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WINNING INSIDE OUT: HOW THE CREATION OF PROTECTIVE MENTAL HEALTH CLAUSES COULD ELEVATE PROFESSIONAL ATHLETE PERFORMANCE

I. INTRODUCTION: SCOUTING OUT MENTAL HEALTH CONCERNS IN PROFESSIONAL ATHLETES

Viewership of professional sporting events is a pillar of American entertainment.¹ Americans are intrigued by the multi-faceted nature of sports, and professional athletes and their impactful presences on and off the field.² Whether it be sponsorships or partnerships, involvement in charitable organizations, sports betting, or scandalous headlines, the events off the field are equally as entertaining to fans as those on the field.³ Regardless, sports leagues are the multi-media platform for which professional athletes begin

1. See Brad Adgate, *The Audience Disparity of NFL Games and Everything Else Widens*, FORBES (Jan. 12, 2023, 9:57 AM), <https://www.forbes.com/sites/bradadgate/2023/01/12/the-audience-disparity-of-nfl-games-and-everything-else-widens/?sh=65aef28b113a> [<https://perma.cc/SV3V-4Y8P>] (explaining popularity of sports viewership on television last year); see also Anthony Crupi, *2022 TV Recap: It's the NFL's World; The Rest of Us Just Live In It*, SPORTICO (Jan. 6, 2023, 5:55 AM), <https://www.sportico.com/business/media/2023/nfl-games-account-for-82-of-100-top-tv-broadcasts-1234700381/> [<https://perma.cc/V2SY-MV22>] (highlighting statistics that sports accounted for ninety-four out of one hundred most-watched telecasts in 2022, and National Football League accounted for eighty-two of those ninety-four).

2. See Maureen A. Weston, *The Anxious Athlete: Mental Health and Sports' Duty and Advantage to Protect*, 13 HARV. J. SPORTS & ENT. L. 1, 3 (2022) (exploring the multifaceted identities of professional athletes and their societal influence beyond the field). Sports differ from other entertainment industries because professional athletes are multi-faceted beings. See *id.* (describing athletes' ability to gain attention from fans and society aside from their athleticism). These individuals are athletes of course, but they are also businesspeople, social media stars, models, and celebrities. See *id.* (noting aspects of athletes' lives outside of sports that fans are attracted to). Essentially, the public is intrigued by athletes for more than just their physical skill. See *id.* (listing elements that make athletes distinct apart from their athletic skill such as tattoos, personalities, and marketability).

3. See Ronen Ainbinder, *How Athletes Became Celebrities?*, SPORTS, TECH, BIZ (May 29, 2020), <https://www.sportstechbiz.com/p/how-athletes-became-celebrities> [<https://perma.cc/MX3Q-H7YZ>] (highlighting impact social media has on athletes' public presence). The rise of social media and modern technology advances have allowed professional athletes to control their image and create their own brand. See *id.* (outlining two different ways athletes use their name and image: celebrity licenses and celebrity endorsements). Professional athletes now attract massive public attention not only because of their skill, but because of their celebrity status. See *id.* (describing this public attention as manifestation of "profound appeal on consumers and particularly in young followers and fans").

their long careers, and more importantly, as celebrities in perpetual spotlight.⁴

In recent news, professional athletes are speaking out about the toll the constant spotlight and intense pressure takes on their mental health, sharing their struggles more openly than ever.⁵ Nearly one in every five Americans, including professional athletes, experience anxiety, depression, or other mental health issues.⁶ In the last couple of years, many athletes have spoken up about their mental health challenges and how these challenges have interfered with their lives both on and off the field.⁷ Notable athletes like Aly Raisman, Michael Phelps, Naomi Osaka, Serena Williams, Ronda Rousey, and Abby Wambach have recently advocated for increased awareness, resources, treatment, and attention to athlete mental health.⁸

Professional athletes who have spoken out about their mental health challenges have been met with mixed reactions.⁹ While some athletes have been given support from their fellow athletes and

4. See Weston, *supra* note 2, at 3 (describing unique nature and status of professional athletes in society).

5. See Christina Vogt, *9 Football Players Who've Spoken Up About Mental Health*, EVERYDAY HEALTH, <https://www.everydayhealth.com/emotional-health/football-players-whove-spoken-up-about-mental-health/> [https://perma.cc/X8FB-PH8J] (last visited Feb. 19, 2024) (explaining prevalence of mental health issues in athletes and their recent decisions to speak out); see also Erin McDowell, *12 Athletes Who've Spoken About Their Mental Health Struggles*, BUS. INSIDER (June 6, 2021, 9:30 AM), <https://www.insider.com/athletes-mental-health-struggles-depression-2021-6> [https://perma.cc/45UN-KJYE] (providing list of famous athletes who have spoken out about personal mental health struggles).

6. See Vogt, *supra* note 5 (providing statistic that one in every five Americans experience mental health issues).

7. See McDowell, *supra* note 5 (explaining impact mental health challenges have on professional athletes' jobs and lives).

8. See *id.* (listing athletes who have spoken out about mental health and their goals for mental health awareness). These athletes have called for erasing the stigma surrounding mental health issues, encouraging an open dialogue around asking for help, and creating a support system for their teammates. See *id.* (quoting Serena Williams' support for Naomi Osaka's withdrawal from French Open saying, "I wish I could give her a hug because I know what it's like"); see also Juliet Spies-Gans, *Ronda Rousey Isn't Ashamed of Opening Up About Her Mental Health*, HUFFPOST (Feb. 24, 2016, 10:44 AM), https://www.huffpost.com/entry/ronda-rousey-mental-health_n_56cdc177e4b0ec6725e4887c [https://perma.cc/ZS2H-W9H8] (detailing Ronda Rousey's call for open communication around mental health challenges faced by athletes). Specifically, Michael Phelps is a huge advocate for mental health in professional athletes. See Julie Kliegman, *Michael Phelps on Mental Health and the USOPC: 'I Want People to Actually Do Something'*, SPORTS ILLUSTRATED (Oct. 10, 2022), <https://www.si.com/olympics/2022/10/10/michael-phelps-mental-health-advocacy-sports-nft-cover> [https://perma.cc/5AG7-KEWP] (explaining Phelps' role in athlete mental health advocacy). Phelps struggled with anxiety, depression, and suicidal thoughts, and through his own struggles, he started a mental health foundation to help reduce the stigma surrounding mental illness. See *id.* (highlighting advocacy work Phelps has done for mental health awareness in athletes).

9. For further discussion of athletes speaking out about their mental health, see *infra* note 10 and accompanying text.

leagues, others have not experienced such grace.¹⁰ For instance, players in the National Football League (“NFL”) and National Basketball League (“NBA”) experience predominately negative treatment by their teams and the leagues regarding mental health.¹¹

This Comment uses two dominant American sports leagues, the NFL and the NBA, as case studies to address the potential benefits and drawbacks of creating contractual mental health protections.¹² Section II of this Comment begins by discussing how mental health

10. See Juliet Macur, *Simone Biles is Withdrawing from the Olympic All-Around Gymnastics Competition.*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/07/28/sports/olympics/simone-biles-out.html#:~:text=our%20live%20coverage-,Simone%20Biles%20is%20withdrawing%20from%20the%20Olympic%20all%20around%20gymnastics,continue%20without%20risking%20severe%20injury> [https://web.archive.org/web/20240507133330/https://www.nytimes.com/2021/07/28/sports/olympics/simone-biles-out.html] (explaining Biles’ withdrawal from Olympics due to mental health issues and her support from United States of America Gymnastics). In a statement released by United States of America Gymnastics, following Biles’ withdraw from the Olympics, the organization stated they “wholeheartedly support[ed] Simone’s decision and applaud[ed] her bravery in prioritizing her well-being.” See *id.* (quoting United States of America Gymnastics’ statement regarding Biles’ withdrawal). This support validated Biles’ decision to prioritize her mental health and gave her confidence to continue to listen to her body without fear of career implications. See Oskar Garcia, *Simone Biles Says the Supportive Reaction to Her Withdrawal Has Been Uplifting.*, N.Y. TIMES (Aug. 3, 2021), <https://www.nytimes.com/2021/07/28/sports/olympics/simone-biles-tweet.html> [https://web.archive.org/web/20240507134049/https://www.nytimes.com/2021/07/28/sports/olympics/simone-biles-tweet.html] (“The outpouring [of] love & support I’ve received has made me realize I’m more than my accomplishments and gymnastics which I never truly believed before.”). However, not all athletes have received the same support and understanding. See Kelly McLaughlin & Scott Davis, *Naomi Osaka is Withdrawing from the French Open After Being Fined for Refusing to Attend a Press Conference*, BUS. INSIDER (May 31, 2021, 2:13 PM), <https://www.insider.com/naomi-osaka-withdrawing-french-open-fined-press-conferences-2021-5> [https://perma.cc/J2MY-2GLT] (discussing negative reaction of French Open and others to Osaka’s press conference absence). Naomi Osaka received extreme criticism from the French Open, other tennis associations, and players for missing a press conference. See *id.* (describing monetary fine imposed on Osaka, and tennis stars Ashleigh Barty, Rafael Nadal, and Billie Jean King for speaking out about importance of press conferences in tennis careers). It was not just the players that lacked solidarity: Tennis Australia, the US Tennis Association, the French Tennis Association, and the All England Lawn Tennis Club threatened further discipline for Osaka’s decision. See *id.* (referencing statement of several tennis associations published by Roland-Garros stadium insinuating additional repercussions for Osaka’s actions). In response to these reactions, Osaka suggested in the future, tennis players should get the right to take a mental break from the media without the fear of being severely scrutinized. See Naomi Osaka, *Naomi Osaka: ‘It’s O.K. Not to Be O.K.’*, TIME (July 8, 2021, 7:15 AM), <https://time.com/6077128/naomi-osaka-essay-tokyo-olympics/> [https://perma.cc/G9EX-ZYDZ] (explaining Osaka’s opinion on how to deal with athlete mental health issues in future instances).

