the unavailability of the neuropsychologist or the unavailability of medical records, such testing and examination must occur within thirty (30) days from the date of the filing of the grievance. The neutral neuropsychologist will be provided with all medical records of closed head trauma and/or concussions including baseline testing, within the possession of Club and player. All other requirements and limitations set forth in this Article regarding the neutral physician process shall apply to such testing and examination except that if a neutral neuropsychologist's examination spans multiple days, it will be considered one office visit. The neutral neuropsychologist must prepare and submit a detailed report regarding his examination and the player's cognitive functioning and other symptoms, if any, of concussion or closed head injury affecting the player's ability to return to play at the date of the examination. If the neutral neuropsychologist in his sole discretion determines that the player should be examined by another physician of appropriate specialization in order to complete his neutral physician report, the neuropsychologist shall have the authority to refer such player for such additional examination. In such circumstances, the report of

the neutral neuropsychologist shall be designated as the neutral physician report and may incorporate any findings or opinion of the referral doctor.

(c) In order to facilitate settlement of grievances, the parties periodically will consult with neutral physicians by telephone conference call to obtain preliminary opinions as to the length of time, if any, after their examinations before players would be physically able to perform contract services. The NFLPA will use its best efforts to make the neutral physicians in each Club city equally available to the players who file Injury Grievances.

(d) The arbitrator will consider the neutral physician's findings conclusive with regard to the physical condition of the player and the extent of an injury at the time of his examination by the neutral physician. The arbitrator will decide the dispute in light of this finding and such other issues or defenses which may have been properly submitted to him. In cases in which the player is alleging that he suffered a closed head injury or concussion with resulting cognitive deficit, somatic symptoms and/or other concussion symptoms the report of the neutral neuropsychologist shall be considered conclusive with regard to the player's cognitive functioning and other objective findings as well as the extent of the injury at the time of the examination.

Section 5. **Neutral Physician List:**

The NFLPA and the Management Council will maintain a jointly-approved list of neutral physicians, including at least two orthopedic physicians and two neuropsychologists in each city in which a Club is located. This list will be subject to review and modification between February 1 and April 15 of each year, at which time either party may eliminate any two neutral physicians from the list by written notice to the other party. When vacancies occur, the NFLPA and the Management Council will each submit a list of three (3) replacements to the other party within thirty (30) days for each NFL city where a vacancy exists. If the parties are unable to agree on a replacement, within ten (10) days they will select a neutral for each city by alternately striking names. The party to strike a name first will be determined by a flip of a coin. If either party fails to cooperate in the striking process the other party may select one of the nominees on its list, and the other party will be bound by such selection. The next vacancy occurring will be filled in similar fashion with the party who initially struck first then striking second. The parties will alternate striking first for future vacancies occurring thereafter during the term of this Agreement.

Section 6. **Appeal:** An Injury Grievance may be appealed to an arbitrator by filing of written notice of appeal with the Chairperson of the arbitration panel at least seven (7) days prior to the Settlement Committee meeting, but no later than the Injury Grievance scheduling meeting.

Section 7. **Arbitration Panel:** There will be a panel of five (5) arbitrators, whose appointment must be accepted in writing by the NFLPA and the Management Council. The parties shall designate the Chairperson of the panel. In the event of a vacancy in the position of the Chairperson of the panel, the senior Injury Grievance Arbitrator will succeed to the position of Chairperson of the panel, and the resultant vacancy on the panel will be

filled according to the procedures of this Section. Either party to this Agreement may discharge a member of the arbitration panel by serving written notice upon the arbitrator and the other party to this Agreement from July 10 through July 20 of each year, but at no time shall such discharges result in no arbitrators remaining on the panel. If either party discharges an arbitrator, the other party shall have two (2) business days to discharge any other arbitrator. If an arbitrator has been discharged he or she shall retain jurisdiction for any case in which the hearing has commenced. Any vacancies occurring on the arbitration panel will be filled as follows: If the parties are unable to agree to a new arbitrator within thirty (30) days of the occurrence of the vacancy, the Chairperson of the panel shall submit a list of ten (10) qualified and experienced arbitrators to the NFLPA and the Management Council. Within fourteen (14) days of the receipt of the list, the NFLPA and the Management Council shall select one arbitrator from the list by alternately striking names until only one remains, with a coin flip determining the first strike. The next vacancy occurring will be filled in similar fashion, with the party who initially struck first then striking second. The parties will alternate striking first for future vacancies occurring thereafter during the term of this Agreement. If either party fails to cooperate in the striking process, the other party may select one of the nominees on the list and the other party will be bound by such selection.

Section 8. **Hearing:**

(a) Each arbitrator shall designate a minimum of twelve hearing dates per year, exclusive of the period July 1 through September 10, for use by the parties to this Agreement. Upon being appointed, each arbitrator will, after consultation with the Chairperson, provide to the NFLPA and the Management Council specified hearing dates for each of the ensuing six months, which process will be repeated on a semiannual basis thereafter. The parties will notify each arbitrator thirty (30) days in advance of which dates the following month are going to be used by the parties. The designated arbitrator will set the hearing on his or her next reserved date in the Club city, unless the parties agree otherwise. If a grievance is set for hearing and the hearing date is then postponed by a party within thirty (30) days of the hearing, the postponement fee of the arbitrator will be borne by the postponing party, unless the arbitrator determines that the postponement was for good cause. Should good cause be found, the parties will bear any postponement costs equally. If the arbitrator in question cannot reschedule the hearing within thirty (30) days of the postponed date, the case may be reassigned by the Chairperson to another panel member who has a hearing date available within the thirty (30) day period. At the hearing, the parties to the grievance and the NFLPA and Management Council will have the right to present, by testimony or otherwise, any evidence relevant to the grievance. The NFLPA and the Management Council have the right to attend all grievance hearings. All hearings shall be transcribed.

