

Benching Stigma: Mental Health Leaves of Absence in the National Basketball Association

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In recent years, professional sports organizations such as the National Basketball Association (“NBA”) have increasingly recognized the importance of mental health in athlete well-being, prompting legal and contractual reforms. This article investigates contractual and legal frameworks governing mental health-related leaves of absence for athletes in the NBA, focusing on the evolution of these frameworks from the 2017 to 2023 collective bargaining agreements (“CBAs”). By analyzing the high-profile dispute between Ben Simmons and the Philadelphia 76ers, this article identifies potential ambiguities in the 2017 CBA pertaining to athlete mental health disclosures and illustrates how recent modifications in the 2023 CBA address procedural gaps by mandating more timely and transparent communication between players and their teams.

This article’s examination of the updated CBA reframes mental health considerations within professional athletic contracts, situating these developments within broader trends in athlete advocacy and organizational accountability. Furthermore, this article assesses the practical application of these new protocols by analyzing a recent NBA athlete mental health leave that exemplifies a cooperative approach between player and team. This article concludes by recommending the integration of a dedicated place for mental health policies in the next CBA to clarify procedures, reduce disputes, and enhance support for athlete well-being. This legal analysis contributes to ongoing discussions on balancing player privacy rights with organizational needs in sports, emphasizing the increased significance of mental health considerations in the NBA’s governing framework.

Keywords: National Basketball Association, collective bargaining agreement, mental health, well-being

Introduction

The increasing emphasis on mental health in sports has led to structural changes in the way professional athletic organizations treat athlete well-being. The pressures of



high-level competition and prolonged physical stress can take a powerful mental toll, leading some athletes to refrain from competing altogether. Conflicts can arise when competitions are contractually obligated and failure to perform can be considered a breach with financial consequences. These competing interests came to a crossroads when National Basketball Association (“NBA” or the “League”) All-Star Ben Simmons informed his team that his mental health would prevent him from playing ahead of the 2021–22 basketball season.

This article examines the provisions of the 2017 iteration of the Collective Bargaining Agreement (“CBA”) between the NBA and the National Basketball Players Association (“NBPA” or “Players Association”) that governed Simmons’ mental health leave of absence. It next analyzes the 2023 version of CBA to identify what elements the parties changed through the negotiating process and how these updates would have affected Simmons’ situation had they been in effect at the time. Lastly, this article explains how players can take mental health leaves of absence in a way that is fully compliant with the requirements of the 2023 CBA, before discussing an example of a non-contentious mental health leave successfully executed under this framework.

Part I. Setting up the Play

Ben Simmons’ contentious mental health dispute with the Philadelphia 76ers (“76ers” or “Sixers”) highlights the pressures of professional basketball and the challenges of addressing mental health within the League. Part I of this article begins by laying the foundation necessary for understanding the governing framework of the NBA and its impact on Simmons’ dispute. It describes the background of Simmons’ struggles before highlighting the rise in prominence of NBA athlete mental health and the supportive actions the NBA and NBPA have taken. The discussion concludes with an explanation of the League’s general framework governing athlete employment and an examination of individual provisions in the 2017 agreement that are pertinent to NBA athlete mental health leaves of absence.

On the Court

Ben Simmons burst onto the scene in his first few years in the NBA, earning the 2018 Rookie of the Year award in addition to making three All-Star teams, one All-NBA team, and an All-Defensive team—all before the age of 25.¹ After being selected with the first overall pick in the 2016 NBA draft by the Philadelphia 76ers, Simmons was welcomed as a basketball savior—the player destined to change the

¹ *Ben Simmons*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/players/s/simmobe01.html> (last visited Nov. 17, 2024).



fortunes of a struggling franchise.² His impact was immediate. The Sixers soared up the standings, rising from 15th place in the 2016 Eastern Conference regular season to third place in Simmons' 2018 debut season.³ Despite falling short of the NBA championship, Simmons and costar Joel Embiid led the Sixers to four consecutive playoff appearances.⁴

Simmons' fortunes quickly shifted following his team's stunning upset loss to the Atlanta Hawks in the 2021 Eastern Conference Semifinals.⁵ Simmons received widespread public criticism from fans, teammates, and even his head coach over his reluctance to shoot the basketball throughout the series.⁶ Shortly thereafter, Simmons requested a trade from the 76ers.⁷ The team was unable to find an appealing trade and entered training camp with the expectation that the All-Star point guard would play until another team made a suitable offer.⁸ After treating Simmons for a back injury, the Sixers' medical staff cleared him to play in the 2021–22 season opener.⁹ Simmons then informed his coach and the team's medical staff that he was not mentally ready to play.¹⁰

² Lee Jenkins, *The Process Is Over: Ben Simmons and the 76ers Have Arrived*, SPORTS ILLUSTRATED (Nov. 30, 2017), <https://www.si.com/nba/2017/11/30/ben-simmons-philadelphia-76ers-lebron-james-the-process>.

³ *2015-16 Philadelphia 76ers Roster and Stats*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/teams/PHI/2016.html> (last visited Nov. 17, 2024); *2017-18 Philadelphia 76ers Roster and Stats*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/teams/PHI/2018.html> (last visited Nov. 17, 2024).

⁴ Michael Lee, *Joel Embiid Says He Wants Ben Simmons Back as 76ers Are Set to Open Training Camp*, WASH. POST (Sept. 27, 2021), <https://www.washingtonpost.com/sports/2021/09/27/ben-simmons-holdout-76ers-joel-embiid/>.

⁵ *Id.*

⁶ *Id.* (“Simmons is also a flawed offensive player whose refusal to shoot and fears of getting fouled because of his poor free throw shooting led to him taking the brunt of the blame for the 76ers losing in the second round of the playoffs for the third time in four years.”); Jason Owens, *Doc Rivers, Joel Embiid Raise Doubts About Their Confidence in Ben Simmons After Game 7 Loss*, YAHOO! SPORTS (June 20, 2021), <https://sports.yahoo.com/doc-rivers-joel-embiid-raise-doubts-about-their-confidence-in-ben-simmons-after-game-7-loss-045651369.html>.

⁷ Lee, *supra* note 4.

⁸ *Ben Simmons Timeline: All of the Major Happenings with the Philadelphia 76ers Star in 2021-2022*, ESPN (Feb. 8, 2022, 10:53 AM), https://www.espn.com/nba/story/_/id/32877959/ben-simmons-line-all-major-happenings-philadelphia-76ers-star-2021-2022.

⁹ Adrian Wojnarowski (@wojespn), X (Oct. 21, 2021, 2:06 PM), https://twitter.com/wojespn/status/1451263590866948130?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweet-embed%7Ctwterm%5E1451263590866948130%7Ctwgr%5Ecfecce0ace86bclf636164fc95fcd02b7d3bec03%7Ctwcon%5Esl1&ref_url=https%3A%2F%2Fthelibraryline.com%2F2021%2F10%2F21%2Fben-simmons-faked-back-injury%2F.