11. For further discussion of NFL and NBA players’ mental health, see *infra* notes 19–51 and accompanying text.

12. For further discussion of potential benefits and drawbacks to adding mental health protections to NFL and NBA contracts, see *infra* notes 145–148 and accompanying text.

affects players in the NBA and NFL.¹³ It then discusses the current mental health resources the NFL and NBA provide for its players.¹⁴ Section III of this Comment begins by discussing the legal obstacles presented for NFL and NBA players struggling with their mental health.¹⁵ This Section then analyzes a current professional sports league in the United States that has included a contractual mental health provision in their contracts.¹⁶ Finally, this Section analyzes how a similar mental health provision would benefit players in the NFL and NBA.¹⁷ Section IV argues that a mental health clause would be helpful in providing athletes with mental health protections and in decreasing the stigma surrounding mental health in these individuals.¹⁸

II. BACKGROUND: STACKED TEAM OF MENTAL HEALTH ISSUES IN THE NFL AND NBA

A. Roster of NFL and NBA Players Who Have Spoken Up About Their Struggles

NFL player Antonio Brown is an unfortunate example of how mental health challenges may negatively affect the performance of skilled professional athletes.¹⁹ His struggles made headlines in 2022 during a game against the New York Jets where, in a moment of mental health crisis, he tossed his jersey and shoulder pads towards his team's bench, threw his undershirt and glove to the stands, and ran off the field throwing peace-signs to the stadium.²⁰ This incident was

13. For further discussion of how mental health conditions affect NBA and NFL athletes, see *infra* notes 19–51 and accompanying text.

14. For further discussion of what the NFL and NBA have done to provide players with mental health resources and support, see *infra* notes 52–84 and accompanying text.

15. For further discussion of legal and social obstacles players face who are struggling with their mental health, see *infra* notes 85–112 and accompanying text.

16. For further discussion of a current league who has developed contractual mental health protections, see *infra* notes 124–144 and accompanying text.

17. For further discussion of how a contractual mental health protection would benefit players in the NFL and NBA, see *infra* notes 145–175 and accompanying text.

18. For further discussion of the potential benefits increased mental health protections will have on athletes and broader society, see *infra* notes 176–184 and accompanying text.

19. See Rob Maaddi, *Analysis: Antonio Brown's Mental Health is No Joke*, ASSOCIATED PRESS (Jan. 3, 2022, 5:14 PM), <https://apnews.com/article/nfl-sports-health-mental-health-antonio-brown-1dc9e09956169dec7cafedb2ba19c2f7> [<https://perma.cc/VFS5-Q2ND>] (discussing impact of Brown's mental health challenges on his football career).

20. See *id.* (describing Antonio Brown's "bizarre" behavior during Buccaneers game against Jets). This outburst accompanied a build-up of multiple other issues

one of many outbursts which, along with other problematic behaviors, have persisted throughout his entire NFL career.²¹

People close to Antonio Brown have spoken out about their concerns regarding his mental health.²² Tom Brady released a statement following the Jets game, stating that “[e]verybody should do what they can to help him in ways that he really needs it . . . I think everyone should be very compassionate and empathetic toward some very difficult things that are happening.”²³ Brown’s ex-girlfriend, Chelsie Kyriss, also released a statement on Instagram stating, “[m]y hope is that [Antonio] will get help and seek the mental health treatment that he so desperately needs so that he can be the father all of his children need and deserve.”²⁴ Despite

including a past of sexual assault allegations and Brown’s three-game suspension for misrepresenting his coronavirus-vaccination status. *See id.* (explaining ease of piling issues on top of Brown due to frequent drama and scandal associated with his name).

21. *See id.* (describing Brown’s other questionable actions and behaviors he has shown during his career). Before this incident on the Buccaneers, Brown’s struggles were apparent earlier in his career while on the Pittsburgh Steelers. *See* Jordan Greer, *Why Did Antonio Brown Leave the Steelers? Pittsburgh Exit Marked Start of Problems for Former Buccaneers Star*, SPORTING NEWS (Jan. 3, 2022), <https://www.sportingnews.com/us/nfl/news/antonio-brown-steelers-buccaneers-leave-pittsburgh/1lqi6wc8ebc0flmub4yp4aaah#:~:text=Despite%20that%20Brown%20was%20coming,%2D%20and%20fifth%2Dround%20pick> [<https://perma.cc/D82Q-3U8L>] (explaining Brown’s tendencies of being late to practice and engaging in arguments with teammates on Steelers). The Steelers head coach let Brown’s behavior slide for a short time because of his immense skill on the field. *See id.* (citing to Brown’s second place ranking in all-time receiving yards in Steelers franchise and being named Pro Bowler seven times). Eventually, however, Brown was kicked off the Steelers due to the “constant drama” caused by Brown’s behavior. *See id.* (describing events leading up to Brown’s release including “a heated disagreement with a teammate” and absences from meetings and practices before important game). From the Steelers, Brown went to the Oakland Raiders who also had issues with his unpredictable conduct. *See id.* (explaining Brown’s issues on Raiders including helmet drama, missing workouts, sharing private conversations on social media, and arguing with general manager of Raiders); *see also* Dan Bernstein, *Five Details from Antonio Brown’s Reported Helmet Fuss That Cement His Bizarre Reputation*, SPORTING NEWS (Aug. 12, 2019), <https://www.sportingnews.com/us/nfl/news/five-details-antonio-browns-helmet-fuss-bizarre-reputation/1053n17hnat0c10diphuog0pr3> [<https://perma.cc/Q4NP-N6LT>] (detailing Brown’s issues with Raiders’ helmet, insisting he would not play football again unless he could wear old helmet). After quickly getting “sick” of Brown’s behavior, the Raiders released him from their team. *See* Maaddi, *supra* note 19 (stating Raiders released Brown before regular season games commenced). Following his release from the Raiders, Brown was briefly signed on to the Patriots on a one-year contract, but they quickly released him after just one game. *See* Greer, *supra* note 21 (explaining Brown’s release from Patriots after being sued for sexual assault by former trainer).

22. *See* Maaddi, *supra* note 19 (explaining fellow NFL players’ concerns for Brown’s health).

23. *See id.* (quoting Tom Brady’s statement in response to Brown’s actions, emphasizing Brown’s need for help).

24. *See* Zac Al-Khateeb, *Antonio Brown’s Ex-Girlfriend Says He ‘Desperately Needs’ Mental Health Treatment*, SPORTING NEWS (Jan. 22, 2020), <https://www.sportingnews.com>.

his innate talent, it is uncertain whether Antonio Brown will play professional football again.²⁵

Not all cases have been as public or controversial as Antonio Brown's, but there are several other NFL athletes who have experienced challenges with their mental health.²⁶ NFL athletes struggle with depression and anxiety which may be attributed in part to the aggressive nature of the game, but also to the spotlight and

com/us/nfl/news/antonio-brown-ex-girlfriend-mental-health-treatment/1tpnpqpm86bu21q8h53o9s7yv8 [https://perma.cc/LH24-AMP2] (quoting Chelsie Kyriss' statement made on Instagram).

25. See Bryan DeArdo, *Antonio Brown Announces He's Ending His Retirement To Join the Ravens in 2023 and It Raises Some Questions*, CBS SPORTS (Apr. 29, 2023, 5:39 PM), <https://www.cbssports.com/nfl/news/antonio-brown-announces-hes-ending-his-retirement-to-join-the-ravens-in-2023-and-it-raises-some-questions/#:~:text=Log%20Out,Antonio%20Brown%20announces%20he%27s%20ending%20his%20retirement%20to%20join%20the,and%20it%20raises%20some%20questions&text=Less%20than%20two%20months%20after,to%20resume%20his%20NFL%20career> [https://perma.cc/3SJL-H2KD] (explaining Brown's retirement announcement from NFL and then subsequent announcement of his return to NFL to join Ravens). Brown's challenges, both on and off the field, have led teams to steer clear of him since his brief tenure with the Buccaneers. See *id.* (discussing Brown's legal troubles including arrest warrants and allegations of inappropriate sexual and violent behavior as deterrents from being signed to new teams). These issues have cast a dark shadow over his talent, leaving him unsigned since his time on the Buccaneers. See *id.* (quoting Steelers coach's reflection on Brown as player, "I don't think enough gets said about the will of that dude, about the work ethic of that dude, about the fearlessness in which he played the game . . . We talk about all this other stuff, but we don't talk about that.").

26. See Vogt, *supra* note 5 (highlighting unsurprising fact that many NFL players experience mental health issues despite being "household names"). Dallas Cowboys quarterback, Dak Prescott, has spoken up about his struggles with anxiety and depression. See Jori Epstein, *Dallas Cowboys QB Dak Prescott On Why He Opened Up On Depression, Brother's Suicide: 'Being a Leader is About Being Genuine'*, USA TODAY (Sept. 11, 2020, 11:05 AM), <https://www.usatoday.com/story/sports/nfl/cowboys/2020/09/10/dak-prescott-dallas-cowboys-depression-brother-jace/3460645001/> [https://perma.cc/7RXP-YH6Y] (describing Prescott's mental health struggles after his brother's suicide). In opening up about his struggles with mental health, Prescott described negative thoughts he has as a result of being under the spotlight since the start of his NFL career. See *id.* (highlighting intense critiques and attention paid to elite professional athletes). Like Prescott, now-Philadelphia Eagles wide receiver, A.J. Brown, has also spoken up about his mental health challenges. See Paul Kasabian, *Titans' A.J. Brown Posts Video Addressing Depression, Importance of Mental Health*, BLEACHER REP. (Nov. 12, 2021), <https://bleacherreport.com/articles/10018035-titans-aj-brown-posts-video-addressing-depression-importance-of-mental-health> [https://web.archive.org/web/20240507141040/https://bleacherreport.com/articles/10018035-titans-aj-brown-posts-video-addressing-depression-importance-of-mental-health] (describing Brown's social media post explaining struggle with depression, anxiety, and suicidal thoughts). Brown has reflected upon the culture surrounding mental health in men and professional athletes, stating in a press conference that, "I . . . really didn't take into consideration what depression really was . . . [t]hat's how I grew up. I just brushed off my feelings, and it got the best of me." See Vogt, *supra* note 5 (capturing Brown's discussion of his mental health challenges).

pressure that comes with being a professional athlete.²⁷ Unfortunately, popular sports networks are not helping the problem and are rather perpetuating the idea that mental health challenges are a sign of weakness in these athletes.²⁸

Players in the NBA also struggle with their mental health.²⁹ Dr. Kensa Gunter, director of the NBA's Mind Health program, stated in an article for *The Athletic* that NBA players experience mental health challenges at the same rate as everyday people; however, the majority of their lives are visible for the world to see, and in turn are subject to intense critique by the media and fans.³⁰ This is likely because fans view players as the pinnacle of toughness and masculinity, which amplifies the stigma around mental health in these athletes.³¹ Further, a 2019 study done by the International Olympic Committee released a consensus statement which found that thirty-five percent of elite athletes struggle with mental health.³² In applying that percentage in terms of NBA players alone, upwards of 158 of 450 NBA athletes struggle with their mental health.³³

Recently, Ben Simmons has shared his struggles with mental health.³⁴ While on the Philadelphia 76ers, Simmons was experiencing

27. See Vogt, *supra* note 5 (attributing repeated head collisions and “ultra-masculine culture” of NFL as cause for players’ increased risk of mental health challenges).