(b) If a witness is unable to attend the hearing, the party offering the testimony shall inform the other party of the identity and unavailability of the witness to attend the hearing. At the hearing or within fourteen (14) days thereafter, the party offering the testimony of the unavailable witness must offer the other party two possible dates within the next forty-five (45) days to take the witness' testimony. The other party shall have the

opportunity to choose the date. The record should be closed sixty (60) days after the hearing date unless mutually extended notwithstanding any party's failure to present post-hearing testimony within the above-mentioned time period. If a witness is unavailable to come to the hearing, the witness' testimony may be taken by telephone conference call if the parties agree. In cases where the amount claimed is less than $25,000, the parties may agree to hold the hearing by telephone conference call.

(c)(i) Any party may seek bifurcation of a grievance to assert a claim of untimeliness Bifurcation motions shall be presented in writing to the other party and the arbitrator in the moving party's answer or at any time no later than seven (7) days prior to the scheduled hearing on the merits of the grievance. If an arbitrator has not yet been assigned to hear the grievance then the moving party shall file the motion with the Chairperson of the Arbitration panel, who will decide the motion or assign it to a member of the Injury Grievance Arbitration panel. A party's decision to pursue a bifurcated hearing may not delay the processing of a hearing scheduled on the merits of the grievance. For any motions made at least thirty (30) days before a hearing on the merits of the grievance, the parties will use their best efforts to schedule the bifurcated hearing at least ten (10) days before the scheduled hearing on the merits of the grievance. In any case where a timely motion for bifurcation is made, but a bifurcated hearing is not held, the arbitrator shall decide the issue of timeliness during the hearing on the merits.

(ii) If a defense of untimeliness is not raised at least seven (7) days before the scheduled hearing on the merits of the grievance, the parties will be precluded from arguing that defense. However, where a party learns of facts supporting the defense less than seven days prior to the hearing, during the hearing, or in a post-hearing deposition, the party must present the defense to the opposing party and arbitrator within seven (7) days of when the facts supporting the defense became known or reasonably should have been known to the party.

(iii) If a grievance is ultimately dismissed based on a finding of untimeliness, the arbitrator shall issue a written decision limited to that issue, and such ruling shall be final and binding.

(d) Post-hearing briefs must be submitted to the arbitrator no later than sixty-five (65) days after receipt of the last transcript. The arbitrator will issue a written decision within thirty (30) days of the submission of briefs but shall not consider briefs filed by either party more than sixty-five (65) days after receipt of the last transcript, unless the parties agree otherwise. The arbitrator's decision will be final and binding; provided, however, that no arbitrator will have the authority to add to, subtract from, or alter in any way any provision of this Agreement or any other applicable document. In the event the arbitrator finds liability on the part of the Club, he or she shall award Interest beginning one year from the date of the last regular season game of the season of injury.

Section 9. **Expenses:** Expenses charged by a neutral physician will be shared equally by the Club and the player. All travel expenses incurred by the player in connection with his examination by a neutral physician of his choice will be borne by the player. The parties will share equally in the expenses of any arbitration engaged in pursuant to this Article; provided, however, the respective parties will bear the expenses of attendance of their own witnesses. Notwithstanding the above, if the hearing is held in the Club city and if the

arbitrator finds liability on the part of the Club, the arbitrator shall award the player reasonable expenses incurred in traveling to and from his residence to the Club city, lodging and meal expenses in accordance with Article 34. The arbitrator may award the player payments for medical expenses incurred or which will be incurred in connection with that injury.

Section 10. **Pension Credit:** Any player who receives payment for three or more regular season games (or such other minimum number of regular season games required by the Bert Bell/Pete Rozelle NFL Retirement Plan for a year of Credited Service) during any year as a result of filing an Injury Grievance or settlement of a potential Injury Grievance will be credited with one year of Credited Service under the Bert Bell/Pete Rozelle NFL Player Retirement Plan for the year in which he was injured.

Section 11. **Payment:**

(a) If an award is made by the arbitrator, payment will be made within thirty (30) days of the receipt of the award to the player or jointly to the player and the NFLPA, provided the player has given written authorization for such joint payment. The time limit for payment may be extended by mutual consent of the parties or by a finding of good cause for the extension by the arbitrator. Where payment is unduly delayed beyond thirty (30) days, double Interest will be assessed against the Club from the date of the decision. The arbitrator shall retain jurisdiction of the case for the purpose of awarding post-hearing interest pursuant to this Section.

(b) Any player who does not qualify for group health insurance coverage in a given Plan Year under the NFL Player Insurance Plan as a result of being terminated while physically unable to perform and who receives payment for at least one (1) regular or post-season game via an injury grievance award or injury settlement for that Plan Year shall receive a payment in an amount determined by multiplying the number of months in that Plan Year for which he would have been eligible for coverage had he qualified for group health insurance coverage in that Plan Year by the premium the Player Insurance Plan charged for COBRA coverage during that period.

Section 12. **Presumption of Fitness:** If the player passes the physical examination of the Club prior to the preseason training camp for the year in question, having made full and complete disclosure of his known physical and mental condition when questioned by the Club physician during the physical examination, it will be presumed that such player was physically fit to play football on the date of such examination.

Section 13. **Playoff Money:** If the arbitrator finds that an injured player remained physically unable to perform the services required of him by his contract during the NFL postseason playoffs and if the Club in question participated in the playoffs that season, the player will be entitled to and the arbitrator shall award, such playoff money as though he had been on the Injured Reserve list at the time of the playoff games in question, should he otherwise qualify for such pay pursuant to Article 37.

Section 14. **Information Exchange:** The NFLPA and the Management Council must confer on a regular basis concerning the status of pending Injury Grievances and the attribution of any Injury Grievance exposure to Team Salary under Article 13. Any communications pursuant to this Section are inadmissible in any grievance hearing.

Section 15. **Discovery:** No later than fourteen (14) days prior to the hearing, each party will submit to the other copies of all documents, reports and records relevant to the Injury Grievance hearing. Failure to submit such documents, reports and records no later than fourteen (14) days prior to the hearing will preclude the non-complying party from submitting such documents, reports and records into evidence at the hearing, but the other party will have the opportunity to examine such documents, reports and records at the hearing and to introduce those it so desires into evidence, except that relevant documents submitted to the opposing party less than ten (10) days before the hearing shall be admissible provided the offering party and the custodian(s) of the documents made good faith effort to obtain (or discover the existence of) such documents or that the documents' relevance was not discovered until the hearing.