¹⁰ Adrian Wojnarowski (@wojespn), X (Oct. 22, 2021, 9:59 AM), <https://twitter.com/wojespn/status/1451563937099513859>.



The Sixers responded by offering Simmons further medical help, which he refused, instead electing to receive support from mental health professionals outside of those offered by the team.¹¹ Simmons provided the Sixers with the names of each of his mental health professionals but declined to allow those professionals to share any further information with the team.¹² The Sixers insisted they should be given more details about Simmons' treatment plans, process, and return timeframe, but Simmons refused to share this information.¹³ This ongoing disagreement over the amount of access the Sixers and their doctors should have to Simmons' mental health information ultimately led the team to claim that Simmons was in breach of his employment contract.¹⁴ Consequently, the Sixers began to fine him \$360,000 for each missed game.¹⁵

After a few months and nearly \$20 million in accumulated fines,¹⁶ the 76ers finally traded Simmons in February of 2022.¹⁷ Shortly thereafter, he filed a grievance with the NBA to recoup the money he had paid out in fines.¹⁸ Under the rules described in the 2017 iteration of the NBA's Collective Bargaining Agreement ("CBA"),¹⁹ this

¹¹ Dan Feldman, *Report: Ben Simmons Tells 76ers Names of His Mental-Health Professionals, Doesn't Grant Team Full Access to Info*, NBC SPORTS (Nov. 8, 2021, 11:45 AM), <https://www.nbcsports.com/nba/news/report-ben-simmons-tells-76ers-names-of-his-mental-health-professionals-doesnt-grant-team-full-access-to-info>.

¹² Shams Charania, *Ben Simmons Trade Talk, Where Things Stand with the Sixers, Plus More NBA Notes: Shams Charania's Inside Pass*, ATHLETIC (Nov. 8, 2021), <https://theathletic.com/2940604/2021/11/08/ben-simmons-trade-talk-where-things-stand-with-the-sixers-plus-more-nba-notes-shams-charanias-inside-pass/>.

¹³ *Id.*

¹⁴ Ramona Shelburne, Bobby Marks & Adrian Wojnarowski, *Sources: Brooklyn Nets' Ben Simmons Files Grievance to Challenge Nearly \$20 Million Withheld by Philadelphia 76ers*, ESPN (Apr. 2, 2022 8:57 AM), https://www.espn.com/nba/story/_/id/33652726/sources-brooklyn-nets-ben-simmons-files-grievance-nearly-20-million-withheld-philadelphia-76ers.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Tim Bontemps, *Brooklyn Nets Trade James Harden to Philadelphia 76ers for Ben Simmons, Seth Curry, Andre Drummond*, ESPN (Feb. 10, 2022 1:23 PM), https://www.espn.com/nba/story/_/id/33260613/brooklyn-nets-trade-james-harden-philadelphia-76ers-ben-simmons-seth-curry-andre-drummond-sources-say.

¹⁸ Shelburne et al., *supra* note 14; *see infra* text accompanying notes 83–102 (examining NBA grievance procedures in more detail).

¹⁹ NAT'L BASKETBALL ASS'N, COLLECTIVE BARGAINING AGREEMENT, art. XXXI (Jan. 19, 2017) [hereinafter 2017 CBA], <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf>; *see infra* text accompanying notes 57–70 (providing an explanation of the Collective Bargaining Agreement).



dispute proceeded to arbitration.²⁰ The parties settled for an undisclosed amount prior to judgment.²¹

Mental Health and the NBA

Simmons is not alone—many prominent NBA players have opened up about their mental health struggles, leading the League to recognize the growing importance of athlete mental health.²² In 2018, then-Toronto Raptors forward DeMar DeRozan opened up to the *Toronto Star* about his lifelong battle with anxiety and depression,²³ sparking the conversation between the NBA and the NBPA about how best to maximize player health and wellness.²⁴ “It’s nothing I’m against or ashamed of,” DeRozan remarked.²⁵ The six-time All-Star hoped that his willingness to share his experiences might encourage others to follow suit.²⁶ Less than a month later, then-Cleveland Cavaliers forward Kevin Love wrote an article for *The Players Tribune* wherein he shared openly about his experiences with panic attacks and crippling anxiety.²⁷ Other NBA athletes began to follow suit by opening up about their struggles,²⁸ including Philadelphia 76ers center Andre Drummond, Milwaukee Bucks superstar Giannis Antetokounmpo, and veteran journeyman Michael Beasley.²⁹ These conversations helped prime the NBA to take action on mental health.³⁰

²⁰ Adrian Wojnarowski, *Sources: Philadelphia 76ers, Ben Simmons Reach Settlement on Grievance over Withheld Pay*, ESPN (Aug. 15, 2022 6:56 PM), https://www.espn.com/nba/story/_/id/34405414/sources-philadelphia-76ers-ben-simmons-reach-settlement-grievance-withheld-pay.

²¹ *Id.*

²² 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/>.

²³ Doug Smith, *Raptors’ DeRozan Hopes Honest Talk on Depression Helps Others*, TORONTO STAR (Feb. 25, 2018), https://www.thestar.com/sports/raptors/raptors-derozan-hopes-honest-talk-on-depression-helps-others/article_18254ed4-b3bf-5b2e-908a-44eda0d80232.html.

²⁴ Blake Pinto, *How NBA Players Are Taking the Lead on Mental Health*, CHICAGO SCH. (July 18, 2019), <https://www.thechicagoschool.edu/insight/psychology/nba-mental-health-awareness/>. The NBPA is a union for current NBA players that aims to “protect and support the rights and talents of our players, magnify the power of their collective will, and amplify their voices as leaders who will transcend sport and society globally.” *Overview & History*, NAT’L BASKETBALL PLAYERS ASS’N, <https://nbpa.com/about> (last visited Nov. 17, 2024).

²⁵ Pinto, *supra* note 24.

²⁶ *Id.*

²⁷ Kevin Love, *Everyone Is Going Through Something*, PLAYERS’ TRIBUNE (Mar. 6, 2018), <https://www.theplayertribune.com/articles/kevin-love-everyone-is-going-through-something>.

²⁸ Vardon, *supra* note 22.

²⁹ *Id.*; Omer Awan, *Former NBA Player Michael Beasley Becomes a Champion for Mental Health*, FORBES (July 3, 2023, 8:48 AM), <https://www.forbes.com/sites/omerawan/2023/07/03/former-nba-player-michael-beasley-becomes-a-champion-for-mental-health/?sh=31ce77187457>.

³⁰ Vardon, *supra* note 22.