28. See Epstein, *supra* note 26 (describing Fox Sports’ Skip Bayless suggesting Prescott’s depression was sign of “vulnerability” and not Cowboys quarterback material).

29. See Joe Vardon, *Why the NBA Got Serious About Mental Health: ‘We Believe in It, But We Also Saw an Increasing Need For It’*, ATHLETIC (Apr. 18, 2023), https://theathletic.com/4384992/2023/04/18/nba-mental-health/?access_token=11766543 [<https://perma.cc/92PN-V2DZ>] (discussing NBA players’ experience with mental health issues and how topic is frequently talked about in NBA).

30. See *id.* (“The difference between them . . . and the rest of us, Gunter said, is that so much of their lives are carried out in the public eye. They are critiqued by hundreds of media, thousands of fans in the seats and millions on social media.”). Gunter also provided the statistic that one in every five Americans will experience a mental illness every year, and this statistic does not exclude NBA players. See *id.* (emphasizing idea that NBA players should not be viewed differently from rest of population when considering mental health).

31. See *id.* (describing players placed under increased scrutiny because of publicization of their lives); see also Epstein, *supra* note 26 (evidencing intense stereotype of manliness and stigma around mental health in professional athletes).

32. See DruSmith, *DeMar DeRozan, Ben Simmons, Giannis Antetokounmpo & the Mental Health Balancing Act*, BREW HOOP (Oct. 19, 2022, 11:00 AM), <https://www.brewhoop.com/2022/10/19/23411766/demar-derozan-ben-simmons-giannis-antetokounmpo-the-mental-health-balancing-act> [<https://perma.cc/QWZ3-DT4F>] (explaining consensus statement issued by International Olympic Committee).

33. See *id.* (putting thirty-five percent of all athletes into perspective of NBA population).

34. See Farbod Esnaashari, *Ben Simmons Opens Up About Mental Health Struggle on 76ers*, FAN NATION (Nov. 5, 2022, 8:38 PM), <https://www.si.com/nba/nets/news/ben-simmons-opens-up-about-mental-health-struggle-on-76ers> [<https://web.archive.org/web/20240507141736/https://www.si.com/nba/nets/news/ben-simmons->

issues with his performance on the court.³⁵ At the start of the 2021–2022 season, he met with the team and informed them he was not mentally ready to play up to his standards and expressed that he needed to step away from playing.³⁶ Simmons explained in an interview that “[he] got into a really dark place in [his] life . . . It was a build-up of everything— all that pressure.”³⁷ The issues culminated in a pivotal moment in the 76ers’ season where, as a result of his struggles, he failed to dunk the ball in game seven of the Eastern Conference Semifinals against the Atlanta Hawks.³⁸ Simmons claimed that after the game, he was criticized by the city of Philadelphia, his coaches, and his teammates.³⁹ Simmons’ case is one of many that give a glimpse into the mental health struggles NBA players face, and the lack of support they receive.⁴⁰

opens-up-about-mental-health-struggle-on-76ers] (describing Ben Simmons’ mental health challenges).

35. See Michael Kaskey-Blomain, *Ben Simmons’ Beef With 76ers Explained: Complete Timeline of Drama That Ultimately Led To James Harden Trade*, CBS SPORTS (Feb. 10, 2022, 5:32 PM), <https://www.cbssports.com/nba/news/ben-simmons-beef-with-76ers-explained-complete-timeline-of-drama-that-ultimately-led-to-james-harden-trade/#:~:text=Simmons%20met%20with%20the%20Sixers,doing%20so%20at%20this%20point> [https://web.archive.org/web/20240507142149/https://www.cbssports.com/nba/news/ben-simmons-beef-with-76ers-explained-complete-timeline-of-drama-that-ultimately-led-to-james-harden-trade/] (detailing Simmons’ statistics from Wizards series where he shot ten for twenty-eight free throws and from playoffs where he shot twenty-five for seventy-three free throws).

36. See *id.* (explaining Ben Simmons’ request for time away after Simmons expressed wanting trade and had missed training camp, media day, two preseason games, and was suspended for first game of 2021–2022 regular season).

37. See Esnaashari, *supra* note 34 (explaining Simmons’ mental health issues); see also Konrad Marshall, *From Our Greatest Basketball Export To US Sporting Pariah: Can Simmons Bounce Back?*, SYDNEY MORNING HERALD (Nov. 5, 2022), <https://www.smh.com.au/sport/from-our-greatest-basketball-export-to-us-sporting-pariah-can-simmons-bounce-back-20220726-p5b4mm.html> [https://perma.cc/QB6V-7R65] (describing interview with Simmons where he discussed his struggles with depression).

38. See Esnaashari, *supra* note 34 (explaining Simmons’ failure to perform like usual to help his team win Eastern Conference semifinal game).

39. See *id.* (describing 76ers’ reaction to Simmons’ decision not to dunk ball).

40. See *id.* (describing Simmons’ struggles with mental health). Other NBA athletes, too, have struggled with their mental health. See Alex Reimer, *Delonte West’s Mental Illness, Once Treated as a Joke, Was Never a Laughing Matter*, FORBES (Jan. 21, 2020, 3:34 PM), <https://www.forbes.com/sites/alexreimer/2020/01/21/delonte-wests-mental-illness-used-to-elicite-laugh/?sh=218abb2e347b> [https://perma.cc/LVF8-9H8Q] (explaining Delonte West’s struggles with mental health). West was diagnosed with bipolar disorder in 2008 and struggled with the illness throughout his basketball career. See *Former NBA Player Delonte West Talks About His Battle with Bipolar Disorder and Starting Fresh*, GOOD MORNING AM. (July 13, 2022, 4:41 PM), <https://www.goodmorningamerica.com/gma/story/nba-player-delonte-west-talks-battle-bipolar-disorder-86682528> [https://perma.cc/RVQ2-T78C] [hereinafter *Former NBA Player*] (describing West’s diagnosis of bipolar disorder). West had a record of “blow [ups]” and outbursts, both at his teammates and to referees, while playing for the Cavaliers and the Mavericks. See Reimer, *supra* note 40 (describing West opening up to reporters about his feelings after blowing up at referee); see also *Former NBA Player*, *supra* note 40 (describing West’s mental health incidents while on

DeMar DeRozan, a forward for the Chicago Bulls, has been a dominant voice in the conversation around mental health in the NBA.⁴¹ *The Washington Post* coined a tweet published by DeRozan in 2018 as a catalyst for starting an honest conversation about the presence of anxiety and depression in the NBA.⁴² The tweet read “[t]his depression get the best of me.”⁴³ DeRozan had been through a tough life, and thought that making it to the NBA would help mitigate his struggles.⁴⁴ However, he found that the fame only made his struggles with anxiety and depression worse.⁴⁵ Since the tweet, DeRozan has been outspoken about his mental health and the challenges he faces being a professional basketball player.⁴⁶ He recently shared on the podcast “The Old Man & The Three” with JJ Redick, that “there’s so much internal pressure to want to be great every single day. Every single day of like, ‘I got to go back to the gym. I didn’t do enough.’”⁴⁷

These athletes and others have initiated the dialogue surrounding mental health in professional athletics, and have started to demand that leagues be responsible for addressing and accommodating their mental illness concerns.⁴⁸ This discussion calls for an in-depth exploration of the existing legal and contractual

Mavericks). The Mavericks ended up suspending West multiple times for his conduct and he eventually retired from basketball all together. *See id.* (describing West’s mental health incidents while on Mavericks and reporting on West’s life once he retired from basketball, including his admission to drug rehabilitation clinics, and being seen panhandling on the streets). Many players and members of the NBA community have expressed their concerns for Delonte West, most notably, former player Royce White. *See Reimer, supra* note 40 (describing West’s former coach at St. Joseph’s, college teammate, and Royce White publicly expressing their concerns for his wellbeing).

41. *See* Michael Lee, *How the NBA Got Serious About Mental Health*, WASH. POST (Apr. 19, 2022, 7:00 AM), <https://www.washingtonpost.com/sports/2022/04/19/nba-mental-health-demar-derozan/> [<https://perma.cc/H8LU-6VXL>] (describing DeMar DeRozan’s time on Chicago Bulls).

42. *See id.* (describing intention of DeRozan’s tweet to express he was not okay and tweet’s effect on how NBA sees mental health).

43. *See id.* (featuring picture of DeRozan’s tweet).

44. *See id.* (explaining DeRozan came from life where he had lost friends and family members to gang violence).

45. *See id.* (describing DeRozan’s attempts to push away reality by burying under new reality as basketball star).

46. *See* Scott Polacek, *Bulls’ DeMar DeRozan: ‘I Don’t Think I Can Truly Be Happy Until I Retire’*, BLEACHER REP. (Sept. 28, 2022), <https://bleacherreport.com/articles/10050603-bulls-demar-derozan-i-dont-think-i-can-truly-be-happy-until-i-retire> [<https://perma.cc/SV5B-358D>] (discussing DeRozan’s role as spokesperson for mental health in NBA).

47. *See id.* (quoting DeRozan in podcast where he explains pressure he feels as NBA player).

48. For further discussion of professional athletes who have struggled with mental health and opened up about their struggle, see *supra* notes 10–11 and accompanying text.

responsibilities that leagues and teams bear in safeguarding the mental well-being of their players.⁴⁹ Considering the inherent difficulty of playing professional sports, and athletes' reluctance to do anything that may jeopardize their coveted roster spots, the onus seems to be on the leagues and the teams themselves to protect their players.⁵⁰ It also prompts consideration of whether legal obligations between parties can be devised to effectively protect players in a manner that benefits the leagues, teams, and players alike.⁵¹

B. NFL's Mental Health Initiatives Fall Yards Short of the End Zone

In 2020, the NFL issued an updated collective bargaining agreement ("CBA").⁵² In the CBA, the NFL and National Football League Players Association ("NFLPA") implemented a "Comprehensive Mental Health and Wellness Committee" to spearhead mental health initiatives for NFL teams and players.⁵³ One of the various responsibilities the Committee is tasked with is to develop educational mental health programming for players, coaches, and other team personnel.⁵⁴ The CBA also requires every team to hire a Team Clinician who is either a board-certified psychiatrist, a doctoral level clinical or counseling psychologist, or a professional counselor with a master's degree in counseling or social work.⁵⁵ The responsibilities

49. For further discussion of current mental health resources provided by the NFL and NBA, see *infra* notes 53–84 and accompanying text.