Section 16. **Grievance Settlement Committee:** A grievance settlement committee consisting of representatives of the NFLPA and representatives of the NFL shall meet annually between the end of the regular season and the annual arbitration scheduling conference. The committee shall engage in good faith efforts to settle or bifurcate any pending Injury Grievances. No evidence will be taken at such meetings, except parties involved in the grievance may be contacted to obtain information about their dispute. If the committee resolves any grievance by mutual agreement of its members, such resolution will be made in writing and will constitute full, final and complete disposition of the grievance and will be binding upon the player(s) and the Club(s) involved and the parties to this Agreement.

Section 17. **Settlement Agreements:** Grievances settled prior to the issuance of an arbitration award will be memorialized in the standard Settlement and Release Agreement, which may include a notification of grievant's right to file a Workers' Compensation Claim, if applicable, as set forth in Appendix L. This form may be amended and/or supplemented if the parties agree and/or if required by state law.

Section 18. **Standard Grievance Correspondence:** The provisions of Article 43, Section 14 shall apply to Injury Grievances.

ARTICLE 46
COMMISSIONER DISCIPLINE

Section 1. **League Discipline:** Notwithstanding anything stated in Article 43:

(a) All disputes involving a fine or suspension imposed upon a player for conduct on the playing field (other than as described in Subsection (b) below) or involving action taken against a player by the Commissioner for conduct detrimental to the integrity of, or public confidence in, the game of professional football (other than as described in Subsection (e) below), will be processed exclusively as follows: the Commissioner will promptly send written notice of his action to the player, with a copy to the NFLPA. Within three (3) business days following such written notification, the player affected thereby, or the NFLPA with the player's approval, may appeal in writing to the Commissioner.

(b) Fines or suspensions imposed upon players for unnecessary roughness or unsportsmanlike conduct on the playing field with respect to an opposing player or players shall be determined initially by a person appointed by the Commissioner after consultation concerning the person being appointed with the Executive Director of the NFLPA, as promptly as possible after the event(s) in question. Such person will send written notice of his action to the player, with a copy to the NFLPA. Within three (3) business days following such notification, the player, or the NFLPA with his approval, may appeal in writing to the Commissioner.

(c) The Commissioner (under Subsection (a)), or the person appointed by the Commissioner under Subsection (b), shall consult with the Executive Director of the NFLPA prior to issuing, for on-field conduct, any suspension or fine in excess of $50,000.

(d) The schedule of fines for on-field conduct will be provided to the NFLPA prior to the start of training camp in each season covered under this Agreement. The 2020 Schedule of Fines and Aggravating/Mitigating Factors, which have been provided to and accepted by the NFLPA and are attached hereto as Appendix U, shall serve as the basis of discipline for the infractions identified on that schedule. The designated minimum fine amounts will increase by 3% for the 2021 League Year, and each League Year thereafter during the term of this Agreement. On appeal, a player may assert, among other defenses, that any fine should be reduced because it is excessive when compared to the player's expected earnings for the season in question. A player may also argue on appeal that the circumstances do not warrant his receiving a fine above the amount stated in the schedule of fines.

(e) (i) Fines or suspensions imposed upon players for violating the League's Personal Conduct Policy, as well as whether a violation of the Personal Conduct Policy has been proven by the NFL, will be initially determined by a Disciplinary Officer jointly selected and appointed by the parties. Unless the parties mutually determine otherwise, the Disciplinary Officer shall serve a minimum two-year term. Thereafter, the Disciplinary Officer may be discharged by either party at any time upon 120 days' written notice. Upon notice of intention to discharge or notice of intention to resign, the parties will each identify a minimum of two successor candidates. All timely candidates will then be promptly ranked by the parties. Within sixty days, the top two candidates will be interviewed by the parties. Absent agreement on a successor, the parties will alternately strike names from said list, with the party striking first to be determined by the flip of a coin.

Should a party fail to identify, rank, interview or strike candidates in a timely manner, that party will forfeit its rights with respect to that step of the appointment process, including selection of the ultimate successor if that party fails to participate in alternate striking.

(ii) The Disciplinary Officer will be responsible for conducting evidentiary hearings (pursuant to the procedures of Section 2 below), issuing binding findings of fact and determining the discipline that should be imposed, if any, in accordance with the Personal Conduct Policy.

(iii) At least ten (10) calendar days prior to the hearing, the NFL shall inform the NFLPA, player and Disciplinary Officer of the recommended terms of discipline.

(iv) The NFL will have the burden of establishing that the player violated the Personal Conduct Policy. The NFL also will publish mitigating factors for discipline which shall include acceptance of responsibility and cooperation, engagement with clinical resources and voluntary restitution.

(v) The Disciplinary Officer's disciplinary determination will be final and binding subject only to the right of either party to appeal to the Commissioner. The appeal shall be in writing within three business days of the Disciplinary Officer's decision, and any response to the appeal shall be filed in writing within two business days thereafter. The appeal shall be limited to arguments why, based on the evidentiary record below, the amount of discipline, if any, should be modified. The Commissioner or his designee will issue a written decision that will constitute full, final and complete disposition of the dispute and will be binding upon the player(s), Club(s) and the parties to this Agreement.

Section 2. **Hearings:**

(a) **Hearing Officers.** For appeals under Section 1(a) above, the Commissioner shall, after consultation with the Executive Director of the NFLPA, appoint one or more designees to serve as hearing officers. For appeals under Section 1(b) above, the parties shall, on an annual basis, jointly select two (2) or more designees to serve as hearing officers. For hearings under Section 1(e)(i) above, the Disciplinary Officer shall serve as the hearing officer. The salary and reasonable expenses for the services of the Disciplinary Officer and the designees referenced in this section shall be shared equally by the NFL and the NFLPA. Notwithstanding the foregoing, the Commissioner may serve as hearing officer in any appeal under Section 1(a) of this Article at his discretion. In no event will the Commissioner serve as hearing officer in hearings under Section 1(e)(i).

(b) **Representation.** In any hearing provided for in this Article, a player may be accompanied by counsel of his choice. The NFLPA and NFL have the right to attend all hearings provided for in this Article and to present, by testimony or otherwise, any evidence relevant to the hearing.