The 2017 CBA does not provide explicit protocols outlining athlete mental health or wellness care.³¹ It does, however, state in Article IV that there is an agreement between the NBA and the NBPA to “establish a mental wellness program for current players....”³² The NBPA is a union created to advocate for the collective rights and interests of all professional basketball players in the NBA.³³ The Article IV agreement between the NBA and NBPA has led to the integration of mental health and wellness sessions into the Rookie Transition Program (“RTP”) as well as the creation of the NBA’s Mind Health initiative and the Players Association’s Mental Health and Wellness Department.³⁴

The RTP is a week-long formal program designed to help incoming NBA players adjust to the life changes that come with playing in the League.³⁵ It consists of advice panels and discussions centered around subjects such as financial management, career development, and social justice.³⁶ Mental health and wellness conversations were integrated into the RTP before the 2018 season—only a year after the 2017 CBA came into effect.³⁷ The mental health and wellness sessions cover multiple days of the RTP and have included sessions with NBA Mind Health Director Dr. Kensa Gunter and NBPA Mental Health Director Dr. William Parham.³⁸

The League launched the NBA Mind Health initiative in April 2018, which aims to bring mental health conversations to the forefront by helping players, staff, youth,

³¹ See 2017 CBA, *supra* note 19, art. IV, § 3(a)(9).

³² *Id.*

³³ *Overview & History*, *supra* note 24.

³⁴ David Aldridge, *NBA, NBPA Taking Steps to Further Address Mental Wellness Issues for Players*, NBA (Mar. 12, 2018, 9:45 AM), <https://www.nba.com/news/morning-tip-nba-nbpa-addressing-mental-wellness-issues/> (“The mental wellness program – the product of almost a year of discussions between the league and union that began as the sides were working out the new Collective Bargaining Agreement – will allow players to seek treatment and counseling outside of the framework of their individual teams, if they want.”); Bruce Y. Lee, *NBA, NBPA Being Proactive About Mental Health, Especially With The Covid-19 Pandemic*, FORBES (Sept. 10, 2021 10:21 AM), <https://www.forbes.com/sites/brucelee/2021/09/10/nba-nbpa-being-proactive-about-mental-health-especially-with-the-covid-19-pandemic/?sh=6b7467b37699>. See *Mind Health*, NBA, <https://mindhealth.nba.com> (last visited Nov. 17, 2024); Kiki Campbell, *Mental Health Awareness Month: What Is Mental Health?*, NBPA (June 11, 2020), <https://nbpa.com/grassroots/blog/mental-health-awareness-month-what-is-mental-health>.

³⁵ Lee, *supra* note 34.

³⁶ *Id.*

³⁷ Bruce Y. Lee, *Mental Health A Big Part Of The NBA Rookie Transition*, FORBES (Sept. 3, 2019, 6:55 PM), <https://www.forbes.com/sites/brucelee/2019/09/03/mental-health-a-big-part-of-the-nba-rookie-transition/?sh=6991e7ad6070>.

³⁸ Lee, *supra* note 34.



and fans access mental health professionals and resources.³⁹ Its self-described mission is to “engage, educate, and serve the NBA community and to position mental health as an essential element of wellness and excellence—both on and off the court.”⁴⁰ This mission has been realized through the actions the NBA has taken to provide mental health resources and information to members of that community.⁴¹ The Mind Health initiative has also partnered with communications firm Reingold to produce a 51-page “Wellness Playbook” comprising wellness tips, exercises, self-assessments, and other mental health resources for NBA players.⁴² The NBA selected Dr. Gunter to lead the program in 2020.⁴³

The Players Association’s wellness efforts help provide built-in mental health services for players along with a vetted directory of mental health practitioners described by Dr. Parham as “confidential.”⁴⁴ Created with the help of retired NBA veteran Keyon Dooling, the Players Association program also provides, among other benefits, a mental health literacy program and a touchpoint program for checking in on players.⁴⁵

While these programs constitute substantial efforts on behalf of the NBA and the Players Association, it has been unclear until recently what services, if any at all, individual teams have provided for players.⁴⁶ Prior to the 2019–20 season, the League addressed team mental health efforts by issuing a memo stating that among other things, teams are expected to “retain and make available to players on a voluntary basis one to two mental health professionals who are licensed in their field and locality,”⁴⁷ “identify a licensed psychiatrist (M.D. or D.O.) to be available to assist in managing player mental health issues,”⁴⁸ “enact a written action plan for mental

³⁹ *Id.*

⁴⁰ *Mind Health*, *supra* note 34.

⁴¹ *Id.*

⁴² *NBA Mind Health*, REINGOLD, <https://www.reingold.com/featuredprojects/nba-mind-health/> (last visited Nov. 17, 2024).

⁴³ Lee, *supra* note 34.

⁴⁴ Lee, *supra* note 37.

⁴⁵ Lee, *supra* note 34.

⁴⁶ Vardon, *supra* note 22.

⁴⁷ Sam Amick, *NBA Ramps Up Mental Health Program, Setting New Expectations for Each Team—Details From a League Memo*, ATHLETIC (Aug. 7, 2019), <https://theathletic.com/1120892/2019/08/07/nba-ramps-up-mental-health-program-setting-new-expectations-for-each-team/>.

⁴⁸ *Id.*



health emergencies,⁴⁹ and “put in place procedures for communicating to players and team staff the team’s practices with respect to privacy and confidentiality.”⁵⁰ NBA Vice President of Player Development Jamila Wideman has stated that all 30 teams are in compliance with these rules.⁵¹

There is considerable variance in the way teams have chosen to institute these rules.⁵² The Los Angeles Lakers employ a director of mental health who manages a team of four.⁵³ The Miami Heat have three psychologists on call and allow players to use their own therapists.⁵⁴ As of 2023, the Philadelphia 76ers keep at least four mental-health professionals on call.⁵⁵ While many teams reported having provided these services for years,⁵⁶ the NBA’s 2019 guidance serves to clarify the duties of teams in athlete mental health and reflects the League’s increased focus on the issue.

Legal Environment

The terms and conditions of NBA player employment are outlined in a seven-year Collective Bargaining Agreement negotiated between the NBA and the NBPA.⁵⁷ The CBA binds all teams and players to a uniform set of rules covering topics such as the distribution of league revenue, compensation limits, conduct requirements, and athlete eligibility requirements.⁵⁸ It is periodically updated and renegotiated, with the most recent version taking effect on July 1, 2023.⁵⁹

The form contract signed by every NBA player after coming to an employment agreement with a team is called the Uniform Player Contract (“UPC”).⁶⁰ The standard terms of the UPC are negotiated between the NBA and NBPA as part of the overall

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Vardon, *supra* note 22.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Collective Bargaining Agreement (CBA)*, NAT’L BASKETBALL PLAYERS ASS’N, <https://nbpa.com/cba> (last visited Nov. 17, 2024).

⁵⁸ 2017 CBA, *supra* note 19, arts. II, IV, XIII, XX, XXXVIII.

⁵⁹ *Collective Bargaining Agreement (CBA)*, *supra* note 57.