50. See *Estimated Probability of Competing in Professional Athletics*, NCAA, <https://www.ncaa.org/sports/2015/3/6/estimated-probability-of-competing-in-professional-athletics.aspx> [<https://perma.cc/7P98-7BXQ>] (last visited Mar. 18, 2024) (providing data that 1.2% of NCAA athletes make it to NBA and 1.6% of NCAA athletes make it to NFL).

51. For further discussion and examples of whether legal obligations between parties can be formed to protect player mental health, see *infra* notes 120–144 and accompanying text.

52. See Dan Graziano, *NFL CBA Approved: What Players Get in New Deal, How Expanded Playoffs and Schedule Will Work*, ESPN (Mar. 15, 2020, 10:20 AM), https://www.espn.com/nfl/story/_/id/28901832/nfl-cba-approved-players-get-new-deal-how-expanded-playoffs-schedule-work [<https://perma.cc/TK56-NGNB>] (describing new collective bargaining agreement for NFL players).

53. See 2020 NFL-NFLPA Collective Bargaining Agreement, Art. 39, § 19 (Mar. 5, 2020), available at https://nflpaweb.blob.core.windows.net/media/Default/NFLPA/CBA2020/NFL-NFLPA_CBA_March_5_2020.pdf [<https://perma.cc/7A5V-NAWV>] [hereinafter *NFL-NFLPA CBA*] (describing new Comprehensive Mental Health and Wellness Committee's formation and responsibilities).

54. See *id.* (describing responsibilities of Comprehensive Mental Health and Wellness Committee). This educational programming includes suicide awareness and prevention and education on clinical concerns such as depression and anxiety. See *id.* (describing topics Committee will educate about).

55. See *id.* (explaining requisite qualifications of Team Clinicians); see also Nicholas Cothrel, *Rams Helped Shape CBA With Mental Health Resource*, FANATION

of the Team Clinician include conducting at least two educational mental health programming sessions per season, voluntary workshops, being available to players on-site at least twice weekly, and being available to speak with players who are on the Injured Reserve or Physically Unable to Perform list.⁵⁶ In addition to Team Clinicians, the CBA requires teams to implement Mental Health Emergency Action Plans at the start of each NFL season.⁵⁷ The required components of these plans include defining teams' responses to mental or behavioral health crises and other major incidents that could result in extreme mental health stress.⁵⁸ Finally, the CBA includes injury protection benefits for players.⁵⁹ These benefits only apply to players who get "severely injured" in an NFL game or practice, and whose contracts are eventually terminated by their team for their inability to perform.⁶⁰

C. NBA's "Mental Disability" Amendment Bounces Off the Rim

In 2019, the NBA issued a memorandum to all thirty teams announcing new required mental health measures.⁶¹ Included in these new measures is that each team is required to have at least one mental health professional and one licensed psychiatrist to be available for players.⁶² Additionally, all NBA teams are required to have action plans for mental health emergencies.⁶³ Finally, all thirty NBA teams were required to attend a mental health and wellness meeting in September 2019.⁶⁴ These requirements were in part credited to DeMar DeRozan's 2018 tweet, mentioned earlier in this Comment.⁶⁵

(Aug. 16, 2021, 6:21 PM), <https://www.si.com/nfl/rams/news/los-angeles-rams-nfl-cba-mental-health-resource-training-camp> [<https://perma.cc/9Q2C-PK5N>] (describing Los Angeles Rams' mental health clinician's role in shaping CBA mandate for each team to require mental health clinicians).

56. See NFL-NFLPA CBA, *supra* note 53 (explaining duties of team clinicians).

57. See *id.* (describing new Mental Health Emergency Action Plans).

58. See *id.* (listing required components of Mental Health Emergency Action Plans).

59. See *id.* (detailing injury protection benefits some players are entitled to).

60. See *id.* (identifying criteria for injury protection eligibility).

61. See Michael Shapiro, *Report: NBA Finalizes Expanded Mental Health Program, Adds Licensed Psychiatrists*, SPORTS ILLUSTRATED (Aug. 7, 2019), <https://www.si.com/nba/2019/08/07/nba-expanded-mental-health-program-licensed-psychologists> [<https://perma.cc/2CM7-C3VF>] (summarizing new required mental health measures).

62. See *id.* (outlining new requirements); see also Vardon, *supra* note 29 (explaining NBA's requirement for all teams to hire mental health practitioner).

63. See Vardon, *supra* note 29 (describing other mental health requirements of NBA teams).

64. See *id.* (describing mental health and wellness meeting requirement).

65. See *id.* (mentioning DeMar DeRozan's tweet and Kevin Love's story in *The Players' Tribune* about their struggles with mental health, as inspiration for these expanded resources).

DeRozan has been credited with being a catalyst for increased discussion of mental health.⁶⁶

The CBA also includes a “Mandatory Programs” section.⁶⁷ This section mandates that NBA players participate in Team Awareness Meetings which cover “mental health and wellness programming.”⁶⁸ If a player is absent from one of these meetings without an acceptable excuse, they will be fined \$20,000.⁶⁹ Further, if a player does not attend a Team Awareness Meeting that covers the NBA Anti-Drug Program, they must be provided with the educational materials pertaining to the Anti-Drug Program.⁷⁰ There is no such requirement for mental health and wellness programming.⁷¹

On July 1, 2023, the NBA issued a new CBA that runs through the 2029–2030 season.⁷² The CBA does not contain specific rules that detail procedures for dealing with mental health recovery for players.⁷³ However, it contains an “Allowable Amendments” section that outlines ways in which specific players and their teams may amend certain aspects of the Uniform Player Contract.⁷⁴ This section allows for players and their teams to amend the Uniform Player Contract to protect a player’s base salary in the event their contract is terminated due to a “mental disability.”⁷⁵ It also outlines the process

66. See Shapiro, *supra* note 61 (describing DeRozan’s efforts to speak out about mental health).

67. See 2023-NBA-NBPA Collective Bargaining Agreement, Art. 6, § 4 (July 2023), available at <https://ak-static.cms.nba.com/wp-content/uploads/sites/4/2023/06/2023-NBA-Collective-Bargaining-Agreement.pdf> [<https://perma.cc/QP8U-HLMW>] [hereinafter *NBA-NBPA CBA*] (outlining mandatory programs NBA players must participate in).

68. See *id.* (explaining Team Awareness Meetings which include mental health and wellness programming among other programming).

69. See *id.* (providing consequences for not attending mandatory programs).

70. See *id.* (describing protocol for players who miss Team Awareness Meetings covering Anti-Drug Program).

71. See *id.* (listing NBA Anti-Drug Program as sole program requiring follow-up if missed).

72. See *NBA Collective Bargaining Agreement Signed*, NBA (June 28, 2023, 4:25 PM), <https://www.nba.com/news/nba-collective-bargaining-agreement-signed#> [<https://perma.cc/2JJA-MCSB>] (issuing official release of 2023 NBA CBA).

73. See 2023 NBA-NBPA CBA, *supra* note 67, at Art. 22 (detailing player health and wellness items). This section is supposed to encompass all player health and wellness, yet it fails to make any mention of mental health. See *id.* (describing items such as requirements for team player health professionals, vaccine requirements, health and performance screenings, and medical records).

74. See *id.* at Art. 2, § 3 (containing Article 2, Section 3 of CBA titled “Allowable Amendments”).

75. See *id.* at Art. 2, § 4 (describing mental disability amendment available to NBA players). According to the section, a player and team may agree to guarantee the player’s base salary in the event a “mental disability,” not covered by the team’s insurance causes the player to be unfit to play skilled basketball. See *id.* (outlining how mental disability amendment will apply to players who choose to negotiate amendment into contract).

to procure an insurance policy for a player's mental disability.⁷⁶ This process is dependent on the player producing all information requested of him, participating in all required examinations, and fully cooperating with the team and insurance provider in the procurement process.⁷⁷ In order for the team and the player to agree to this amendment, the CBA outlines that the player's mental disability may not be the result of a lengthy list of potential causes including attempted suicide and substance abuse.⁷⁸

D. Additional Mental Health Resources

Apart from both CBAs, the NFL and the NBA, along with their respective Players Associations, have launched mental health and wellness webpages.⁷⁹ The NFL's website serves as a summary where NFL fans can see what the NFL has done to support the mental health of its players.⁸⁰ The NFLPA's website is a resource for current players which requires a log-in, but lists options to hire a therapist with the NFL's insurance provider and mental health resources such as

76. *See id.* (explaining process for procuring insurance policies for players' mental disabilities if team wishes to do so).

77. *See id.* (explaining lengthy and invasive procedure for teams to procure insurance policy for player).

78. *See id.* (indicating when player's base salary may be protected if player's contract is terminated for mental disability). The items included in this lengthy list include:

[L]ack of skill does not result from the player's participation in activities prohibited by Paragraph 12 of the Uniform Player Contract (as such Paragraph may be modified by Exhibit 5 to the Player Contract), attempted suicide, intentional self-inflicted injury, abuse of alcohol, use of any Prohibited Substance or controlled substance, abuse of or addiction to prescription drugs, conduct occurring during the commission of any felony for which the player is convicted (including by a plea of guilty, no contest, or nolo contendere), participation in any riot, insurrection, or war or other military activities, or failure to comply with the requirements of Paragraphs 7(d)-(i) of the Uniform Player Contract.

See id. (describing lengthy list of exceptions to obtaining compensation for non-performance due to mental disability).

79. *See Player Health & Safety*, NFL, <https://www.nfl.com/playerhealthandsafety/health-and-wellness/mental-health/> [<https://perma.cc/3MRJ-QZG8>] (last visited Feb. 4, 2024) (explaining resources and initiatives created by NFL around mental health); *see also Mental Health & Counseling*, NFLPA, <https://nflpa.com/active-players/health/counseling-1> [<https://perma.cc/WS32-NZT8>] (last visited Feb. 4, 2024) (depicting resources for current players created by NFLPA for mental health); *see also Stop and Take a Moment.*, MIND HEALTH, <https://mindhealth.nba.com> [<https://perma.cc/24UL-TMCW>] (last visited Feb. 4, 2024) (describing mental health resources created by NBA); *see also Mental Health & Wellness Department*, NBPA, <https://nbpa.com/mentalwellness> [<https://perma.cc/9TV8-AB48>] (last visited Feb. 4, 2024) (depicting mental health resources for current players).