(c) **Telephone Hearings.** Upon agreement of the parties, hearings under this Article may be conducted by telephone conference call or videoconference.

(d) **Decision.** Except as otherwise provided in Section 1(e) above, as soon as practicable following the conclusion of the hearing, the hearing officer will render a written decision which will constitute full, final and complete disposition of the dispute and will be binding upon the player(s), Club(s) and the parties to this Agreement with respect to that dispute. Any discipline imposed pursuant to Section 1(b) may only be affirmed, reduced, or vacated by the hearing officer, and may not be increased.

(e) **Costs.** Unless the Commissioner determines otherwise, each party will bear the cost of its own witnesses, counsel and other expenses associated with the appeal.

(f) **Additional Procedures for Appeals and Hearings Under Sections 1(a) and 1(e)(i).**

(i) **Scheduling.** (A) Appeal hearings under Section 1(a) will be scheduled to commence within ten (10) days following receipt of the notice of appeal, except that hearings on suspensions issued during the playing season (defined for this Section as the first preseason game through the Super Bowl) will be scheduled for the second Tuesday following the receipt of the notice of appeal, with the intent that the appeal shall be heard no fewer than eight (8) days and no more than thirteen (13) days following the suspension, absent mutual agreement of the parties or a finding by the hearing officer of extenuating circumstances.

(B) Hearings conducted by the Disciplinary Officer under Section 1(e)(i) will be scheduled to commence within thirty (30) days following the NFL's transmission of the investigative report and/or law enforcement or court documents forming the basis for review to the player, NFLPA and Disciplinary Officer, except that, during the playing season, the hearing will be scheduled to take place on the fourth Tuesday following the receipt of the investigative report absent mutual agreement of the parties or a finding by the hearing officer of extenuating circumstances. The investigative report shall contain a summary of the evidence found, whether inculpatory or exculpatory.

(C) If unavailability of counsel is the basis for a continuance, a new hearing shall be scheduled on or before the Tuesday following the original hearing date, without exception.

(ii) **Discovery.** (A) In appeals under Section 1(a), the parties shall exchange copies of any exhibits upon which they intend to rely no later than three (3) calendar days prior to the hearing.

(B) In hearings conducted under Section 1 (e) (i), the NFL shall produce any transcripts or audio recordings of witness interviews, any expert reports and court documents obtained or prepared by the NFL as part of its investigation, and any evidentiary material referenced in the investigative report that was not included as an exhibit at least ten (10) calendar days before the hearing. The parties shall exchange copies of any exhibits upon which they intend to rely that were not previously produced no later than five (5) calendar days prior to the hearing.

(C) Failure to timely provide any intended exhibit shall preclude its introduction at the hearing.

(iii) **Record; Posthearing Briefs.** Unless the parties agree otherwise, all hearings conducted under Sections 1(a) and 1(e) of this Article shall be transcribed. Posthearing briefs will not be permitted absent agreement of the NFL and NFLPA or the request of the hearing officer. If permitted, such briefs shall be limited to five pages (single-spaced) and must be filed no later than three (3) business days following the conclusion of the hearing.

Section 3. **Time Limits:** Each of the time limits set forth in this Article may be extended by mutual agreement of the parties or by the hearing officer upon appropriate motion.

Section 4. **One Penalty:** The Commissioner and a Club will not both discipline a player for the same act or conduct. The Commissioner's disciplinary action will preclude or supersede disciplinary action by any Club for the same act or conduct.

Section 5. **Commissioner Exempt:** Players who are placed by the Commissioner on the Exempt list prior to the determination of discipline and any appeal therefrom under the Personal Conduct Policy will be paid while on the Commissioner Exempt list and credited for the regular and post-season games missed against any suspension ultimately imposed. Notwithstanding any other provision in this Agreement, if such a suspension is ultimately imposed, the player must promptly return and shall have no further right to any salary for the games for which he was paid while on the Commissioner Exempt list that were credited to the suspension (i.e., for a number of games no greater than the length of the suspension).

Section 6. **Fine Money:**

(a) Fines will be deducted at the rate of no more than $3,500 from each pay period, if sufficient pay periods remain; or, if less than sufficient pay periods remain, the fine will be deducted in equal installments over the number of remaining pay periods. For the 2026–2030 League Years, the amount will increase from a rate of $3,500 to $4,500 from each pay period.

(b) For any fine imposed upon a player under Section 1(b), no amount of the fine will be withheld from the player's pay pending the outcome of the appeal, except that if: (i) the fine is imposed on or after the thirteenth (13th) week of the regular season; (ii) the player or the NFLPA does not timely appeal; or (iii) the hearing on a fine imposed for conduct occurring through the thirteenth (13th) week of the regular season is delayed by the player or the NFLPA for any reason beyond the time provided for in Section 2(b) of this Article, the full amount of the fine shall be promptly collected.

(c) Unless otherwise agreed by the parties., fine money collected pursuant to this Article shall be allocated as follows: 50% to the Players Assistance Trust and 50% to charitable organizations jointly determined by the NFL and the NFLPA. In the absence of said joint determination, the NFL and the NFLPA shall each determine a charitable organization or organizations to which half of the second 50% shall be allocated.

Section 7. **Permitted Activities for Players Suspended Under the Personal Conduct Policy:** Players who have been placed on Reserve/Commissioner Suspension pursuant to the Personal Conduct Policy will be permitted to attend the club facility and participate in limited activities during the second half of any suspension period on terms substantially similar to the corresponding provisions of the policies on Performance-Enhancing Substances and Substances of Abuse.

Alternative Dispute Resolution

45TH ANNUAL CONFERENCE OF THE FORUM ON ENTERTAINMENT & SPORTS INDUSTRIES

Saturday, October 7, 10:45 A.M. – 12:15 P.M.