⁶⁰ Billy Dixon, *CBA – NBA Contract Types*, BETWEEN LINES SPORTS (May 13, 2021), <https://www.btlscouting.org/post/cba-nba-contract-types>.



collective bargaining process.⁶¹ The UPC is attached to the CBA as Exhibit A.⁶² The terms of both the CBA and its accompanying UPC are fully binding on all players. Most UPC terms are off limits in individual negotiations between a player and his prospective team, although the player can negotiate limited provisions regarding his compensation amount, bonuses, compensation protection, and contract length.⁶³ Player contracts also specify the amount of the player's salary that is guaranteed.⁶⁴ NBA salaries are typically fully guaranteed, although some allow either the team or the player to opt out after an agreed-to number of years.⁶⁵ Player compensation is generally protected in the event that the contract is terminated by the team due to the player's lack of skill, death, disability from injury or illness, or mental disability.⁶⁶

The UPC standard provisions also include remedies in the event of breach by a player.⁶⁷ A material breach can void the standard player compensation protections.⁶⁸ “[W]hen a player fails or refuses, without proper and reasonable cause or excuse” to play in a game as required by his contract, the CBA allows the player's team to reduce his base compensation for the current year by a certain percentage for each game missed.⁶⁹ A player can also be fined more than \$7,500 for missing a team practice session “without proper and reasonable excuse.”⁷⁰

⁶¹ 2017 CBA, *supra* note 19, art. II.

⁶² *Id.* art. II, § 1; NAT'L BASKETBALL ASS'N, COLLECTIVE BARGAINING AGREEMENT, art. II, § 1 (July 1, 2023) [hereinafter 2023 CBA], <https://imgix.cosmicjs.com/25da5eb0-15eb-11ee-b5b3-fbd321202bdf-Final-2023-NBA-Collective-Bargaining-Agreement-6-28-23.pdf>.

⁶³ Dixon, *supra* note 60; Cameron J. Turkzadeh, *A Player's League: Short- and Long-Term Solutions to Contract Holdouts in the NBA*, 45 COLUM. J.L. & ARTS 525, 530–31 (2022).

⁶⁴ 2017 CBA, *supra* note 19, art. II, § 3; 2023 CBA, *supra* note 62, art. II, § 3.

⁶⁵ William W. Berry III, *Superstars, Superteams, and the Future of Player Movement*, 13 HARV. J. SPORTS & ENT. L. 199, 228 (2022); Lev Akabas, *How Do NBA Contract and the Salary Cap Work?*, SPORTICO (July 5, 2024), <https://www.sportico.com/feature/nba-salaries-explained-salary-cap-1234786618/>.

⁶⁶ 2017 CBA, *supra* note 19, art. II, § 4; 2023 CBA, *supra* note 62, art. II, § 4.

⁶⁷ 2017 CBA, *supra* note 19, art. VI, § 1; 2023 CBA, *supra* note 62, art. VI, § 1.

⁶⁸ 2017 CBA, *supra* note 19, art. II, § 4; 2023 CBA, *supra* note 62, art. II, § 4.

⁶⁹ 2017 CBA, *supra* note 19, art. VI, § 1 (allowing a reduction in yearly base compensation of 1/145th for each missed game); 2023 CBA, *supra* note 62, art. VI, § 4, (allowing a reduction in yearly base compensation of 1/91.6th for each missed game).

⁷⁰ 2017 CBA, *supra* note 19, art. VI, § 2(a); 2023 CBA, *supra* note 62, art. VI, § 2(a).



Player Health and Dispute Resolution Under the 2017 CBA

Under the 2017 CBA and its accompanying UPC, rules regarding player fitness, outside training, and medical examinations are governed by UPC § 7. Section 7(d) requires that the “[p]layer agree[s] to provide to the Team’s coach, trainer, or physician prompt notice of any injury, illness, or medical condition suffered by him that is likely to affect adversely the Player’s ability to render the services required under this Contract....”⁷¹ Should such an event happen to a player, he must “submit himself to a medical examination, appropriate medical treatment by a physician designated by the Team, and such rehabilitation activities as such physician may specify.”⁷² Section 7(h)(i) requires that if a player consults or is treated by “a physician (including a psychiatrist) ... other than a physician or other professional designated by the Team” the player must “give notice of such consultation or treatment to the Team and shall provide the Team with all information it may request concerning any condition that in the judgment of the Team’s physician may affect the Player’s ability to play skilled basketball.”⁷³

Further, § 7(i) expressly mandates that “to the extent necessary to enable or facilitate the disclosure of medical information as provided for by this Contract ... the Player shall execute such individual authorization(s) as may be requested by the Team or the Medical Director of the Anti-Drug Program....”⁷⁴ This section unambiguously obligates the player to share medical information with the team as required under the player’s contract.

The 2017 CBA further outlines the League’s protocols for player health and wellness.⁷⁵ Each team must have available at least two certified team physicians, one athletic trainer, one strength and conditioning coach, and one orthopedic surgeon.⁷⁶ Each team also has the “sole and exclusive discretion to select any doctors, hospitals, clinics, health consultants, or other health care providers ... to examine and/or treat players pursuant to the terms of this Agreement and the Uniform Player Contract....”⁷⁷

A player has the right to receive a second medical opinion at the expense of his team regarding the course of treatment for limited scenarios including “an injury,

⁷¹ *National Basketball Association Uniform Player Contract*, in NAT’L BASKETBALL ASS’N, COLLECTIVE BARGAINING AGREEMENT, Exhibit A, § 7(d) (Jan. 19, 2017) [hereinafter 2017 UPC], <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf>.

⁷² *Id.* § 7(e).

⁷³ *Id.* § 7(h)(i).

⁷⁴ *Id.* § 7(i).

⁷⁵ 2017 CBA, *supra* note 19, art. XXII.

⁷⁶ *Id.* art. XXII, §§ 1–2.

⁷⁷ *Id.* art. XXII, § 6.



illness, or other health condition that ... in the opinion of the Team physician will not be significantly aggravated by the player continuing to participate in NBA games ... when the player reasonably believes that continued participation will significantly aggravate his injury, illness, or condition....”⁷⁸ The player then chooses the medical professional who provides this second opinion from a “Second Opinion List” of medical specialists termed “Second Opinion Physicians,” who are approved by both the NBA and the Players Association.⁷⁹ Under the 2017 CBA, a Second Opinion Physician remains on the Second Opinion List for the duration of the CBA unless either the NBA or Players Association has provided written notice to the other party that the physician should be removed.⁸⁰ Such removal is effective immediately so long as it does not affect a second opinion process previously requested by a player.⁸¹ The team is required to consider the second opinion in connection with the diagnosis or treatment of the player’s condition.⁸²

The CBA also contains express procedures that allow players to file grievance claims with respect to disputes involving player discipline.⁸³ Grievances are submitted to an independent arbitrator (the “Grievance Arbitrator”), who is agreed upon by both parties and follows a formal trial-like procedure to adjudicate the dispute.⁸⁴ The parties first schedule a hearing with the Grievance Arbitrator.⁸⁵ They can then file pre-hearing motions, such as a motion to dismiss for lack of jurisdiction or a motion to dismiss for an improperly filed or untimely claim.⁸⁶ Next, a conference call is scheduled for the purpose of setting a date for the parties’ oral arguments on the motion.⁸⁷ After oral arguments, the Grievance Arbitrator renders a decision on the motion, including any appropriate award, as soon as practicable.⁸⁸ If the motion to dismiss is denied, a hearing is scheduled to evaluate the merits of the grievance itself.⁸⁹

No later than seven business days prior to the hearing, the parties submit a joint statement of the issues to the Grievance Arbitrator.⁹⁰ If the parties cannot agree on such

⁷⁸ *Id.* art. XXII, § 10(a).