80. *See Player Health & Safety*, *supra* note 79 (listing available resources for players, videos, and articles discussing mental health, and changes NFL made in most recent CBA).

Headspace.⁸¹ Additionally, the NFL Life Line is a free, confidential hotline for players, coaches, staff, and family members to connect with mental health providers.⁸² The NBA's website provides several resources that are aimed for fan-use as opposed to player use.⁸³ The National Basketball Players Association's ("NBPA") website is for current player-use, providing a short mission statement for visitors and a password protected sign-in link for current players to access NBA resources and contact links.⁸⁴

III. ANALYSIS: LEVELING UP THE DEFENSE TO PROTECT ATHLETES FACING MENTAL HEALTH CHALLENGES

Though providing resources to players is a great start, it is extremely hard to standardize high-quality mental health care, education, and treatment when the responsibility of providing mental health resources is delegated to each team.⁸⁵ Aside from these resources, there are legal obstacles that stand in the way of athletes getting the mental health assistance they need.⁸⁶ These obstacles lie in current NBA and NFL player contracts.⁸⁷ Standard NFL and NBA contracts do not adequately account for mental health issues, and are structured in a way that allows for relatively easy termination.⁸⁸ In turn, it is common for players to find themselves being

81. See *Mental Health & Counseling*, *supra* note 79 (providing information on how to obtain mental health clinicians and how to access NFL-subsidized stress management and mental health resources).

82. See Rebecca A. Clay, *A New NFL Playbook: Enhancing Mental Health*, 48 *MONITOR ON PSYCH.* 22, 22–23 (2017) (describing NFL Life Line initiative).

83. See *Stop and Take a Moment.*, *supra* note 79 (listing various mental health skills and resources for viewers to consume).

84. See *Mental Health & Wellness Department*, *supra* note 79 (stating NBPA's mission is to "establish a safe place to assist NBA players to uncover the essence of who they are and to achieve excellence").

85. For further discussion of the variability in implementation and use of mental health resources in NBA and NFL, see *infra* notes 91–94 and accompanying text.

86. For further discussion of the legal issues affecting NBA and NFL players with mental health conditions, see *infra* notes 97–112 and accompanying text.

87. See Christopher R. Deubert, I. Glenn Cohen & Holly Fernandez Lynch, *Comparing Health-Related Policies & Practices in Sports: The NFL and Other Professional Leagues*, *PETRIE-FLOM CTR. FOR HEALTH L. POL'Y, BIOTECHNOLOGY & BIOETHICS* 1, 186 (2017), <https://footballplayershealth.harvard.edu/wp-content/uploads/2017/05/Harvard-Comparative-League-Analysis-5.15.17.pdf> [<https://perma.cc/6X58-Y477>] (examining contractual effects on health of NBA players).

88. See *id.* at 186, 194 (discussing issues of guaranteed contracts, salary caps, and contract termination as potential areas that affect player health). By not guaranteeing players' compensation, the players may feel more inclined to play through injuries to remain on the team. See *id.* at 194 (discussing mental effect nonguaranteed contracts have on NFL players).

traded between teams when they are not performing their best.⁸⁹ These legal issues, paired with the broader societal implications for professional athletes suffering mental health, make it difficult for these athletes to succeed at the same rate as their mentally-healthy counterparts.⁹⁰

First, though the NFL and NBA CBAs have mandatory mental health resources, there is great variability in how these resources are implemented and used.⁹¹ For instance, though the NBA's CBA requires all teams to retain mental health professionals and a licensed psychiatrist, there is no mandated or outlined procedure or protocol for mental health recovery.⁹² Additionally, the NFL does not even require its franchises to hire clinicians with a sports background.⁹³ Sam Maniar, a former clinician for the Cleveland Browns, was quoted saying “[t]his is a very specialized area . . . The environment of athletics, and especially at the highest level, is something that does require specialization, and not every clinician being brought into the NFL has that.”⁹⁴

89. See Tyler Sullivan, Cody Benjamin & Jeff Kerr, *2022 NFL Trade Deadline Takeaways: All the Biggest Deals, a Surprising Move, More From a Record-Setting Day*, CBS SPORTS (Nov. 2, 2022, 8:05 AM), <https://www.cbssports.com/nfl/news/2022-nfl-trade-deadline-takeaways-all-the-biggest-deals-a-surprising-move-more-from-a-record-setting-day/live/> [<https://perma.cc/89AW-D8BL>] (describing trades made on NFL's 2022 trading deadline as most ever made on deadline day); see also Jerico, *Why Do NBA Players Get Traded So Much?*, BALL UNLOCKED, <https://ballunlocked.com/why-nba-players-get-traded-so-much/> [<https://perma.cc/N647-NZR4>] (last visited Feb. 4, 2024) (discussing frequency of NBA trades).

90. For further discussion of societal implications on NFL and NBA athletes, see *infra* notes 116–119 and accompanying text.

91. See Mark Kreidler, *NFL Has Been Slow to Embrace Mental Health Support for Players*, USA TODAY (Jan. 20, 2023, 5:00 AM), <https://www.usatoday.com/story/news/health/2023/01/20/nfl-slow-embrace-mental-health-players/11082135002/#> [<https://perma.cc/EF4M-55AY>] (citing to “great latitude” of individual franchises as cause of NFL's delay in implementing mental health programs). Some franchises' required clinicians vary in whether they are employed part-time or full-time, whether they are sports psychologists or not, or whether they are even hired by a franchise at all. See *id.* (describing varying qualifications allowed for licensed behavioral health clinician requirement as “critical flaw”); see also Vardon, *supra* note 29 (listing teams with varying numbers and types of mental health clinicians).

92. See Skyler Jordan Sands, *Mental Health and the NBA CBA: Making Sense of the Ben Simmons Arbitration*, BROOK. SPORTS & ENT. L. BLOG (Oct. 6, 2022), <https://sports-entertainment.brooklaw.edu/sports/mental-health-and-the-nba-cba-making-sense-of-the-ben-simmons-arbitration/#19> [<https://perma.cc/PXN6-LF3Z>] (addressing hiring licensed psychiatrists as sole league rule concerning mental health).

93. See Kreidler, *supra* note 91 (discussing lack of requirements for NFL franchise-hired clinicians).

94. See *id.* (quoting Sam Maniar discussing NFL's lack of requirement for clinicians to have sports psychology background).

Second, NFL and NBA contracts are not friendly to players who are not playing at peak performance.⁹⁵ NFL contracts present three major concerns when it comes to protecting players with mental health conditions: (1) mental health conditions are not covered by the injury protection provision; (2) most NFL contracts are nonguaranteed and the NFL has a “hard” salary cap; and (3) there is a very low threshold for contract termination.⁹⁶ The NFL injury protection provision only protects players who were physically unable to play due to a “severe football injury in an NFL game or practice.”⁹⁷ If a player is injured and covered by the injury protection provision, the player will continue to receive his salary for as long as the player is physically unable to play, or until the season in which the player was injured is over.⁹⁸ This provision limits protections to physical injuries and therefore excludes mental health conditions.⁹⁹ Further, the NFL contracts’ nonguaranteed nature and “hard” salary caps leave players vulnerable to termination without any salary to support them.¹⁰⁰ Thus, if a player is not performing well due to mental health reasons, without formal protections, coaches will likely terminate the player’s contract and hire a different, more capable player.¹⁰¹ Finally, it is extremely easy for a team to terminate a player’s contract early for various reasons including unsatisfactory skill, performance, conduct, or if a team believes another player can contribute more to the team’s success.¹⁰²

95. See NBA-NBPA CBA, *supra* note 67, at Art. 2, § 4 (describing low threshold to terminate contract for unsatisfactory performance); see also NFL-NFLPA CBA, *supra* note 53, at App. A (stating unsatisfactory performance is at sole discretion of team and may be grounds for contract termination).

96. For further discussion of the concerns of NFL contracts for players with mental health conditions, see *infra* notes 97–102 and accompanying text.

97. See NFL-NFLPA CBA, *supra* note 53, at Art. 45, § 2 (stating players must be injured during league game or practice to be covered by this provision).

98. See *id.* at App. A (describing procedure if players are injured during season).

99. See *id.* (describing qualifying injuries as those where physical examinations by club physician may determine injury).

100. See *id.* at Art. 13, § 2 (requiring that no team exceed salary cap determined for each team in NFL). This “hard” salary cap has led to the nonguaranteed nature of NFL contracts because teams must be extremely cautious about where their salary money goes. See Matthew Epstein, *Ball Never Lies: How Guaranteed Contracts Provide NBA Players More Security Than NFL Players to Advocate for Social Justice*, 93 UNIV. COLO. L. REV. 253, 258, 259–60 (2022) (explaining NFL’s hard cap deters teams from giving players more money and only money guaranteed to player is their signing bonus).

101. See Epstein, *supra* note 100, at 261–62 (discussing ability nonguaranteed contracts give to teams to easily cut players and use money saved to pay other players). Players may negotiate an injury guarantee, where a player is guaranteed money if he is released from his team due to a football injury, however this does not include mental health injuries. See *id.* at 260 (describing nature of injury guarantees).

102. See NFL-NFLPA CBA, *supra* note 53, at App. A (“If at any time, in the sole judgment of Club, Player’s skill or performance has been unsatisfactory as compared with that of other players competing for positions on Club’s roster, or if Player

NBA contracts offer players a bit more protection because players can negotiate guaranteed contracts.¹⁰³ However, there are still concerns regarding protections for players with mental health conditions in these contracts such as a broad termination clause and limited protections for non-performance due to mental health conditions.¹⁰⁴ Although players are still guaranteed money if their contract is terminated early, the ease of termination threatens their job stability, which is a major source of anxiety for professional athletes who have a small window of opportunity to compete at the professional level in the first place.¹⁰⁵ The standard player contract has similar language in its termination provision as the NFL's provision that allows teams to terminate players if the team deems their performance is not up to standard.¹⁰⁶ Additionally, the NBA's CBA allows for players and teams to negotiate amendments to the Uniform Player Contract.¹⁰⁷ One possible amendment is to allow for a player and a team to negotiate compensation protection upon termination of a contract if the contract is terminated for a "mental disability."¹⁰⁸ This may sound like a great option on paper, to make compensation protection available if a player experiences mental health issues that render them unable to play.¹⁰⁹ However, negotiating over guarantees for mental

has engaged in personal conduct reasonably judged by Club to adversely affect or reflect on Club, then Club may terminate this contract. In addition, during the period any salary cap is legally in effect, this contract may be terminated if, in Club's opinion, Player is anticipated to make less of a contribution to Club's ability to compete on the playing field than another player or players whom Club intends to sign or attempts to sign, or another player or players who is or are already on Club's roster, and for whom Club needs room.").