AMERICAN BAR ASSOCIATION

Forum on the Entertainment & Sports Industries

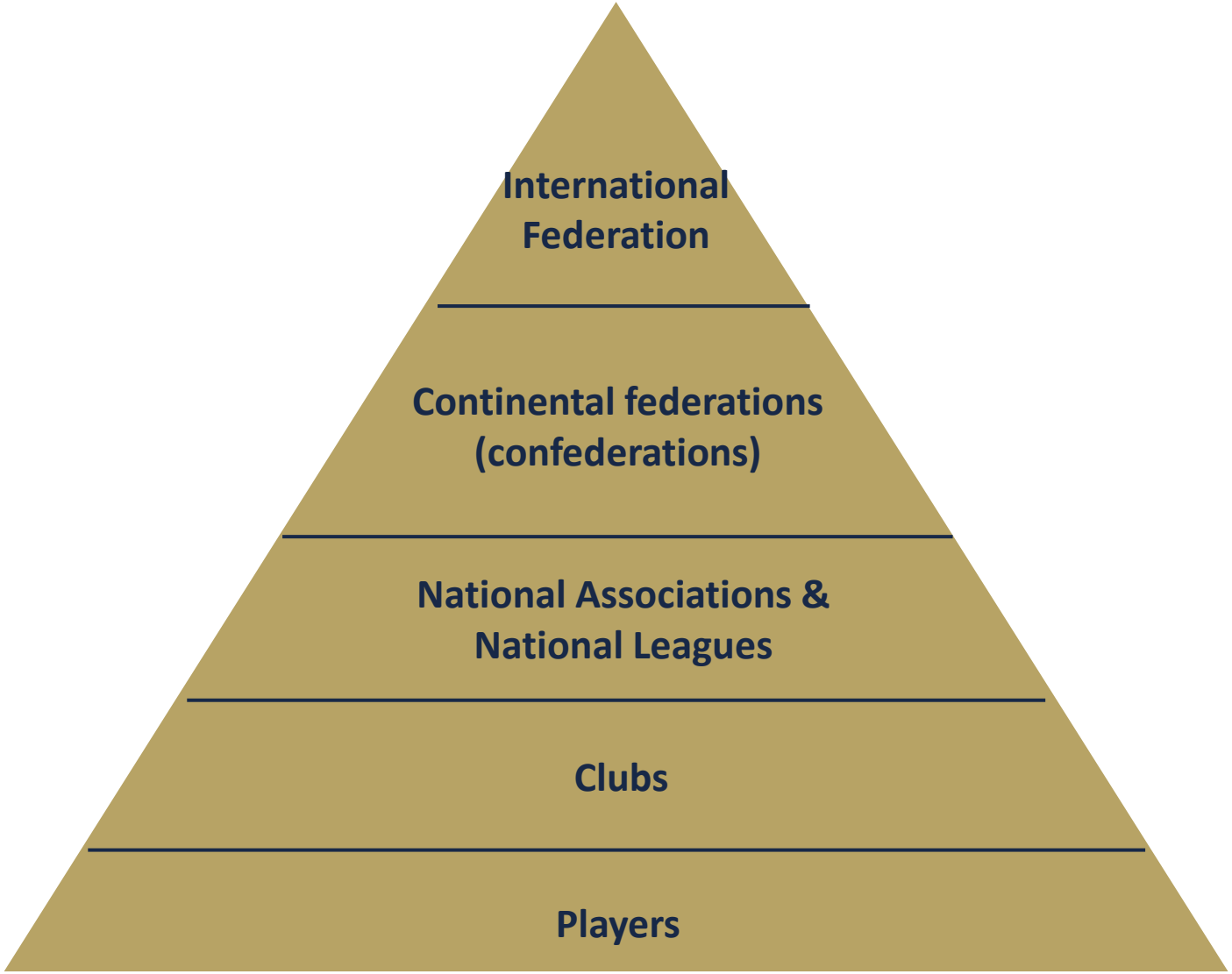
2023

International Sports Disputes

Resolution of Sports-Related Disputes on the International Stage

AMERICAN BAR ASSOCIATION
Forum on the Entertainment & Sports Industries

The Pyramid Model of International Sport



The Pyramid Model of International Sport: Soccer

The Football Tribunal: Resolution of International Soccer Disputes before FIFA

IX. JURISDICTION

22 Competence of FIFA

1.
Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;

c) employment-related disputes between a club or an association and a coach of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of coaches and clubs;

d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

e) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;

f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).

2.
FIFA is competent to decide regulatory applications made pursuant to these regulations or any other FIFA regulations.

23 Football Tribunal

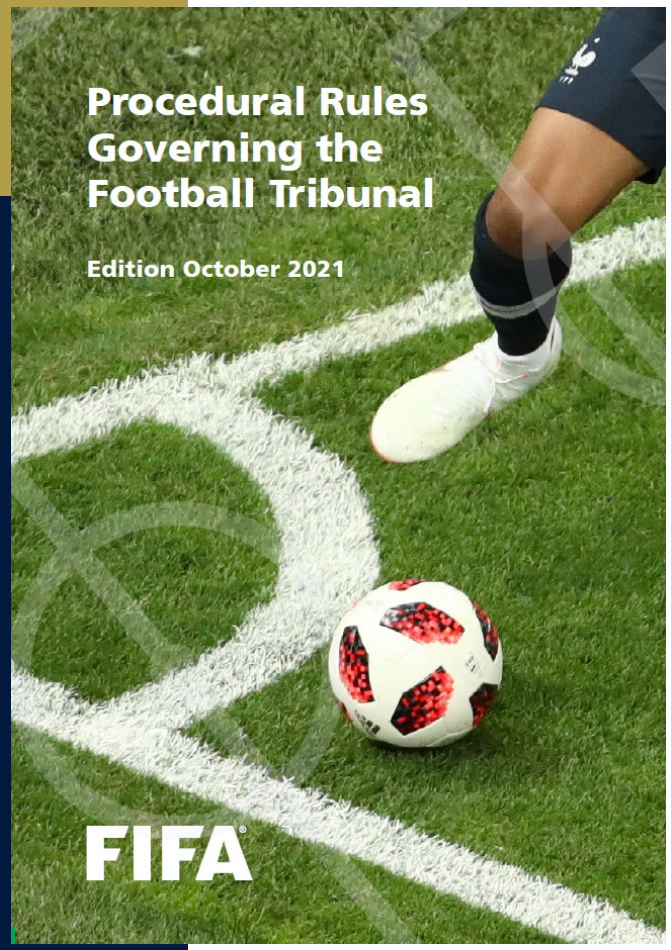
1.
The Dispute Resolution Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 a), b), d), and e).