⁷⁹ *Id.* art. XXII, § 10(b).

⁸⁰ *Id.*

⁸¹ *Id.* art. XXII, § 10(c).

⁸² *Id.* art. XXII, § 10(g).

⁸³ *Id.* art. XXXI.

⁸⁴ *Id.* arts. XXXI, § 7(a), XXXI, § 5.

⁸⁵ *Id.* art. XXXI, § 4(a).

⁸⁶ *Id.* art. XXXI, § 3(a).

⁸⁷ *Id.* art. XXXI, § 3(b).

⁸⁸ *Id.* art. XXXI, § 3(d).

⁸⁹ *Id.* art. XXXI, § 3(f).

⁹⁰ *Id.* art. XXXI, § 5(a).



a joint statement, they submit separate statements that are delivered to the Grievance Arbitrator simultaneously.⁹¹ The parties, at this point separately represented by the NBA and the Players Association, are each entitled to discovery of non-privileged documents from any adverse party in the proceeding.⁹² No later than three business days prior to the hearing, the parties exchange any witness lists, relevant documents, and other evidentiary materials gathered throughout the course of discovery.⁹³

All hearings are held in New York and are conducted in accordance with the Labor Arbitration Rules of the American Arbitration Association.⁹⁴ After the hearing, the Grievance Arbitrator renders an award as soon as practicable.⁹⁵ The Grievance Arbitrator's decision is fully binding on all parties and is accompanied by a written opinion.⁹⁶ Appeal is unavailable following the final decision.⁹⁷

The 2017 CBA contains special provisions for certain types of disputes. For grievances challenging a commissioner or team-imposed fine, the amount of any fine or salary lost is deposited in a separate interest-bearing account.⁹⁸ Through the final award, the Grievance Arbitrator determines the amount of deposited funds payable to the parties involved.⁹⁹ For disputes with respect to players under contract withholding playing services, the Grievance Arbitrator can determine that damages are continuing at the time of the hearing, and after awarding damages, can leave the hearing open to enable the submission of proof on the issue of continuing damages.¹⁰⁰ For injury grievances, the NBA and Players Association can agree to designate a neutral physician to serve as an independent medical expert and consultant to the Grievance Arbitrator.¹⁰¹ Section 17 of the 2017 UPC stipulates that the player agrees to resolve any contractual dispute with his team through the CBA's Grievance and Arbitration Procedure.¹⁰²

⁹¹ *Id.*

⁹² *Id.* art. XXXI, § 3(b).

⁹³ *Id.* art. XXXI, § 5(c).

⁹⁴ *Id.* art. XXXI, § 4(g).

⁹⁵ *Id.* art. XXXI, § 6(a).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* art. XXXI, § 10.

⁹⁹ *Id.*

¹⁰⁰ *Id.* art. XXXI, § 12.

¹⁰¹ *Id.* art. XXXI, § 8.

¹⁰² 2017 UPC, *supra* note 71, § 17.



Part II. Revisiting History

The 2023 CBA negotiations presented an opportunity for the NBA and NBPA to make changes to the League’s most important agreement, reflecting the parties’ increased focus on athlete mental health and wellness. The provisions of the final 2023 CBA and its accompanying UPC are more nuanced than the 2017 CBA’s vague intention to “establish a mental wellness program for current players.”¹⁰³ These updated provisions contain more detailed procedural information that would have been relevant to Ben Simmons’ dispute and more concrete policies regarding athlete mental health overall. Part II of this article examines these updates and applies them to Simmons’ dispute in order to illustrate their effects. It concludes by briefly addressing previous NBA and NBPA mental health initiatives that are now rooted in the language of the 2023 CBA.

Simmons’ Dispute Under the 2023 CBA

Perhaps the most notable changes relevant to Ben Simmons’ dispute with the Sixers are found in the updated language of a non-negotiable section of the CBA’s accompanying UPC—thereby making those changes binding on all NBA athletes.¹⁰⁴ Section 7 of the 2017 UPC is titled “PHYSICAL CONDITION,”¹⁰⁵ whereas in the 2023 UPC it is called “HEALTH AND PHYSICAL CONDITION.”¹⁰⁶ Section 7(d) of the 2017 UPC reads:

The Player agrees to provide to the Team’s coach, trainer, or physician prompt notice of any injury, illness, or medical condition suffered by him that is likely to affect adversely the Player’s ability to render the services required under this Contract, including the time, place, cause, and nature of such injury, illness, or condition.¹⁰⁷

¹⁰³ See 2017 CBA, *supra* note 19, art. IV, § 3(a)(9).

¹⁰⁴ Dixon, *supra* note 60.

¹⁰⁵ 2017 UPC, *supra* note 71, § 7.

¹⁰⁶ *National Basketball Association Uniform Player Contract*, in NAT’L BASKETBALL ASS’N, COLLECTIVE BARGAINING AGREEMENT, Exhibit A, § 7 (July 1, 2023) [hereinafter 2023 UPC], <https://imgix.cosmicjs.com/25da5eb0-15eb-11ee-b5b3-fbd321202bdf-Final-2023-NBA-Collective-Bargaining-Agreement-6-28-23.pdf>.

¹⁰⁷ 2017 UPC, *supra* note 71, § 7(d).



The 2023 UPC updated language reads:

The Player agrees to provide to the Team’s coach, trainer, or physician prompt notice of any injury, illness, or *other* medical condition (*including, for clarity, any illness or other medical condition related to mental health*) suffered by him that is likely to affect adversely the Player’s ability to render the services required under this Contract, including the time, place, cause, and nature of such injury, illness, or *other* medical condition.¹⁰⁸

Under the 2017 UPC, it is not clear whether Simmons was required to disclose that his mental health condition was likely to affect his ability to perform under his contract.¹⁰⁹ It is possible that Simmons’ team interpreted UPC § 7(d) to only apply to physical ailments, especially as the section was titled “Physical Condition.”¹¹⁰ The language of the 2023 UPC makes clear that the scope of § 7 is broader than conditions that are only physical and that athletes are required to give “prompt notice” of any “illness or other medical condition related to mental health” that is “likely” to adversely affect the athlete’s ability to play.¹¹¹ Thus, under the 2023 UPC, athletes must report to their team any mental health conditions that are severe enough to have a likely impact on the athlete’s ability to play.