103. See Andrew Brandt, *How NFL and NBA Contracts Differ, and What NFL Players Can Do to Change It*, SPORTS ILLUSTRATED (July 10, 2018), <https://www.si.com/nfl/2018/07/10/nfl-nba-player-contracts-salary-cap-kirk-cousins-aaron-rodgers-lebron-james-chris-paul> [<https://perma.cc/8FP6-P8LA>] (stating NBA contracts guarantee that player be paid in full upon termination of their contract).

104. For further discussion of the concerns of NBA contracts for players with mental health conditions, see *infra* notes 105–112 and accompanying text.

105. See Damond L. Williams, *Life After the Game: Navigating Retirement as a Basketball Player*, CHI. BASKETBALL ACAD. (Apr. 17, 2023), <https://www.cbaworldacademy.com/blog/life-after-the-game-navigating-retirement-as-a-basketball-player> [<https://perma.cc/EP55-A6WB>] (explaining short average playing career in NBA and providing statistic that sixty percent of NBA players are unprepared for retirement after leaving league).

106. See NBA-NBPA CBA, *supra* note 67, at Ex. A (including termination provision in NBA contract stating teams may terminate contracts if player shall, "at any time, fail, in the sole opinion of the Team's management, to exhibit sufficient skill or competitive ability to quality to continue as a member of the Team").

107. See *id.* at Art. II, § 3 (describing "Allowable Amendments" section of NBA CBA).

108. See *id.* at Art. II, § 4 (explaining compensation protection for mental disability).

109. See Deubert et al., *supra* note 87, at 186 (explaining compensation guarantee for players who experience mental disabilities).

disability protection in a contract raises potential issues.¹¹⁰ Players and their agents may not want to raise such an issue at the onset of a new relationship between a player and a team for fear of causing the team concern that the player suffers from a mental disability in the first place.¹¹¹ Additionally, prospective teams may unfairly judge a player who suffers from a mental disability and choose to sign on someone else.¹¹²

These contractual frameworks may inadvertently create an environment where athletes find it challenging to cultivate lasting relationships with team clinicians or make effective use of the resources provided, given the persistent apprehension of being traded or abruptly cut from their teams hanging over their heads.¹¹³ The pervasive uncertainty surrounding their contractual status can hinder their ability to seek and receive crucial mental health assistance.¹¹⁴ This, in turn, underscores the critical need for reform in contract structures and mental health support systems within professional sports to ensure the well-being of athletes remains paramount.¹¹⁵

Third, the persistent stereotyping of male professional athletes, perpetuated by fans and our greater society, contribute to an impenetrable stigma surrounding these athletes and mental health.¹¹⁶ Even if these mental health resources exist, teams and leagues

110. For further discussion of the issues presented by negotiating a mental disability guarantee, see *infra* notes 111–112 and accompanying text.

111. See Weston, *supra* note 2, at 6 (explaining stigma surrounding mental health in elite athletes, suggesting “[t]he ‘no-pain, no-gain’ and ‘win at all costs’ messages, more often than not, deter athletes from addressing potential debilitating mental health concerns”).

112. See *Stigma Deterring Elite Athletes with Mental Health Issues from Seeking Help*, BMJ (May 16, 2019), <https://www.bmj.com/company/newsroom/stigma-deterring-elite-athletes-with-mental-health-issues-from-seeking-help> [<https://perma.cc/7MFQ-G6H9>] (“Athletes fear, possibly rightly so, that disclosing mental health symptoms or disorders would reduce their chances of maintaining or signing a professional team contract or an advertising campaign.”). There is a common belief in professional athletes that mental illness is a sign of weakness, and disclosing such illness would cause coaches, peers, or fans to perceive them as such. See *id.* (describing expectation of toughness in professional athletes).

113. See Sarah A. McGraw, Lauren Taylor, Christopher R. Deubert, Holly Fernandez Lynch, Alixandra Nozzolillo & I. Glenn Cohen, *Life on an Emotional Roller Coaster: NFL Players and Their Family Members’ Perspectives on Player Mental Health*, 12 J. CLINICAL SPORT PSYCH. 404, 418 (2018) (explaining players’ fear of negative impacts that seeking mental health support could have on their career if team management found out about it).

114. See *id.* at 418–19 (attributing players’ fear of negative impact on career to confidentiality concerns between mental health clinicians and players).

115. For further discussion of potential changes in professional athletes’ contracts, see *infra* notes 121–144 and accompanying text.

116. See Clay, *supra* note 82, at 22 (describing persistent stigma around mental health in male athletes).

cannot guarantee that their athletes will effectively use or engage with them.¹¹⁷ Although mental health education and awareness is improving, the relentless stigma and inadequate education prevent athletes from acknowledging their issues and seeking help.¹¹⁸ In a current culture where contracts may be terminated essentially at the will of any team who believes a player is not up to its performance standards, it is understandable why NBA and NFL athletes may want to try and push through the pain in an effort to keep their jobs and avoid being perceived as weak for other prospective teams they may play on.¹¹⁹

A. Perhaps an Amendment to NFL and NBA Contracts
is the Answer

So, if offering mental health resources is not enough for these athletes, then what is?¹²⁰ There has already been talk between the NBA and the NBPA around treating mental health concerns like an ailment similar to physical injury.¹²¹ These measures would allow athletes to report mental health issues on an injury report, the same as any other physical injury, and would treat their mental health with the same gravity as any other injury.¹²² This is reassuring that the

117. See McGraw et al., *supra* note 113, at 420 (emphasizing fact that players may not seek help due to their inability to recognize or identify their issues).

118. See Weston, *supra* note 2, at 5 (discussing existing mental health stigma in athletes); see also William D. Parham, *Invisible Tattoos*, AEON (Jan. 29, 2020), <https://aeon.co/essays/if-trauma-can-propel-athletes-healing-can-make-them-soar> [<https://perma.cc/7H8U-WV2W>] (“[A]thletes can resist professional help due to beliefs that, if effective, therapy might blunt their ‘edge’ and thus compromise their drive and determination. This fear, fueled by their quest to remain in the game as long as they possibly can, might cause them to conclude that fighting through the grind and emotional walls of challenge remains the best option.”).

119. See NFL-NFLPA CBA, *supra* note 53, at App. A, (“If at any time, in the sole judgment of Club, Player’s skill or performance has been unsatisfactory as compared with that of other players competing for positions on Club’s roster, or if Player has engaged in personal conduct reasonably judged by Club to adversely affect or reflect on Club, then Club may terminate this contract.”); see also NBA-NBPA CBA, *supra* note 67, at Ex. A (describing low threshold for NBA contract termination).

120. For further discussion of potential benefits of mental health clauses, see *infra* notes 132–135 and accompanying text.

121. See Shams Charania, *Shams: Where NBA CBA Talks Stand, Plus New Issues on Players Association Agenda*, ATHLETIC (Sept. 19, 2022), <https://theathletic.com/3607549/2022/09/19/shams-nba-cba-negotiations/> [<https://perma.cc/4NDF-JCJ4>] (summarizing talks about treating mental health concerns like physical injuries).

122. See *id.* (explaining these measures would be “an unprecedented and progressive change for American pro sports”).

leagues are thinking about considering mental health as a legitimate injury, however, athletes still need more.¹²³

In 2022, the National Women's Soccer League ("NWSL") and the National Women's Soccer League Players Association ("NWSLPA") agreed on the league's first-ever collective bargaining agreement.¹²⁴ Among other benefits, the CBA provides the players with a mental health leave provision.¹²⁵ The new mental health leave is an unprecedented benefit in sports that provides players with six-months of paid leave for mental health recovery.¹²⁶ NWSL players have enthusiastically spoken out about how they feel as though they finally are protected and cared about as human beings first, then athletes.¹²⁷ Additionally, NWSL players feel empowered to seek mental health help without worry so they can get better faster and play longer.¹²⁸

The provision is now included in all NWSL player contracts under the "Mental Health, Physical Condition, Medical Examinations, and Injuries" section of the CBA.¹²⁹ Specifically, the mental health leave provision is in a subsection labeled "Mental Fitness to Play" which follows the "Physical Fitness to Play" provision in this

123. See Shams Charania, *Ben Simmons Feels 76ers Want to Force Him to Play; Team Responds: Exclusive*, ATHLETIC (Nov. 11, 2021), <https://theathletic.com/4075358/2021/11/12/ben-simmons-feels-76ers-want-to-force-him-to-play-team-responds-exclusive/> [<https://perma.cc/Y75B-T5SG>] (describing NBA's hopeful attitude towards treating mental health like physical health).

124. See *National Women's Soccer League and NWSL Players Association Agree on Transformative, First-Ever CBA to Run Through 2026 Season*, NWSL (Jan. 31, 2022), <https://www.nwslsoccer.com/news/national-womens-soccer-league-and-nwsl-players-association-agree-on-transformative-first-ever-cba-to-run-through-2026-season> [<https://perma.cc/5KCJ-Y43T>] (describing finalization of NWSL's inaugural CBA).

125. See *id.* (reporting new competitive health and wellness benefits as well as pregnancy, parental, and mental health leave for players).

126. See *id.* (highlighting unprecedented nature of CBA and outlining mental health leave provision); see also Ashley Mitchell, *Cari Roccaro's Role in Securing Historic NWSL Mental Health Leave*, PARITY (May 19, 2022, 6:54 PM), <https://impact.paritynow.co/cari-roccaros-role-in-securing-historic-nwsl-mental-health-protections> [<https://perma.cc/EY4C-URFP>] (describing how mental health leave is now in NWSL athletes' contracts and guarantees players their salary and benefits).

127. See Mitchell, *supra* note 126 ("It's nice to know that you're being acknowledged as a human being, too. You're not just an athlete, especially those big-timers that make all this big money."); see also Molly Geary, *NWSL's 10-Year Growth Through the Eyes of Its Lifers*, SPORTS ILLUSTRATED (Apr. 28, 2022), <https://www.si.com/soccer/2022/04/28/nwsl-lifers-10-seasons-league-growth> [<https://perma.cc/RCF7-XTWY>] (explaining mental health leave focuses on greater picture of player welfare beyond physical health).

128. See Mitchell, *supra* note 126 (describing how before CBA, players in NWSL would push through their mental health struggles for fear of losing salary and eventually burn out).