2.
The Players' Status Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 c) and f), and 2.

3.
The Football Tribunal shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined *ex officio* in each individual case.

4.
The procedures for lodging claims in relation to the disputes described in article 22 are contained in the Procedural Rules Governing the Football Tribunal.

The Football Tribunal: Resolution of International Soccer Disputes before FIFA



II. GENERAL PROCEDURAL RULES

9 Parties

1.
Subject to the relevant FIFA regulations, only the following natural or legal persons may be a party before a chamber:

a. member associations;
b. clubs affiliated to a member association;
c. players;
d. coaches;
e. football agents licensed by FIFA; or
f. match agents licensed by FIFA.

V. REGULATORY APPLICATIONS BEFORE THE PLAYERS' STATUS CHAMBER

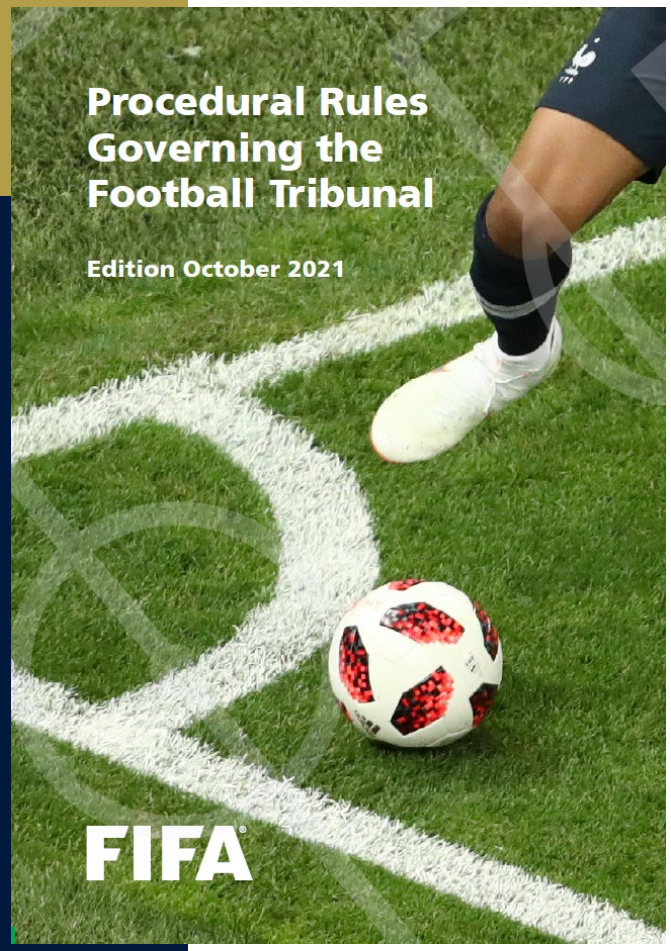
29 Regulatory applications

1.
Pursuant to the relevant FIFA regulations, the PSC shall adjudicate regulatory applications regarding:

a) the international transfer or first registration of a minor;
b) a limited minor exemption (**LME**);
c) FIFA intervention to authorise the registration of a player;
d) a request for eligibility or change of association; or
e) the late return of a player from representative-team duty.

4.
Generally, a single judge shall adjudicate. In a complex matter or where exceptional circumstances exist, at least three judges shall adjudicate.

The Football Tribunal: Optional Mediation Pursuant to the CAS Mediation Rules



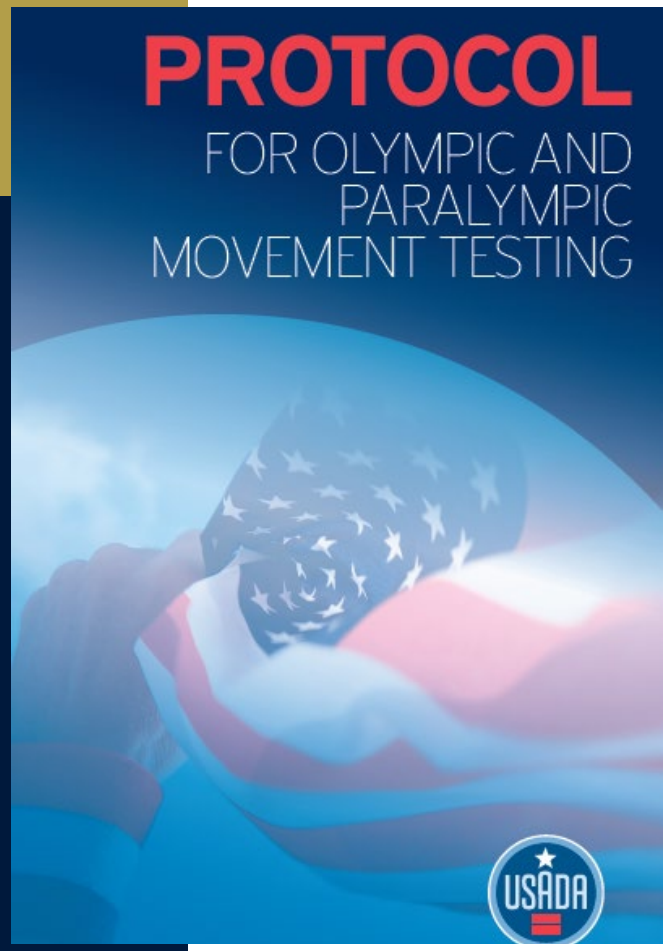
26 Mediation

1.
If the chairperson of the FT considers it appropriate, they may invite the parties to mediate the dispute.

2.
Mediation is a voluntary process and free of charge. It shall be conducted in accordance with the general principles of the CAS Mediation Rules and through the mediators recognised by a list approved by the FIFA general secretariat.

