NATIONAL FOOTBALL LEAGUE

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April 19, 2017

The Honorable Frank Pallone, Jr.
U.S. House of Representatives
237 Cannon HOB
Washington, DC 20515

The Honorable Gene Green
U.S. House of Representatives
2470 Rayburn HOB
Washington, DC 20515

The Honorable Diana DeGette
U.S. House of Representatives
2111 Rayburn HOB
Washington, DC 20515

The Honorable Jan Schakowsky
U.S. House of Representatives
2367 Rayburn HOB
Washington, DC 20515

Dear Ranking Member Pallone and Representatives Green, DeGette, and Schakowsky:

Thank you for your recent letter to Commissioner Goodell regarding a March 9, 2017, *Washington Post* article. Given my work on issues relating to player health and safety and my familiarity with the pending legal action filed by 13 retired players against the 32 member clubs of the NFL (*Evans, et al. v. Arizona Cardinals, et al.*, the "club litigation"), I have been asked by the Commissioner to respond to the questions raised in your March 15, 2017, letter.

As the Commissioner has stated frequently, the National Football League has one overriding priority: the health, safety, and well-being of every player. Our 32 clubs and their medical staffs continue to put the health and safety of players first, ensuring that all NFL players receive the highest quality medical care.

The *Washington Post* acknowledges that its reporting was based solely on allegations made by the plaintiffs in the club litigation. It is, therefore, not surprising that the article does not accurately describe the scope and quality of medical care provided to players by team doctors and athletic trainers; nor does it accurately describe documents or testimony from the litigation.[1]

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[1] The NFL is not a party to the club litigation. In 2014, a lawsuit alleging similar claims was filed against the NFL (*Dent, et al. v. National Football League*, the "NFL litigation"). The NFL litigation was dismissed, with prejudice, by the United States District Court for the Northern District of California. The district court's ruling is now on appeal. After the NFL litigation was dismissed, the same counsel who unsuccessfully brought that lawsuit filed a similar suit (*Evans*) against the NFL's 32 member clubs. In response to a recent motion to dismiss the club litigation, the district court dismissed all claims against 24 of the clubs and most of the claims against the remaining 8 clubs. The district court did, however, permit the plaintiffs a final opportunity to re-plead their claims in an effort to salvage their lawsuit. That last-chance effort is the

NFL teams retain and employ highly distinguished and highly credentialed physicians, medical consultants, and athletic trainers to care for their players. The qualifications of these medical providers and the composition of the team medical staffs are specifically addressed in the NFL's collective bargaining agreement (CBA) with the NFL Players Association (NFLPA), relevant provisions of which accompany this letter. These world-class team doctors – who are associated with and supported by our nation's leading hospitals, health care systems and research institutions – provide expert medical care and support to players on and off the field. They are frequently called upon by players to provide care to their families. They have nearly 1,000 years of combined experience providing medical services to professional athletes. In addition, they have authored thousands of peer-reviewed medical papers and articles in prominent journals, presented on a variety of medical and scientific topics on more than 9,000 occasions, and hold more than 130 active academic appointments. These doctors are also supported by the highest-caliber athletic trainers in the country, each of whom is certified by the National Athletic Trainers' Association.

In addition to the requirements set forth in the bargaining agreement with respect to qualifications and make-up of the team medical staffs, the CBA requires the involvement of the NFLPA and the players themselves with respect to player medical care and treatment in numerous respects including:

- the requirement that the NFLPA's Medical Director serve as a voting member on all NFL health and safety committees and have access to all the data, records, and other information provided to the NFL Medical Advisor or any such committee members;

- the establishment of a CBA-mandated Accountability and Care Committee, comprised of persons appointed by the NFL Commissioner and the NFLPA Executive Director, which provides advice and guidance regarding the provision of preventative, medical, surgical, and rehabilitative care for players by all clubs and has authority independently to investigate any complaint concerning medical care brought by either a player or by the NFLPA on a player's behalf;

- mandatory, comprehensive annual physical examinations;

- the right of every player to obtain a second medical opinion from a doctor of his choosing at no cost to him;

Second Amended Complaint referenced in the *Post* article. The clubs recently filed a motion to dismiss the Second Amended Complaint. That motion will be heard by the district court on April 27, 2017.