129. See 2022 NWSLPA-NWSL Collective Bargaining Agreement, Art. 2 (Apr. 29, 2022), available at https://www.nwslplayers.com/_files/ugd/84dade_f54a9ed0c1fa4bd48f5275563a3f9e04.pdf [<https://perma.cc/V8AN-7NKW>] [hereinafter *NWSLPA-NWSL CBA*] (stating CBA is binding on NWSL, NWSL teams, NWSLPA, and all players).

section.¹³⁰ There are notable positive effects a provision like this will have for these athletes.¹³¹ As alluded to above, this provision gives these players ample mental health support and financial security.¹³² Unlike NFL or NBA contracts where termination with little to no pay is a major risk when players are not performing at their best, these athletes continue to receive their salary during this leave of absence.¹³³ On the flip side, there are also potential drawbacks to implementing a provision like this.¹³⁴ For instance, allowing mental health leave in addition to the existing injury leave could disrupt the cohesion and chemistry of a team.¹³⁵ Athletes play a crucial role in team dynamics, and their absence, especially if prolonged, could impact the overall performance and success of the team.¹³⁶ Additionally, as discussed earlier in this Comment, athletes are public figures and their absence due to mental health reasons may draw public attention.¹³⁷ This may not be too big of an issue for players in the NWSL, as the league is smaller and individual players are not as

130. *See id.* at Art. 11, § 11.8 (including “Mental Fitness to Play” subsection following “Physical Fitness to Play” subsection). The Mental Fitness to Play subsection mirrors the Physical Fitness to Play section, with the difference being that instead of the Team Physician evaluating and making a physical health recommendation for a player, it is a licensed psychologist/psychiatrist evaluating and making a mental health recommendation for the player to take leave. *See id.* (“If a licensed psychologist/psychiatrist who is treating the Player provides the Player with a recommendation to take a leave of absence due to a mental health diagnosis, NWSL shall continue to pay the Player the compensation set forth in the Player’s [Standard Player Agreement] for the term of the [Standard Player Agreement], or for up to six (6) months, whichever is shorter, less any workers’ compensation or short-term or long-term disability benefits, if any, awarded to the Player solely for lost wages.”).

131. For further discussion of the positive effects of a mental health leave provision, see *infra* notes 132–135 and accompanying text.

132. *See* NWSLPA-NWSL CBA, *supra* note 129, at Art. 11, § 11.8 (describing available six-month paid leave for players experiencing mental health issues).

133. *See id.* (“NWSL shall continue to pay the Player the compensation set forth in the Player’s [Standard Player Agreement] for the term of the [Standard Player Agreement], or for up to six (6) months, whichever is shorter, less any workers’ compensation or short-term or long-term disability benefits, if any, awarded to the Player solely for lost wages.”).

134. For further discussion of the potential drawbacks of a mental health leave provision, see *infra* notes 135–139 and accompanying text.

135. *See* Matt Verderame, *Joe Burrow’s Absence from Bengals Training Camp is Keenly Felt*, SPORTS ILLUSTRATED (Aug. 6, 2023), <https://www.si.com/nfl/2023/08/07/bengals-training-camp-joe-burrow-absence-trevor-siemian-jake-browning> [<https://perma.cc/WK8A-55PM>] (explaining Joe Burrow’s absence from team due to injury is causing him to miss “valuable reps where he could be forming chemistry”).

136. *See id.* (discussing how Bengals’ offense “is in great peril” without star quarterback Joe Burrow on field).

137. *See* Shiv Sudhakar, *Is Antonio Brown’s Meltdown a Mental Health Cry for Help?*, FOX NEWS (Jan. 6, 2022, 2:54 PM), <https://www.foxnews.com/sports/antonio-brown-meltdown-mental-health-cry-help> [<https://perma.cc/JN99-9Z36>] (discussing players being subject to “unrelenting scrutiny” by fans).

well-known as those in the NBA and NFL.¹³⁸ However, the stardom and expectations of NFL and NBA players avail them to increased criticism and public opinion, potentially tarnishing their teams' and their own public image.¹³⁹

This type of provision mimics that of the Family and Medical Leave Act ("FMLA"), promulgated by the United States Department of Labor.¹⁴⁰ Similar to the NWSL, the FMLA grants covered employees job-protected leave for mental health conditions that require either inpatient care or continuing treatment by a health care provider.¹⁴¹ Unlike the FMLA, however, the NWSL offers paid leave while the FMLA's leave is unpaid.¹⁴² A mental health provision modeled after the FMLA may be an interesting alternative for NFL and NBA teams where they would be obligated to allow players a mental health leave without having to put up any extra money for their players, but gives the players the job security they undoubtedly seek.¹⁴³ Regardless, the NWSL's provision is a pioneer of its kind in the sports world and is a great example of a contractual mental health provision that larger leagues in the United States, like the NBA and the NFL, could modify and adopt.¹⁴⁴

138. See Claudia Kogi, *NBA vs NFL: Which is the Better Sports League in the USA?*, SPORTS BRIEF (Apr. 12, 2023, 8:12 PM), <https://sportsbrief.com/nfl/24130-nba-nfl-sports-league-usa/> [<https://perma.cc/S5PA-LBHT>] (describing extraordinary popularity of NFL and NBA); see also Arif Islam, *NWSL Championship Game Pulls in 817k Viewers on CBS*, SPORTSPRO (Nov. 15, 2023), <https://www.sportspromedia.com/news/nwsl-championship-game-2023-tv-audience-viewership-cbs-gotham-ol-reign/> [<https://perma.cc/2KMP-UJFF>] (providing NWSL's viewership statistics from past two championship games); see also *NWSL Plans To Expand to 16 Teams in 2026 - Commissioner*, ESPN (May 9, 2023, 6:24 PM), https://www.espn.com/soccer/story/_/id/37638699/nwsl-plans-expand-16-teams-2026-commissioner [<https://perma.cc/LGR3-TR3L>] (stating NWSL's plan to expand league from twelve to sixteen teams by 2026).

139. See Epstein, *supra* note 26 (reporting Fox News reporter Skip Bayless critiquing Dak Prescott's vulnerability for opening up about mental health issues on national television).

140. See *Fact Sheet #280: Mental Health Conditions and the FMLA*, U.S. DEP'T LAB. (May 2022), <https://www.dol.gov/agencies/whd/fact-sheets/280-mental-health> [<https://perma.cc/49RS-3P2N>] [hereinafter *Fact Sheet #280*] (highlighting Act's provision of protected leave to address mental health conditions).

141. See *id.* (explaining like other serious health conditions covered by Act, inpatient care or continuing treatment are required for mental health conditions to be considered as serious health conditions for purposes of FMLA coverage).

142. See NWSLPA-NWSL CBA, *supra* note 129, at Art. 11, § 11.8 (imposing duty on NWSL to continue to pay players their compensation during leave of absence for mental health condition).

143. See *Fact Sheet #280*, *supra* note 140 (describing unpaid, but job-protected nature of leaves taken by employees under FMLA).

144. See *NWSL Passes Historic Agreement That Includes Mental Health Leave*, BEYOND SPORT (May 27, 2022), <https://www.beyondsport.org/articles/nwsl-passes-historic-agreement-that-includes-mental-health-leave/> [<https://perma.cc/77NX-LDNL>] (describing NWSL's intent making CBA publicly available for other leagues to use as "benchmark").

B. Potential Benefits of a Mental Health Provision in NFL and NBA Contracts

Maybe, the gap in mental health support for NFL and NBA athletes can be filled by a standard, contractual provision, like that adopted by the NWSL or that offered to employees under the FMLA.¹⁴⁵ The NFL and NBA should insert a standard mental health clause in their player contracts that allows players to take leave of recovery following a mental health crisis or diagnosis before teams are allowed to trade a player or terminate a player's contract.¹⁴⁶ Essentially, these teams would be obligated to give their players, say, six months of leave due to a mental health issue without facing termination, or else face civil liability for breach of contract.¹⁴⁷ Implementing a contractual protection like this would have several benefits for both players and teams, such as allowing recovery time to improve player mental health and allowing players to continue to play their sport without fear of legal or economic repercussions.¹⁴⁸

1. *Fear-Free Recovery*

Formally permitting players to step away from their sport to recover within an allotted time would contribute to the destigmatization of seeking help for these athletes, and would allow them the chance to actually get better.¹⁴⁹ Ben Simmons' experience shows how a formal recovery period would be an extremely helpful tool for struggling athletes.¹⁵⁰ Ben Simmons was the number one pick in the 2016 draft and is currently one of the NBA's top defenders.¹⁵¹ However, while on the 76ers, he experienced mental health issues

145. For further discussion of the mental health leave provision adopted by the NWSL and the FMLA, see *supra* notes 124–144 and accompanying text.

146. See NWSLPA-NWSL CBA, *supra* note 129, at Art. 11 (establishing obligation of teams to allow players protected and paid mental health leave if recommended by licensed psychiatrist or psychologist).

147. See *Breach of Contract*, CORNELL L. SCH.: LEGAL INFO. INST. (June 2022), https://www.law.cornell.edu/wex/breach_of_contract [<https://perma.cc/3LJZ-3RD>] (explaining breach of contract claim to be “whenever a party who entered a contract fails to perform their promised obligations”).

148. See Mitchell, *supra* note 126 (describing benefits of new mental health leave on NWSL players).

149. See *id.* (explaining positive effect mental health leave has had on NWSL players recovery).

150. See *Ben Simmons Says Philadelphia 76ers Didn't Provide Support as He Dealt with Mental Health*, ESPN (Sept. 22, 2022, 12:12 PM), https://www.espn.com/nba/story/_/id/34643029/ben-simmons-says-philadelphia-76ers-provide-support-struggled-mental-health [<https://perma.cc/ER8Z-RKFX>] (describing Sixers' coach's lack of understanding when Simmons explained he was not mentally ready to play).

151. See *id.* (describing Simmons as top NBA athlete).

that inhibited his ability to play at the level he normally plays.¹⁵² Simmons tried to take time away from playing, even expressing to his coach that he was not mentally ready to participate in a practice.¹⁵³ The 76ers responded to Simmons' refusal to play by explaining they believed he should "partake in all team activities until there is information from [the 76ers'] mental health professional or Simmons that would preclude him from playing."¹⁵⁴ As a result, a long and very public conflict between the 76ers and Simmons ensued.¹⁵⁵ He was eventually traded to the Brooklyn Nets, and since then, he has not performed at the same level as he did before facing challenges during his time with the 76ers.¹⁵⁶ Simmons sued the Philadelphia 76ers to recover \$20 million they withheld from him due to his refusal to play or participate in team activities.¹⁵⁷ He argued he was not mentally fit to play and the NBA should treat his mental health condition like any other physical injury.¹⁵⁸ The parties ended up settling, with the settlement amount remaining confidential.¹⁵⁹ A contractual provision that clearly stated the procedures for taking time off for mental health reasons would have shown Simmons respect as a player and a person, saved Simmons and the 76ers from incurring legal costs, and granted Simmons time to work towards his recovery more quickly.¹⁶⁰

152. See Esnaashari, *supra* note 34 (explaining Simmons' bad play in game against Atlanta Hawks and reaction of team and coaches).