3.
If mediation is successful, a settlement agreement will be signed by the parties and ratified by the mediator and the chairperson of the respective chamber. The settlement agreement shall be considered a final and binding decision of the FT pursuant to the relevant FIFA regulations. If mediation is unsuccessful, the FIFA general secretariat shall continue the procedure at the point it was paused.

Olympic Movement Anti-Doping Disputes in the United States

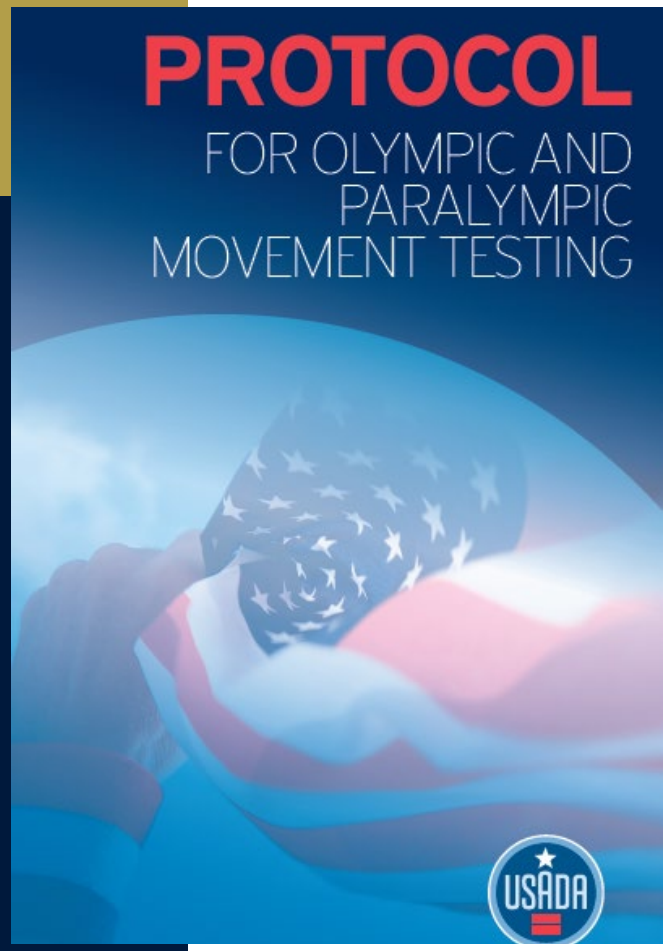


R-4. Initiation by USADA

Arbitration proceedings shall be initiated by USADA with the Arbitral Body after the *Athlete*, *Athlete Support Person*, or other *Person* requests a hearing in response to being charged with an anti-doping rule violation or other dispute subject to arbitration under the USADA Protocol. The initiation from USADA shall include the type of dispute, whether the *Athlete* is a *Recreational Athlete*, *National-Level Athlete*, or *International-Level Athlete*, and if the parties have agreed to three arbitrators. The parties to the proceeding shall be USADA and the *Athlete*, *Athlete Support Person*, or other *Person* who requested a hearing. The applicable International Federation and the World Anti-Doping Agency shall be invited to join in the proceeding as a party or as an observer. For their information only, the USOPC, USOPC Athlete Ombuds, and NGB shall receive notice of the hearing. The *Athlete*, *Athlete Support Person*, or other *Person* who is a party to the proceeding shall have the right to invite the Athlete Ombuds as an observer, but under no circumstances may any party or arbitrator compel the Athlete Ombuds to testify as a witness. If the parties agree or the *Athlete*, *Athlete Support Person*, or other *Person* requests and the arbitrator agrees, the hearing shall be open to the public subject to such limitations as may be imposed by the arbitrator.

Prior to July 24, 2023, arbitration proceedings under the USADA protocol had been administered by the American Arbitration Association. On June 27, 2023, the USOPC, Team USA Athletes' Committee, the National Governing Bodies Council and USADA announced that New Era ADR would administer arbitrations going forward

Olympic Movement Anti-Doping Disputes in the United States



R-43. Appeal Rights

The arbitration award may be appealed exclusively to CAS as provided in the USADA Protocol. Notice of appeal shall be filed with the Administrator within the time period provided in the CAS appellate rules. Appeals to CAS filed under these rules shall be heard in the United States. The decisions of CAS shall be final and binding on all parties and shall not be subject to any further review or appeal except as permitted under Swiss Law to challenge the decision before the Swiss Federal Tribunal.

CAS Arbitration Rules: Ordinary v. Appeal Arbitration

Ordinary Arbitration	Appeal Arbitration
• Confidential	• Outcome is not confidential
• One or three arbitrators	• Three arbitrators (default)
• Absent an express agreement on choice of law, Swiss law applies. Parties may agree to have arbitrators decide dispute *ex aequo et bono*	• Panel decides dispute on the basis of the sports association's rules and regulations. The parties may agree on a choice of law to serve as a "gap filler;" in the absence of an agreement, (i) the law of the country in which the sports association is domiciled, or (ii) according to the rules of law that the Panel deems appropriate.

CAS Ad Hoc Division: Real-Time Dispute Resolution at International Sporting Events

Arbitration Rules applicable to the CAS Anti-Doping Division
Olympic Games Beijing 2022

Preamble

These Arbitration Rules have been established for the Olympic Games (OG) Beijing 2022 in order to provide for the resolution by arbitration of all alleged anti-doping rule violations related to the Olympic Games, based on Rule 59.2.2.4 of the Olympic Charter, and insofar as they arise upon the occasion of Olympic Games Beijing 2022 or during a period of ten days preceding the Opening Ceremony of the Olympic Games. Such disputes shall be referred to the CAS Anti-Doping Division (the "CAS ADD") in accordance with the IOC Anti-Doping Rules applicable to the Olympic Games Beijing 2022. In addition, if any International Federation has delegated their powers to the CAS ADD to decide whether or not there has been a violation of their own anti-doping rules, as well as any applicable sanction, then these Arbitration Rules shall also apply to such disputes.

Article 1 Application of the Present Rules and Jurisdiction of the CAS Anti-doping Division

The CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned.

Decisions rendered by the CAS ADD shall be applied and recognized in accordance with Article 15 WADC.

