

UNIVERSITY of **HOUSTON** | LAW CENTER

Health Law & Policy Institute

ACCESS TO PLAYER HEALTH INFORMATION

Jessica L. Roberts, University of Houston Law Center

Presentation Overview



- Football Players Health Study: Law and Ethics Initiative
- Legal Access to Player Health-Related Information
- Our Recommendations

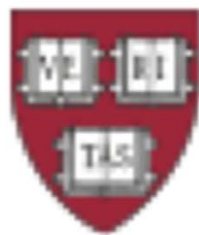
FPHS Law and Ethics Initiative

The Football Players Health Study at Harvard includes a **Law and Ethics Initiative**.

I acted as a **consultant**.

Football Players Health Study

- **National Football League Players Association** (NFLPA) funded the study from its collective bargaining agreement.
 - Multi-million award
 - 7 year term (2014-2021)



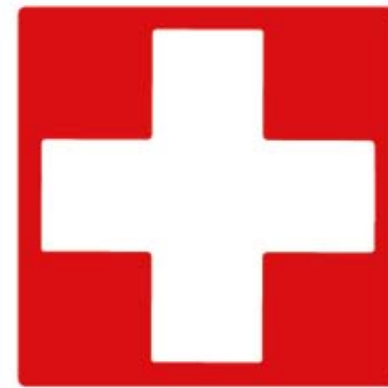
THE FOOTBALL PLAYERS
HEALTH STUDY
AT HARVARD UNIVERSITY

Access to Player Health Information

The **NFL** and the **Clubs** want access player **health-related information** but they must comply with the legal limits on access to employee data.

Player Health-Related Information

- What kinds of information are of interest?
 - Current ability
 - Athletic potential
 - Injury or other risk



Key Research Questions

- (1) What kinds of evaluative technologies and techniques are available?
- (2) What statutory frameworks exist for managing employers' access to and use of health data (e.g., ADA, GINA)?
- (3) Are the NFL, its Clubs, and National Football Scouting complying?

Evaluative Technologies

- (1) Medical examinations and athletic drills
- (2) Non-genetic technologies
- (3) Genetic technologies



What is at stake?

- ❑ Not to be drafted or signed during free agency
- ❑ Get a contract for a lesser amount or without injury guarantees
- ❑ Have a contract terminated
- ❑ Avoid needed medical attention (out of fear of disclosure obligations)
- ❑ Have information used against him in workers' compensation case or injury grievance

What law governs?

- Americans with Disabilities Act
- Genetic Information Nondiscrimination Act



Americans with Disabilities Act

- Title I—Employment
 - Medical exams and inquiries
 - Discrimination



Professional sports examples

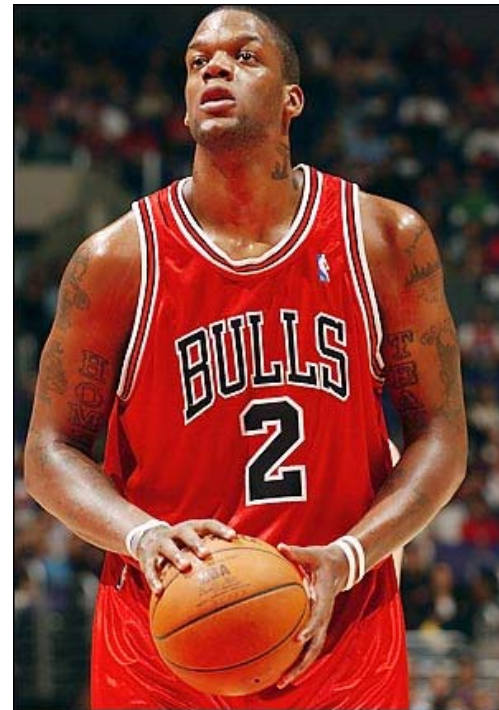
- NFL Scouting Combine
- Leaking medical information
- Cutting players or encouraging them to retire based on diagnoses that do not impede their ability to play professional football

Genetic Information Nondiscrimination Act

- Title II—Employment
 - ▣ Privacy
 - ▣ Discrimination
- Genetic information
 - ▣ Genetic test results
 - ▣ Genetic test results of family
 - ▣ Manifested diseases in family members
- **NOT** manifested conditions for individual

Professional sports examples

- Requests for family medical history during the Combine and preseason physical
- Basketball
 - ▣ Eddy Curry
 - ▣ Isaiah Austin



Our Recommendations

As part of the FPHS, we made **recommendations** to ensure that the NFL and the Clubs are not violating the law.

Three Questions We Considered

- (1) What actions should the NFL, the Clubs, and National Football Scouting take?
- (2) Should Congress or the EEOC revisit existing legal protections? If so, what kind of changes should they make?
- (3) Are any exemptions necessary?

Four C's

- Compliance
- Clarity
- Circumvention
- Changes



Compliance

- Five areas where the NFL and its Clubs may fail to comply with existing laws:
 - (1) pre-offer the medical exams
 - (2) post-offer medical exams made public
 - (3) post-offer medical exams that result in discrimination
 - (4) Combine medical questionnaires
 - (5) preseason physical

Clarity

- Four areas that could benefit from clarification
 - ▣ (1) defining job-relatedness and qualified
 - ▣ (2) establishing the independence of National Football Scouting
 - ▣ (3) scope of medical exams and inquiries under the ADA
 - ▣ (4) scope of family medical history under GINA

Circumvention

- ADA and GINA might not apply to National Football Scouting
- Through the Combine, the NFL and the Clubs access the very kinds of information the ADA and GINA seek to regulate



Changes

- Possible changes to current law
- (1) General professional football/sports exemption
- (2) Exception to ADA medical exam and inquiry provisions
- (3) Exception to GINA prohibition on requests for family medical history
- (4) GINA direct threat defense

Thank you for your
time!

Email: jrobert6@central.uh.edu

Twitter: [@jrobertsuhlc](https://twitter.com/jrobertsuhlc)

**Jessica L.
Roberts**

Leonard Childs
Professor of Law

Professor of
Medicine

Director, Health
Law & Policy
Institute

University of
Houston Law
Center