- the right of every player to have any necessary surgeries performed by the surgeon of his choice, again at no cost to the player;

- 24/7 access for players to their medical records under the electronic medical record system established pursuant to the CBA;

- a collectively bargained program to detect chemical dependency and substance abuse and to provide for rehabilitative services for players identified as having these issues, all overseen by jointly-appointed clinicians;

- injury grievance protection so that any dispute concerning an injured player's contract or CBA rights are resolved promptly by an expert, neutral decision maker;

- more than $100 million in medical research funding;

- independent, jointly-selected experts to develop and administer policies on a wide range of issues including infectious disease controls, concussion management, and equipment and playing field safety; and

- comprehensive post-career care, including five years of continuing medical care paid by the employer, an employer-funded Health Reimbursement Account to reimburse medical expenses, the right to remain in the NFL medical insurance plan for life, and comprehensive disability benefits.

Team physicians are at the forefront of the league's proactive and comprehensive efforts to protect and enhance player health and safety. They adhere to the highest standards of care and best practices related to the prevention and treatment of injuries, including the treatment and management of pain. As leaders in their respective medical fields, team doctors fully appreciate the public health threat and national epidemic related to the abuse of prescription drugs, including painkillers such as opioids.

Club medical staffs have also long taken seriously their responsibilities under the Controlled Substances Act, including the need to avoid the diversion of controlled substances from legitimate medical channels into the illicit market. In fact, as described in more detail below, team physicians and athletic trainers have, for decades, maintained open, respectful, and professional relationships with representatives of the Drug Enforcement Administration (DEA). As further articulated in our answers to your questions, those relationships have included requests for advice over the years

regarding the ordering, storage, transportation and record-keeping requirements for controlled substances.

One example of our ongoing dialogue with the DEA relates to team travel. The complaint in the club litigation alleges – and the *Post* repeats – that it was a violation of the law for an athletic team to travel with controlled substances. This allegation, however, fails to account for clear guidance provided to NFL Club physicians by the DEA permitting this practice: "At locations where drugs are not stored, or on domestic road trips, the practitioner may dispense or administer controlled substances from a medical bag. Access to the controlled drugs must be limited to the practitioner or a designated responsible representative." See January 21, 1994, letter from the Chief Liaison and Policy Section Office of Diversion Control to Dr. Edward St. Mary, a team physician for the Miami Dolphins (a copy of which is provided with this letter). This guidance draws directly from the DEA's own Diversion Investigator Manual, which expressly contemplated that team physicians *would need to* take controlled substances to away games and to administer medications if medically indicated.

After the DEA Office of Diversion Control changed this guidance and approach, the NFL teams changed their practices accordingly. Upon being informed of the Office's changing approach, the NFL facilitated an invitation to the head of Diversion Control to address the team physicians at their 2011 annual meeting. The NFL also established a Visiting Team Medical Liaison program whereby, for each away game, the visiting club retains the services of a physician licensed and registered with the DEA in that state to handle any requests for the use of controlled medications. Today, no NFL team stores or travels with controlled substances.

In short, we firmly believe that every NFL team is in compliance with the Controlled Substances Act. We know of no basis for suggesting otherwise.

With this background in mind, following we provide answers to the questions raised in your letter.

Question 1: The *Washington Post* reports that unlicensed trainers may have administered or dispensed prescription drugs to NFL players. Did non-physician trainers at any time administer or dispense Toradol or any controlled substances to former or current NFL players?

All full-time athletic trainers, many of whom have worked with their respective clubs for decades, are certified by the National Athletic Trainers' Association. To the extent that athletic trainers have provided prescription medications to NFL players, they did so at the direction – and under the supervision – of club physicians. In the typical situation, this would occur after the player and team doctor had discussed the player's medical condition and treatment options, reached a decision that a medication would

be appropriate, and discussed the appropriate use and potential side effects of that medication. The physician would then direct the athletic trainer to provide the player with the appropriate dose of the agreed-upon and discussed medication from the club's stock. This was not a violation of the law; to the contrary, the Controlled Substances Act expressly provides that an authorized agent of a practitioner may administer a controlled substance in the presence of the practitioner. 21 U.S.C. §§ 802(2), 802(3).[2] Athletic trainers are authorized agents of the club physicians. Indeed, the club physicians and athletic trainers work closely together on a daily basis to provide quality medical care to players, a practice expressly contemplated in the DEA Diversion Control Manual.