153. See *Ben Simmons Says Philadelphia 76ers Didn't Provide Support as He Dealt with Mental Health*, *supra* note 150 ("I actually spoke to Doc before practice. I was like, 'Doc, I'm not ready. Mentally, I'm not ready. Please just understand that.'"). Sixers Head Coach Doc Rivers ended up kicking Simmons out of practice for "being a distraction" after Simmons repeatedly told Rivers he was not ready to play. See *id.* (describing Rivers' frustration with Simmons over his mental health issues).

154. See Charania, *supra* note 123 (describing team's belief that mental health professionals or Simmons should provide information before Simmons is excused from contractual obligation of playing).

155. See Kaskey-Blomain, *supra* note 35 (explaining contentious and public nature of Simmons-76ers feud).

156. See Dhani Joseph, *Ben Simmons 'As Healthy as He Has Ever Been' With Nets Return Looming*, N.Y. POST (July 27, 2023, 5:39 PM), <https://nypost.com/2023/07/27/nets-ben-simmons-as-healthy-as-he-has-ever-been-as-nets-return-looms/> [<https://perma.cc/5A6N-63Q5>] (explaining Ben Simmons has not returned to his former self since being on Brooklyn Nets).

157. See Kurt Helin, *Report: 76ers, Simmons Settle Grievance Over Withheld Pay from Missed Games*, NBC SPORTS (Aug. 15, 2022, 4:47 PM), <https://www.nbcsports.com/nba/news/report-76ers-ben-simmons-settle-grievance-over-withheld-pay-from-missed-games#> [<https://perma.cc/SQ8Z-TWMM>] (reporting premise for Simmons' lawsuit against former team).

158. See *id.* (discussing Simmons' arguments for why 76ers owed him withheld money).

159. See *id.* (stating parties chose to keep details of settlement agreement confidential).

160. See NWSLPA-NWSL CBA, *supra* note 129, at Art. 11 (describing procedure of mental health leave in NWSL contracts).

2. *Longevity of Performance*

Allowing for athletes to take time to recover would likely increase player-longevity.¹⁶¹ This Comment has already discussed multiple athletes whose careers were ended by mental illness.¹⁶² For example, Delonte West was originally diagnosed with bipolar disorder in 2008 while playing for the Cavaliers.¹⁶³ West retired after just eight seasons with the NBA, and has since struggled with homelessness, drug addiction, and persisting symptoms of his bipolar disorder.¹⁶⁴ Proper time and treatment may have opened doors for a longer, successful career for West.¹⁶⁵ Similarly, Royce White's NBA career was ended due to mental health reasons.¹⁶⁶ In 2012, Royce White opened up about his struggle with anxiety, and asked the NBA to implement a mental health policy to address his needs.¹⁶⁷ White claimed the NBA "left him behind," yet he remains an advocate for the mental health of NBA players.¹⁶⁸ This Comment has also discussed Antonio Brown's struggle with mental health.¹⁶⁹ Antonio Brown is one of the best wide receivers in NFL history, with 928 receptions, 12,291 receiving yards, 83 touchdowns, and 84.2 yards per game.¹⁷⁰ However, Antonio Brown ended his own career by walking off the field during a game while on the Buccaneers.¹⁷¹ This exit was a product of

161. See Lisa Patterson, *Moving Beyond the Stigma: Athletes and Mental Health*, DAVIDSON J. (May 25, 2023), <https://www.davidson.edu/news/2023/05/25/moving-beyond-stigma-athletes-and-mental-health> [https://perma.cc/R9WW-43NF] (discussing large toll that pressure to constantly perform takes on athletes).

162. For further discussion of careers ending for mental health reasons, see *supra* note 40 and accompanying text.

163. See *Former NBA Player*, *supra* note 40 (stating West was diagnosed with bipolar disorder in 2008).

164. See *id.* (describing West's persistent struggles post-NBA career).

165. See Mitchell, *supra* note 126 (discussing feelings of players that mental health leave means they do not need to push themselves to burnout).

166. See Jeremy Layton, *Royce White Still Isn't Buying the NBA's Mental Health Crusade*, N.Y. POST (July 12, 2019, 8:02 PM), <https://nypost.com/2019/07/12/royce-white-still-isnt-buying-the-nbas-mental-health-crusade/> [https://perma.cc/6WHJ-DU8F] (describing White's career in NBA while struggling with mental health).

167. See *id.* (discussing NBA's refusal to accommodate White's mental health issues).

168. See *id.* (explaining White's continued mental health advocacy after being cut by Sixers in 2014 and leaving NBA).

169. See Maadi, *supra* note 19 (describing Antonio Brown's struggle with mental health).

170. See Ian Valentino, *Should Antonio Brown Make the NFL Pro Football Hall of Fame?*, PRO FOOTBALL NETWORK (May 26, 2023, 2:37 PM), <https://www.profootballnetwork.com/should-antonio-brown-make-nfl-pro-football-hall-of-fame/#> [https://web.archive.org/web/20240508155237/https://www.profootballnetwork.com/should-antonio-brown-make-nfl-pro-football-hall-of-fame/] (stating Brown's playing statistics make him Hall of Fame worthy).

171. See Maadi, *supra* note 19 (explaining Brown's exit during Buccaneers game).

years of mental health issues Brown experienced, with no help other than being kicked-off teams or traded, and now one of the NFL's best players may never play again.¹⁷² Brown has recently announced that he will be returning to the NFL to play on the Baltimore Ravens via Twitter.¹⁷³ However, the Ravens have not addressed his tweet, and it is uncertain whether any team will sign Brown again.¹⁷⁴ These star-athletes' careers were cut short due to their mental illness, and a contractual protection giving them a chance to heal would have allowed them to continue playing their sport.¹⁷⁵

IV. CONCLUSION

As we navigate an era where the physical and emotional well-being of athletes is increasingly recognized as paramount, it is important that the sports industry adapts accordingly.¹⁷⁶ By incorporating a dedicated mental health provision in player contracts, teams and leagues would demonstrate a genuine commitment to the holistic welfare of their players, acknowledging that mental health is as integral to performance and success as physical prowess.¹⁷⁷ This provision would not only empower athletes to seek and receive essential mental health support, but also foster a culture of understanding, empathy, and resilience within the sporting community.¹⁷⁸ Furthermore, it represents a progressive step towards dismantling stigmas surrounding mental health, setting a powerful precedent for athletes

172. For further discussion of Antonio Brown's experience with mental health and being traded frequently, see *supra* notes 19–25 and accompanying text.

173. See Timm Hamm, *Sad or Funny? LOOK: Antonio Brown Excited to Return To NFL' ... With Ravens?*, FAN NATION (Apr. 28, 2023, 1:46 PM), <https://www.si.com/nfl/ravens/news/baltimore-ravens-antonio-brown-signs-rumor-tweet-joins-nfl> [<https://perma.cc/2C7C-RPZN>] (citing Brown's tweet stating he was "[e]xcited to return to the NFL this year #RavensFlock").

174. See *id.* (explaining lack of validity to Brown's tweet and small likelihood of Brown's future in NFL).

175. See Patterson, *supra* note 161 (quoting team clinician of Kansas City Chiefs, Shaun Tyrance, who stated "if our players don't produce on the field they are at risk of losing their jobs. . . Twenty-five percent of NFL players only play for one year. Our players are under so much pressure to perform that it can be hard for them to focus on anything other than football."). Allowing players to take mental health leave when they are feeling the effects of this pressure could help them recover and continue playing their sport. See Mitchell, *supra* note 126 (describing ability to take mental health leave means less burnout for athletes).

176. See Geary, *supra* note 127 (discussing NWSL's ten-year evolution leading to valuable contractual protections for its players).

177. See Mitchell, *supra* note 126 (evidencing NWSL as professional sports league that has committed to players' mental health).

178. See *id.* (explaining NWSL players do not fear seeking help due to new mental health protections).

at all levels.¹⁷⁹ Including mental health protections in professional sports league contracts will require major changes in the way leagues structure their compensation packages and terminate existing contracts.¹⁸⁰ These protections could allow leagues and teams to avoid legal fallout such as Ben Simmons' feud with the 76ers, as well as Antonio Brown's hot potato-ing to various teams.¹⁸¹

As major professional sports leagues such as the NFL and NBA stand at the threshold of this transformative change, they have the opportunity to redefine the narrative of professional sports, championing the well-being of athletes and inspiring a new era of inclusivity, strength, and triumph.¹⁸² This change could be the catalyst society needs to finally rid mental health of the stigma it bears.¹⁸³ The time to embrace this evolution is now, for the benefit of athletes, teams, leagues, and the sports industry as a whole.¹⁸⁴

*Hannah Posencheg**

179. *See id.* (describing NWSL's intention of making CBA publicly accessible to inspire other leagues in future mental health protection considerations).

180. For further discussion of current compensation and termination structures in NFL and NBA contracts, see *supra* notes 97–112 and accompanying text.

181. For further discussion of Ben Simmons and Antonio Brown's experiences with their mental health and teams, see *supra* notes 19–25, 34–40 and accompanying text.

182. *See NWSL Passes Historic Agreement That Includes Mental Health Leave*, *supra* note 144 (noting NWSL made CBA publicly available for other leagues to use as benchmark for future mental health protections).

183. For further discussion of mental health stigma, see *supra* notes 116–119 and accompanying text.

184. For further discussion of increasing numbers of athletes speaking out about mental health, see *supra* notes 5–10 and accompanying text.

* J.D. Candidate, May 2025, Villanova University Charles Widger School of Law; B.A., Political Science, May 2021, Dickinson College. This Comment is dedicated to my support system who constantly encouraged and reassured me throughout the absolute craziness of this journey. Hayden, you are my biggest cheerleader, and I am so lucky to have you as my best friend and twin sister. Your comforting phone calls got me through some of the toughest moments. Sean, thank you for being my grounding presence always. Words cannot express how grateful I am for your constant love, understanding, and belief in me. And finally, Mom and Dad, I am who I am and do what I do because of you. I love you both endlessly.