Under the 2023 UPC, a Grievance Arbitrator likely would have found Simmons in violation of § 7(d) of his player contract if Simmons had been struggling with his mental health prior to informing his team he was not mentally ready to play in the 2021–22 season opener. This is because if Simmons’ mental struggles had been ongoing and gradually worsening prior to his refusal to play, he would not have provided his team with “prompt notice” of his “illness or other medical condition related to mental health” that was “likely” to adversely impact his ability to play.¹¹² Instead, Simmons’ disclosure would be seen as taking place after his mental health issues had surpassed being “likely” to impact his ability to play, since they had already progressed to where he felt definitively unable to play. This is exactly the situation that § 7(d) of the 2023 UPC seeks to avoid. However, if Simmons’ mental struggles began or worsened abruptly when he was cleared to play, he might not have breached his contract since his notice could now be considered prompt. Thus, whether a Grievance

¹⁰⁸ 2023 UPC, *supra* note 106, § 7(d) (emphasis added).

¹⁰⁹ 2017 UPC, *supra* note 71, § 7(d).

¹¹⁰ *See id.* All speculation about the beliefs or motivations of either party in this dispute are inferences based purely on a close reading of the CBA and the facts of the dispute as publicly reported. The author does not have and does not purport to have any non-public information or other special insight pertaining to either party.

¹¹¹ 2023 UPC, *supra* note 106, § 7(d).

¹¹² *See id.*



Arbitrator would find that Simmons violated § 7(d) of the 2023 UPC depends on a fact-specific inquiry as to when exactly Simmons' mental health condition became "likely" to have an impact on his ability to play. The 2023 amendment eliminated any ambiguity as to whether Simmons was required to provide his team with any advanced notice concerning his mental condition.

Section 7(e) of the 2023 UPC then requires that "[s]hould the Player suffer an injury, illness, or other medical condition, he will submit himself to a medical examination, appropriate medical treatment by a physician designated by the Team, and such rehabilitation activities as such physician may specify."¹¹³ "Other medical condition" is explicitly defined in § 7(d) to include "any illness or other medical condition related to mental health..."¹¹⁴ Section 7(g) then requires the player to "supply complete and truthful information in connection with any medical examinations or requests for medical information authorized by this Contract."¹¹⁵ Thus, if a player is afflicted by a medical condition related to mental health, he is required to submit himself to a medical examination by a physician designated by the team and is required to provide "complete and truthful information" about the examination as requested by his team.¹¹⁶ Sections 7(e) and 7(g) are identical across both UPCs.¹¹⁷

The next pertinent change in UPC language clarifies the disclosure requirements pertaining to any outside medical opinions a player might receive. The 2017 iteration of § 7(h)(i) reads:

A Player who consults or is treated by a physician (including a psychiatrist) or a professional providing non-mental health related medical services (e.g., chiropractor, physical therapist) other than a physician or other professional designated by the Team shall give notice of such consultation or treatment to the Team and shall provide the Team with all information it may request concerning any condition that in the judgment of the Team's physician may affect the Player's ability to play skilled basketball.¹¹⁸

The 2023 UPC makes clear that the notice and information must be relayed in a timely manner:

¹¹³ *Id.* § 7(e).

¹¹⁴ *Id.* § 7(d).

¹¹⁵ *Id.* § 7(g).

¹¹⁶ *Id.*

¹¹⁷ *Id.* §§ 7(e), 7(g); 2017 UPC, *supra* note 71, §§ 7(e), 7(g).

¹¹⁸ 2017 UPC, *supra* note 71, § 7(h)(i).



*If the Player consults or is treated by a physician (including a psychiatrist) or a professional providing non-mental health related medical services (e.g., chiropractor, physical therapist) other than a physician or other professional designated by the Team, the Player shall give *timely* notice of such consultation or treatment to the Team and shall *timely* provide the Team with all information it may request concerning any condition that in the judgment of the Team's physician may affect the Player's ability to play skilled basketball.*¹¹⁹

Psychiatrists are specifically mentioned in this section, making it applicable to Simmons' dispute. Simmons' refusal to provide the information requested by the Sixers likely runs contrary to both the 2017 and 2023 UPC requirements. The team claimed that it only sought a good faith effort from Simmons to "help understand his return to action process, not the specifics of his mental health guidance..."¹²⁰ A source from within the NBPA told *The Athletic* that "as long as Simmons has provided his team with the basic information regarding mental health professionals with whom he's seeking help, Philadelphia should not have grounds for salary withholding."¹²¹ If this is indeed the NBPA's interpretation of this language in the 2017 UPC, then the 2023 UPC language is unlikely to alter that understanding since it only requires that the player provide notice and share requested information in a timely manner. If the Sixers' request was valid under either UPC, then Simmons would likely have violated § 7(h)(i) of his contract by refusing to share all information the team requested. Since reporting on the dispute does not indicate that Simmons ever provided his team with the requested information, the 2023 UPC's timely disclosure requirement was certainly not met.

When viewed together, §§ 7(d) and 7(h)(i) show that the 2023 UPC is more focused on timely disclosure of mental health conditions that are likely to affect the player's ability to play and timely disclosure of any requested information relevant to the player's recovery from such conditions.¹²² These changes may reflect a concern on behalf of the NBA that teams could be blindsided by athletes coming forward with previously undisclosed mental conditions that jeopardize the athletes' ability to perform under their contracts. Timely notice and access to information would allow teams to better plan and prepare in advance for potential athlete leaves of absence. Further, timely disclosure of athlete mental health struggles would allow teams to provide appropriate resources and support for the athlete, hopefully helping to ameliorate these issues or at least prevent them from progressing to where the athlete no longer

¹¹⁹ 2023 UPC, *supra* note 106, § 7(h)(i) (emphasis added).

¹²⁰ Charania, *supra* note 12.

¹²¹ *Id.*

¹²² See 2017 UPC, *supra* note 71, §§ 7(d), 7(h)(i); 2023 UPC, *supra* note 106, §§ 7(d), 7(h)(i).



feels he can play for the team. This could be in the best interest of both the athlete and his team since the athlete might receive help earlier and his team can better support him while also remaining informed and planning for his absence, if needed.

The 2023 UPC does not require disclosure of all mental conditions, only those that are likely to adversely affect the athlete's ability to play.¹²³ In this way, it strikes a compromise between player privacy and teams' need for information, thereby allowing an athlete to take a leave of absence while he recovers without putting him in jeopardy of failing to perform under his contract. Even so, the 2023 UPC ultimately sidesteps the issue of exactly what information must be disclosed upon request. While the language in both UPCs reads "all information [the team] shall request,"¹²⁴ it is unclear if the NBPA has altered its reported understanding that this language is limited by player privacy concerns.¹²⁵

Further, both the 2017 and 2023 UPCs expressly require the player to authorize that medical information required under the UPC be provided to the team upon request. The 2017 version of UPC § 7(i) reads:

If and to the extent necessary to enable or facilitate the disclosure of medical information as provided for by this Contract or Article XXII or XXXIII of the CBA, the Player shall execute such individual authorization(s) as may be requested by the Team or the Medical Director of the Anti-Drug Program or as may be required by health care providers who examine or treat the Player.¹²⁶

The 2023 version includes a notable change:

If and to the extent necessary to enable or facilitate the disclosure of medical information as provided for by this Contract or Article XXII or XXXIII of the CBA, the Player shall execute such individual authorization(s) as may be requested by *the NBA*, the Team, or the Medical Director or SPED Medical Director of the Anti-Drug Program, or as may be required by health care providers who examine or treat the Player.¹²⁷

In addition to requiring the player to disclose his health records to his team as provided for in the UPC, § 7(i) now requires the player to authorize disclosure of his medical records to the League itself.¹²⁸ This might make it possible for the NBA to

¹²³ See 2017 UPC, *supra* note 71, §§ 7(d), 7(h)(i); 2023 UPC, *supra* note 106, §§ 7(d), 7(h)(i).