Question 2: In cases in which prescription medicines were administered or dispensed, were NFL players provided with all information regarding the drug(s) they were given, including dosage amounts, possible side effects, and reasons for receiving the drug(s)? Further, in cases where a prescription drug such as Toradol, or any controlled substance such as Vicodin, was administered to an NFL player, was that player's medical history taken into account to determine the proper treatment regimen or primary physician notified and given all relevant information, including date administered and dosage amount, so the player could be monitored?

Each decision to prescribe a medication to a player is the result of an individualized doctor-patient interaction. We believe that players were (and are) provided with the appropriate information regarding the medications, their uses, benefits, and risks, and that club physicians have taken player medical history into account when treating players. It bears mentioning that club physicians have such information about player's medical history in part because under the CBA clubs must annually conduct detailed preseason physical examinations of players, with required elements such as comprehensive laboratory assessments (including blood, urine, and renal function testing, cardiac monitoring, and a full general medical exam) to identify any potential health concerns, monitor any particular player for any particular health condition, and/or to identify particular medications that a player should or should not be given. All players have access to their test results via the NFL's electronic medical record system.

[2] Prior to the 2015 season, some NFL Club physicians stored controlled substances in secured locations at team facilities, as was entirely permissible under their DEA registrations. As noted earlier, no team does so any longer. As a result, any current provision of controlled medications to players occurs only through a prescription ordered from and dispensed by a local pharmacy.

Question 3: Did the NFL maintain records of all prescription drugs—including any controlled substances—administered or dispensed to each NFL player? If so, whose job was it to collect those records, and are they still in the NFL's possession?

Under the CBA, the clubs, and not the NFL, are responsible for maintaining player medical records. Our understanding is that the clubs have kept (and do keep) detailed and accurate records regarding medications provided to players. Pursuant to their 2011 CBA, the NFL teams and the NFLPA established an electronic medical record-keeping system that was put in place league-wide in 2014. That system, which is accessible to individual players (both during and after their careers) and physicians (to include any second opinion physician or other doctor from whom a player seeks input), records all prescription drugs NFL team physicians administer, dispense or prescribe to each NFL player. All medical information, including information regarding players' injuries and prescription medication, is entered into the system, which permits players to access their records at any time via a secure, online portal. This portal remains active and available to players following their retirement.

Question 4: Has Toradol ever been administered "off label" to NFL players for the purpose of masking pain, as reported by the *Washington Post*? If Toradol was used in the course of play, how frequently was it administered? Did or does the NFL keep records of all players administered Toradol, including the amounts, dates, and times given?

Toradol (ketorolac), which is not a controlled substance, was approved by the Food and Drug Administration (FDA) in 1989 for the short-term (up to 5 days in adults) management of moderately severe acute pain that would otherwise require the use of an opioid. It is available in injectable and tablet form. Accordingly, the provision of Toradol to a player to manage pain likely would not be considered an "off label" use. In any event, as FDA guidance states, "once the FDA approves a drug, healthcare providers generally may prescribe the drug for an [off-label] use when they judge that it is medically appropriate for their patient."[3]

Each provision of Toradol to an NFL player by a team physician represents the result of an individual doctor-patient consultation, and the physician's conclusion that Toradol should be administered. Accordingly, the number of players who received Toradol varies from club to club and, for any given club, over time. The clubs kept (and keep) records regarding the dates and dosages of Toradol provided to players.

[3] FDA, "Understanding Unapproved Use of Approved Drugs 'Off Label,'" *available at* https://www.fda.gov/ForPatients/Other/OffLabel/ucm20041767.htm

Question 5: If administered prior to play, it would appear that Toradol could be used to mask pain caused by physical contact that subsequently occurs during a game, according to the *Post*'s report. Did any NFL players suffer a head injury while using Toradol? Did the NFL keep records of any injuries, including head injuries sustained by players while they were using Toradol?