As from 2016, the CAS ADD shall also have jurisdiction in cases of alleged doping violations linked with any subsequent re-analysis of samples collected on the occasion of the OG. With the agreement of the parties concerned, any alleged doping violations linked with the re-analysis of samples collected on the occasion of the OG prior to 2016 may be referred to the Court of Arbitration for Sport.

Article 2 CAS Anti-Doping Division

The CAS ADD is composed of a President, a Deputy President, arbitrators appearing on a special list and a Court Office, all being appointed by the ICAS Board.

Article 3 Special List of Arbitrators

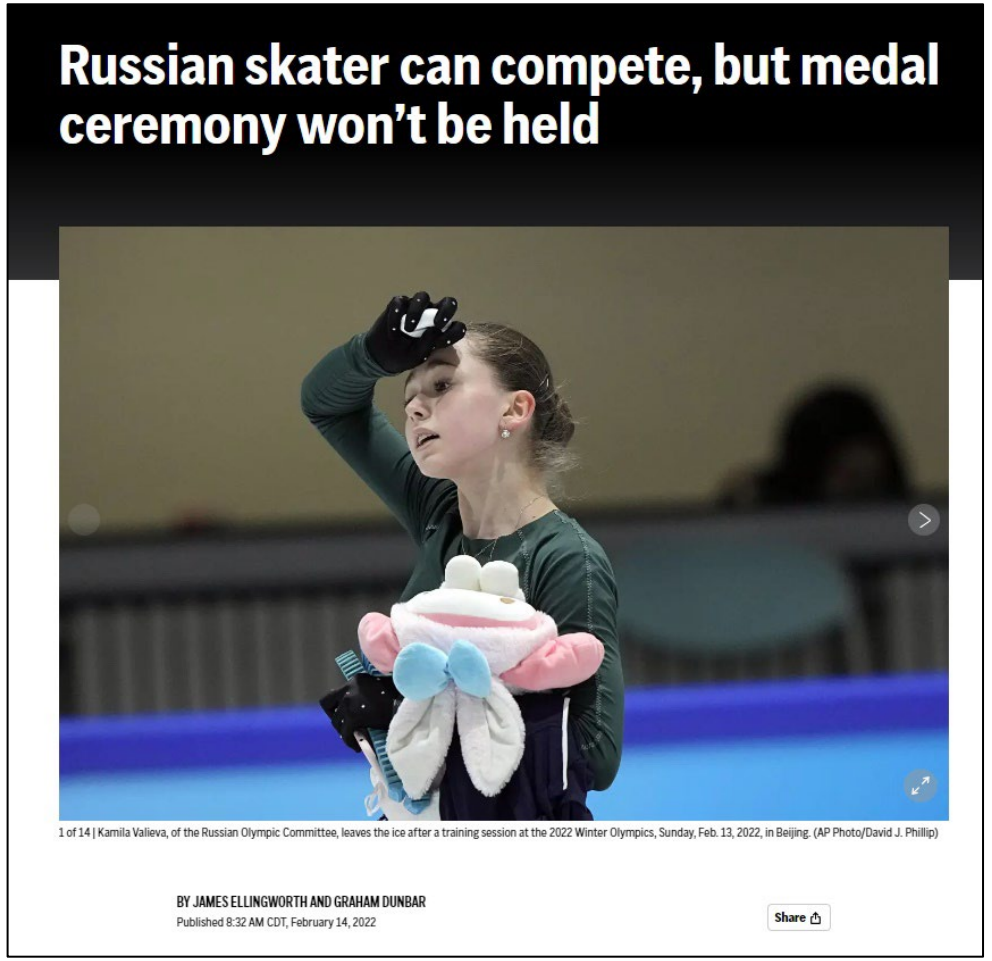
The ICAS, acting through its Board, shall draw up the special list of arbitrators, experienced in anti-doping matters, referred to in Article 2.

This special list consists only of arbitrators who appear on the CAS ADD list of arbitrators. None of these arbitrators may act for the regular CAS ad hoc Division during the same edition of the OG, nor thereafter in anti-doping matters connected to the particular edition of the OG.

The special list of arbitrators shall be published prior to the opening of the OG. It may be subsequently modified by the ICAS Board.

Article 4 Presidency

The ICAS Board shall appoint the President and the Deputy President of the CAS ADD from among the members of the ICAS appointed to ICAS pursuant to Article S4 d) and e) of the Code of Sports-related Arbitration. The President shall be independent from the parties and she/he shall perform the functions conferred upon her/him by the present Rules and all other functions relevant to the proper operation of the CAS ADD. The Deputy President shall be independent from the parties and may substitute for the President at any time if the latter is unable to carry out her/his functions.



Russian skater can compete, but medal ceremony won't be held

1 of 14 | Kamila Valieva, of the Russian Olympic Committee, leaves the ice after a training session at the 2022 Winter Olympics, Sunday, Feb. 13, 2022, in Beijing. (AP Photo/David J. Phillip)

BY JAMES ELLINGWORTH AND GRAHAM DUNBAR
Published 8:32 AM CDT, February 14, 2022

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Caster Semenya: How the Treatment of a South African Runner Became an Issue of European Human Rights

2011: IAAF (now World Athletics) introduces regulations concerning Hyperandrogenism

July 2015: Following a challenge lodged by Indian sprinter Dutee Chand, CAS suspends application of the Hyperandrogenism Regulations

April 2018: IAAF announces new regulations titled the "Differences of Sex Development" or DSD Regulations

June 18, 2018: Semenya commences arbitration before CAS (Ordinary Arbitration Procedures) to challenge application of DSD Regulations to her

April 30, 2019: CAS arbitration panel upholds the Regulations, finding that they are a necessary, reasonable and proportionate means of attaining a legitimate objective

May 19, 2019: Semenya seeks to set aside the CAS arbitration award before the Swiss Federal Tribunal

September 8, 2020: The Swiss Federal Tribunal rejects Semenya's application to set aside the award

February 18, 2021: Semenya lodges a complaint before the European Court of Human Rights

July 11, 2023: The ECHR rules in favor of Semenya, concluding that she "had not been provided sufficient institutional and procedural safeguards" by the Switzerland court

Thank You

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