¹²⁴ 2017 UPC, *supra* note 71, § 7(h)(i); 2023 UPC, *supra* note 106, § 7(h)(i).

¹²⁵ See Charania, *supra* note 12.

¹²⁶ 2017 UPC, *supra* note 71, § 7(i).

¹²⁷ 2023 UPC, *supra* note 106, § 7(i).

¹²⁸ *Id.*



serve as a neutral intermediary in the event that the player does not wish to disclose certain information to his team, as was the case with Ben Simmons. It is also possible that this update might allow the League more direct oversight into future disputes over player health. It is not immediately clear how this amendment will apply.

Article XXII, as mentioned in UPC § 7(i), is titled “PLAYER HEALTH AND WELLNESS” in both CBAs.¹²⁹ Section 10 of this article governs the Second Opinion List and contains a number of updates relevant to Simmons’ dispute. While neither CBA requires teams to have psychiatrists or similar mental health professionals on staff, the League’s 2019 memo to its teams requires that they have at least two licensed mental health professionals available to players on a voluntary basis.¹³⁰

Under Article XXXI § 8(b), both the 2017 and 2023 CBAs allow a Grievance Arbitrator to require:

[A]ny person (including, but not limited to, a Team and a Team physician, and a player and any physician consulted by such player) to provide to the player or that player’s Team, as the case may be, all medical information in the possession of any such person relating to the subject matter of the arbitration.¹³¹

This would have necessitated the disclosure of medical information pertaining to Simmons’ outside consultations—the very information he initially refused to provide. This could have contributed toward Simmons’ decision to settle the arbitration instead of proceeding to a final ruling.

Article XXII § 10(b), which outlines the requirements of the Second Opinion List, is amended in the 2023 CBA to clarify that psychiatrists should be included on the list and fall under the term Second Opinion Physician.¹³² This removes any ambiguity around whether psychiatrists should be included on the Second Opinion List and whether they are subject to the Article XXII second opinion rules. Section 10(c), which outlines removal of Second Opinion Physicians and from the list, includes an entirely new provision stating that removal can occur:

¹²⁹ 2017 CBA, *supra* note 19, art. XXII; 2023 CBA, *supra* note 62, art. XXII. Article XXXIII, also mentioned in UPC § 7(i), pertains to the NBA’s anti-drug program and substance abuse treatment procedures and is largely irrelevant to the discussion at hand. *See* 2017 CBA, *supra* note 19, art. XXXIII; 2023 CBA, *supra* note 62, art. XXXIII.

¹³⁰ Amick, *supra* note 47.

¹³¹ 2017 CBA, *supra* note 19, art. XXXI, § 8(b); 2023 CBA, *supra* note 62, art. XXXI, § 8(b).

¹³² 2023 CBA, *supra* note 62, art. XXII, § 10(b) (“The parties will maintain and publish annually a list (the ‘Second Opinion List’) of jointly-appointed medical specialists, including one or more psychiatrists (each a ‘Second Opinion Physician’), by specialty and by geographic region in the United States and Canada, to provide players with the second medical opinions described in subsection (a) above.”).



[A]t any time of any year covered by this Agreement, for failure to provide a player's Team with all information relating to a consultation with the player within two (2) business days following the consultation; provided that, for the first such failure, a party is required to issue a warning to the Second Opinion Physician (following written notice to the other party), with removal permitted thereafter if the Second Opinion Physician does not provide the player's Team with all information relating to such consultation within two (2) business days following the warning, or for the second or any additional instances in which the Second Opinion Physician does not timely provide a player's Team with all information relating to a consultation with the player.¹³³

This language indicates that a Second Opinion Physician who fails to provide information to a requesting team within two business days after a second request would be removed from the Second Opinion List.

This addition to the 2023 CBA is interesting when applied to Ben Simmons' dispute. Psychiatrists are bound by doctor-patient privilege and are unable to disclose a patient's medical information without the patient's consent.¹³⁴ Simmons' refusal to grant his consent rendered his psychiatrists unable to share his information with the Sixers.¹³⁵ Under the 2023 CBA, this would result in the psychiatrists being removed from the Second Opinion List, which would not affect the matter at hand, but would prevent the psychiatrists from serving as Second Opinion Physicians in the future.¹³⁶ If Simmons' Grievance Arbitrator requested that the psychiatrists share the medical information in question with the Sixers, as permitted by Article XXXI § 8(b) of both CBAs,¹³⁷ but the psychiatrists refused, they would have been allowed to remain on the list under the 2017 CBA but would now be removed under the 2023 CBA.¹³⁸

Section 10(d), identical across the 2017 and 2023 CBAs, requires that:

Prior to obtaining a second opinion, a player shall notify the Team in writing of his decision to seek such second opinion, the name of the physician who will be performing the evaluation, and the date and location of the evaluation. Upon

¹³³ *Id.* art. XXII, § 10(c).

¹³⁴ Christopher B. Mueller, Laird Kirkpatrick & Liesa Richter, §5.35 *Psychotherapist-Patient Privilege*, in GEO. WASH. L. SCH. PUB. L. SCHOLARLY COMMONS 2018–68 (Wolters Kluwer 6th ed., 2018).

¹³⁵ Charania, *supra* note 12.

¹³⁶ See 2023 CBA, *supra* note 62, art. XXII, § 10(c).

¹³⁷ See 2017 CBA, *supra* note 19, art. XXXI, § 8(b); 2023 CBA, *supra* note 62, art. XXXI, § 8(b).

¹³⁸ Compare 2017 CBA, *supra* note 19, art. XXII, § 10(c), with 2023 CBA, *supra* note 62, art. XXII, § 10(c).



receiving such notice and prior to the player’s evaluation, the Team will make available to the physician relevant medical information regarding the player.¹³⁹

This could serve as a possible basis for the NBPA source’s belief that Simmons provided the Sixers with a sufficient amount of information under the CBA, since it only requires disclosure of the physician name and the date and location of the evaluation.¹⁴⁰ It is possible the NBPA was referring to § 10(d), rather than the previously discussed § 7(h)(i), which requires disclosure of “all information [the team] shall request.”¹⁴¹ Section 10(d) governs only the procedural requirements and duties of the player’s team in the event that a player wishes to seek a second opinion from an outside professional.¹⁴² It does not govern the disclosure requirements pertaining to the content of the medical treatment itself, as those are more specifically addressed by § 7(h)(i).¹⁴³ If this was indeed the basis for the NBPA source’s opinion,¹⁴⁴ it is likely that the Grievance Arbitrator would have found for the Sixers.