Although NFL member clubs maintain records on certain injuries (including certain head injuries) sustained during NFL games and NFL member club physicians maintain records on drug dispensation, the NFL does not have specific records on an association between the administration of Toradol and subsequent injuries sustained by players on the same day.

Under the NFL's Concussion Protocol, in addition to each team's physicians and athletic trainers watching the field for signs of potential concussions, the league and NFLPA have selected and retained two Unaffiliated Neurotrauma Consultants, who staff the sidelines, and two athletic trainers, who are in a booth above the field, to monitor the game and identify players who need to be evaluated for a potential concussion before returning to play. The medical teams utilize sophisticated communication equipment and have access to instant video replay to further their mission. Players suspected of sustaining a Mild Traumatic Brain Injury (MTBI) are not permitted to return to play until they have been evaluated and cleared by both their team physician and an Unaffiliated Neurotrauma Consultant. When in doubt, a player is withheld from returning to play. Players diagnosed with a concussion must follow a rigid five-step process to return to play, which ultimately requires the player to be cleared by an independent physician.

Question 6: According to the *Washington Post*, 28 out of 30 teams reported administering Toradol to an average of 15 players each game as far back as 2002. As reported by the *Post*, in 2012, the NFL funded an NFL Physicians Society task force to study Toradol and to "formulate a 'best practice' recommendation." Despite the widespread usage of Toradol by almost all NFL teams in 2002, the league waited approximately a decade to take this action. What caused the NFL to fund the development of best practice recommendations in 2012?

The NFL did not direct the Physicians Society to study Toradol. The NFL historically has provided funding support to the Physicians Society, an independent academic organization of club physicians, but the league does not direct the Society in terms of what research to undertake.

In January 2012, following allegations by certain plaintiffs in then-pending concussion litigation that Toradol use was somehow related to their injuries, the Physicians Society Executive Committee, with knowledge of the NFL, decided that the Physicians Society should convene a group to study the use of Toradol in the NFL. In

turn, the Physicians Society Executive Committee commissioned a Task Force to do so. The result of that project was the 2012 article, *Recommendations of the National Football League Physicians Society on the Use of Toradol Ketorolac in the National Football League*, Sports Health, v.4(5) (2012), a copy of which is provided with this letter.[4]

Question 7: Regarding the prescribing of Vicodin, does the NFL track current and former NFL players to determine if any have developed opioid dependence or addiction? If not, why not? If it does and dependence or addiction has occurred, what additional follow-up does the NFL take regarding those players?

The collectively-bargained Policy and Program on Substances of Abuse has governed the testing of players for improper use of prescription and non-prescription drugs since 1982, and provides for counseling and other rehabilitative services for players found to have addiction or substance abuse issues. As the Policy states: "The primary purpose of this Policy is to assist Players who misuse Substances of Abuse. As a result, the implementation and application of the terms of this Policy should first be directed toward ensuring evaluation and treatment." Under this Policy, the use of such substances without a prescription or in a manner contrary to the prescription (such as over dosage or use beyond the expiration date) is subject to referral to the League's Intervention Program, which provides periodic testing, counseling and other support for players in need of assistance.[5]

This collectively-bargained Policy applies to active players. The NFL does not have the authority under the CBA to test or monitor retired players. Nevertheless, both the NFL and the clubs have a broad array of benefits and services available to former players who need assistance. Attached to this letter, we have provided a brief report on

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[4] The Task Force authors noted that ketorolac "has been safely used for several years in a variety of patient populations for the temporary relief of moderate to severe pain and inflammation" and that, in general "NFL players are superbly fit and healthy with little risk of experiencing any of the known complications associated with the use of ketorolac." Reacting to the negative media perception of NFL players receiving injections before competition, the Task Force recommended use of the oral formulation over the injectable one, but noted that "each team physician is ultimately free to practice medicine as he or she feels is in the best interest of the patient."

[5] Your letter cites Cottler, et al. *Injury, Pain and Prescription Opioid Abuse Among Former National Football League Players*, Drug and Alcohol Dependence (Jan. 2011) for the proposition that "71 percent [of the 52 percent of retired NFL players who reported to having used prescription pain medication while playing] reported having misused the drugs." It is important to note that the Cottler classified a player as having "misused" medication if the medication was obtained from anyone other than a doctor, lumping athletic trainers in along with teammates, roommates, friends, dealers, and "pill guys." In this respect, the Cottler article both demonstrates that "misuse" occurs despite the best efforts of team medical staffs (in that players seek medications from other players, dealers, etc.) and overstates the prevalence of misuse (in that a player would not be misusing the medication if receiving it from an athletic trainer at the direction of the team physician).

the many benefits and services available to retired players through the NFL CBAs and otherwise.

Question 8: The *Washington Post* suggests that NFL team physicians and trainers may have violated federal laws governing controlled substances and may have ignored guidance from the DEA regarding the transportation, storage, and distribution of controlled substances. For example, the *Washington Post*, citing the plaintiff's complaint, reported that Lawrence Brown, the NFL-employed medical advisor who oversees drug issues, announced that during an audit at least "5 teams were in noncompliance with controlled substances" in a 1998 meeting of the NFL Physicians Society. What DEA guidance did the NFL receive regarding the storage, transport, and distribution of controlled substances, and has the NFL followed all DEA guidance? Please provide a list and timeline of subsequent action taken by NFL officials in response to these violations.

To our knowledge, no NFL team or team medical staff member has ever been the subject of an administrative, civil, or criminal charge of violating any federal or state laws pertaining to controlled substances, or for any conduct involving the provision of medical care to its players.

Any suggestion that the clubs did not, in the past, comply with the relevant regulations ignores the historic guidance the DEA has provided to NFL clubs since at least 1994 on these issues, as well as the shift in the DEA's interpretation of those regulations in or about 2010.

Our understanding is that, prior to 2010, individual team physicians and clubs would communicate with DEA officials directly if they had questions about a particular practice. When DEA provided individualized guidance, we believe that the recipients of that guidance fully complied with it. The NFL itself had never received guidance from the DEA until 2010.

In August 2010, representatives of the NFL Physicians Society, along with the NFL's medical advisor and others, met with DEA officials in Washington, DC. About this time, the DEA Diversion Control Office was making fundamental changes to its guidance and approach regarding the use of controlled substances by sports team physicians. Prior to 2010-11, the DEA's own Diversion Investigator Manual expressly stated that a sports team could travel with limited quantities of controlled substances to dispense at away games. At this meeting, however, the DEA informed those in attendance that teams should not travel with controlled substances.

This advice was new and surprising. It represented a significant departure from the way that team physicians in all sports had been practicing medicine for decades. Much of this advice contradicted written and oral advice that DEA agents had provided

to individual teams over time, including, for example, a January 21, 1994, letter from the Chief Liaison and Policy Section Office of Diversion Control to Dr. Edward St. Mary, a team physician for the Miami Dolphins (a copy of which is provided with this letter), advising that: "At locations where controlled substances are not stored or on domestic road trips, the practitioner may dispense or administer controlled substances from a medical bag." Similar advice, which echoes the Diversion Control Office's own Investigator's Manual, had been provided over the years to numerous team medical staff personnel by local DEA agents, including as recently as July 2010.

Despite the significant departure from previous DEA guidance, the Physicians Society, with logistical support from the NFL Medical Advisor, endeavored to educate its members about the information that DEA provided at the August 2010 meeting. As part of this educational process, the Physicians Society invited the head of the Diversion Control Office to the Society's next annual meeting, in February 2011, to ensure that its members were fully informed of DEA's change in views.

Following these meetings and updated guidance, the NFL established a Visiting Team Medical Liaison Program whereby each visiting team coordinates with a local physician practicing in the state of the away game to assist in the provision of medical care, including obtaining prescription medications, during away game trips. Teams no longer travel with controlled substances, nor are controlled substances stored at team facilities, including at stadiums used by NFL clubs.

Question 9: The *Washington Post* reports that "team and league officials were made aware of abuses, record-keeping problems and even violations of federal law and were either slow in responding or failed to comply." Has the NFL and its teams followed all federal laws regarding administering and dispensing of prescription drugs? Please provide a list of violations of which league officials were aware and a list and timeline of subsequent action taken by NFL officials in response to these violations.

The NFL believes that the club medical staffs have taken (and continue to take) seriously their obligations under federal law and have endeavored to follow the guidance provided by federal regulatory agencies – even when such guidance has been inconsistent. As noted, the NFL is not aware of any team that, or club physician or athletic trainer who, has been charged with any violation of federal law concerning controlled substances or prescription drugs.[6]

[6] In 2009-10, DEA conducted unrelated investigations of registrants affiliated with the New Orleans Saints and San Diego Chargers. Neither investigation resulted in any charges or penalties; both teams developed close connections with their local DEA offices and made certain recommended changes to their practices.

Question 10: Please provide the following documents referenced in the *Washington Post* report: The September 2014 "NFL Prescription Drug Advisory Committee Major Findings and Recommendations," the 78-slide DEA presentation on laws governing handling of controlled substances, minutes from the August 2010 conference call with league medical adviser Elliott Pellman, the findings of the 2012 NFL Physicians Society task force, and the 2014 survey which included responses from 27 teams on use of Toradol. Please also provide the March 2013 document cited in the *Washington Post* report regarding the Steelers doses of NSAIDs in 2012.

Copies of the Prescription Drug Advisory Committee Major Findings and the Physicians Society Task Force article are provided with this letter. To our knowledge, the DEA did not provide a copy of its slide presentation. The August 2010 conference call minutes is a document in the possession of the NFL Physicians Society and is subject to a Protective Order in the Club litigation. The 2014 survey was a confidential survey conducted by the Society, not the NFL, and is also subject to a Protective Order in the litigation. Also attached is the March 2013 document regarding the Steelers' doses of NSAIDs in 2012.[7]

[7] The *Post* somehow concluded that this document indicates that the average NFL player was receiving "six to seven pain pills or injections a week per player over the course of a typical season." We believe that this conclusion is uninformed. To put the reported numbers in context, it is important to note that, for purposes of the audit, each tablet constituted one dose. Other than injectable Toradol (which is generally given once daily), most prescription NSAIDs (such as 800mg Motrin, Indocin, or Naprosyn) are taken 3-4 times daily. Vicodin and Percocet are, depending on the dose, taken up to 6-12 times daily. It also important to consider: (a) that a team roster has 60 active players during the regular season (53 players on the regular roster and 7 on the practice squad), plus additional players on injured reserve, and as many as 90 players during the offseason; (b) the numbers in the report include, for example, medications provided to players on injured reserve, those recovering from surgery, and/or rehabilitating from injuries, etc.; (c) the report covers an annual period encompassing not just the seventeen week regular season, but also the periods of preseason training camp, offseason minicamps, offseason workout programs, and postseason play; and (d) "controlled substances" include medications like Ambien and Adderall that are not opioid analgesics. For the 2012 Steelers, team physicians administered a total of 108 Toradol injections during the entire year. That averages to, at most, two injections per player over the course of an entire year. And of the Steelers' 2,123 doses of "controlled medications," nearly half were for Ambien or Adderall. That equates to, at most, twenty-four "pain pills" per player *per year* -- not six to seven pain pills per player per each week of the season.

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Thank you for the opportunity to respond to your questions and to address the issues raised in your March 15th letter. The NFL and each of its 32 member clubs remain deeply committed to the health and safety of NFL players. As allowable in light of the pending litigation, we would be happy to elaborate on any of the answers set forth above.

Sincerely,

Dennis Curran
Senior Vice President and General Counsel
NFL Management Council

Encls.
1 - CBA provisions regarding player medical care
2 - Letter from the Chief Liaison and Policy Section Office of Diversion Control to Dr. Edward St. Mary (Jan. 21, 1994)
3 - NFL Physicians Society Task Force, *Recommendations of the National Football League Physicians Society on the Use of Toradol Ketorolac in the National Football League*, Sports Health, v.4(5) (2012)
4 - List of benefits and programs available to retired players
5 - Prescription Drug Advisory Committee Major Findings
6 - 2012 Steelers Prescription Drug Audit Report