Mental Health Policy Implementations

The 2023 CBA has also made significant strides in codifying the NBA and NBPA’s mental health efforts. Article VI, which governs player conduct, explicitly provides that NBA players shall be required to attend and participate in educational and life skills programs jointly administered by the NBA and NBPA that are designated as “mandatory programs.”¹⁴⁵ These programs include the RTP as well as “Team Awareness Meetings,” which cover topics including mental health and wellness programming.¹⁴⁶ Failure to attend a Team Awareness Meeting without a reasonable excuse is punished by a \$20,000 fine, while failure to attend the RTP results in a five-game suspension.¹⁴⁷ None of these provisions were present in the 2017 CBA.

Further, in Article XXII § 14, which governs the NBA draft, the 2023 CBA stipulates that “[m]ental health and wellness programming, jointly created by the NBA and Players Association for players, will be included as part of the Pre-Draft

¹³⁹ 2017 CBA, *supra* note 19, art. XXII, § 10(d); 2023 CBA, *supra* note 62, art. XXII, § 10(d).

¹⁴⁰ See 2017 CBA, *supra* note 19, art. XXII, § 10(d); 2023 CBA, *supra* note 62, art. XXII, § 10(d).

¹⁴¹ 2017 UPC, *supra* note 71, § 7(h)(i).

¹⁴² See 2017 CBA, *supra* note 19, art. XXII, § 10(d).

¹⁴³ See 2017 UPC, *supra* note 71, § 7(h)(i).

¹⁴⁴ See Charania, *supra* note 12. It should be noted that while due to the lack of suitable alternatives, this seems like a potential basis for the opinion that Simmons provided the Sixers with sufficient information, this is just an inference and cannot be known with certainty barring further comments from the NBPA.

¹⁴⁵ 2023 CBA, *supra* note 62, art. VI, § 4(a).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* art. VI, § 4(b).



Information Program presented at the Draft Combine.”¹⁴⁸ This is entirely new language that was not present in the 2017 CBA.¹⁴⁹ These additions demonstrate the increasing efforts on behalf of the NBA and Players’ Association to cement athlete mental health support in the League’s most important agreement.

Part III. Going Forward

Ben Simmons’ dispute with the Sixers is the most prominent example of an NBA athlete navigating the winding—perhaps previously uncharted—course of a contentious mental health leave under the 2017 CBA.¹⁵⁰ Part III of this article aims to condense the relevant, but widely dispersed provisions of the 2023 CBA and UPC into a step-by-step guide explaining the League’s current athlete mental health leave policy and the options available to athletes today. It also aims to succinctly show how the modifications implemented in the 2023 CBA create a path noticeably different from the one travelled by Simmons. Lastly, Part III addresses one NBA athlete’s recent non-contentious mental health leave to suggest that the League’s policies can be effective for both athletes and their teams.

Mental Health Leaves Under the 2023 CBA

The lessons learned from Simmons’ dispute can be applied to create a roadmap for future NBA mental health leaves of absence. The NBA used the 2023 CBA to tighten a number of previously discussed open ends, such as the inclusion of “timely” in the § 7(h)(i) outside physician disclosure requirements,¹⁵¹ effectively making the path for a contentious leave more difficult. A player’s first and primary course of action should be to comply with the 2023 CBA requirements.

The first step in doing so would be for the player to educate himself on his team’s individual policies and practices pertaining to mental health emergencies as well as player privacy and confidentiality.¹⁵² This should help him set appropriate expectations with regards to any expected procedures and disclosures should he decide to proceed.¹⁵³ The next step would be for the player to speak to a team-designated

¹⁴⁸ *Id.* art. XXII, § 14(k)(i).

¹⁴⁹ *See* 2017 CBA, *supra* note 19, art. XXII, § 14.

¹⁵⁰ Since grievances filed with the NBA are not publicly disclosed by the League, it is impossible to know for certain which, if any, athletes have unsuccessfully attempted to pursue such a course of action. *See* 2017 CBA, *supra* note 19, art. XXXI.

¹⁵¹ 2023 UPC, *supra* note 106, § 7(h)(i).

¹⁵² *See* Amick, *supra* note 47.

¹⁵³ *See id.*



psychiatrist and communicate that he is struggling with mental health issues.¹⁵⁴ Under the 2023 CBA, the player is required to give “prompt notice” to a “coach, trainer, or physician” if the player believes his mental struggles may be “likely to affect adversely [his] ability to render the services required” under his contract.¹⁵⁵ All teams should have at least one designated psychiatrist available.¹⁵⁶

The player must then submit himself to “appropriate medical treatment by a physician designated by the Team, and such rehabilitation activities as such physician may specify.”¹⁵⁷ Upon request by his team, the player is also required to supply “complete and truthful” information in connection with his treatment.¹⁵⁸ If all goes according to league protocol, this is a relatively seamless process. The player sees a team psychiatrist when he believes his mental struggles might impact his ability to play basketball, he follows the psychiatrist’s treatment recommendations, and the team receives updates on his progress.

If the player chooses, he can receive a second opinion from an outside psychiatrist. The 2023 CBA amendments make clear that psychiatrists are included as Second Opinion Physicians under the Second Opinion List.¹⁵⁹ The player thus must choose a psychiatrist from this list for his second opinion. He is then required to give the team “timely notice” of his consultation and “timely provide the Team with all information it may request” concerning his condition.¹⁶⁰ If requested, the player is also required to authorize that the Second Opinion Physician disclose the player’s medical information to the extent necessary under the UPC.¹⁶¹ If the psychiatrist fails to provide information requested by the team for a given consultation, the psychiatrist will be removed from the Second Opinion List and will be unable to provide second opinions to future NBA players.¹⁶²

In the event the player disagrees with his team over the extent of the medical information he is required to provide under his contract, the dispute would be handled by the Grievance Arbitrator in largely the same way as under the 2017 CBA.¹⁶³ It will be more difficult for the athlete to succeed in arbitration, given that the NBA clarified in the 2023 UPC that the player must provide designated team personnel

¹⁵⁴ See 2023 UPC, *supra* note 106, § 7(e).

¹⁵⁵ See *id.* § 7(d).

¹⁵⁶ See Amick, *supra* note 47.

¹⁵⁷ See 2023 UPC, *supra* note 106, § 7(e).

¹⁵⁸ See *id.*, § 7(g).

¹⁵⁹ See 2023 CBA, *supra* note 62, art. XXII, § 10(b).

¹⁶⁰ See 2023 UPC, *supra* note 106, § 7(h)(i).

¹⁶¹ See *id.* § 7(i).

¹⁶² See 2023 CBA, *supra* note 62, art. XXII, § 10(c).

¹⁶³ See 2017 CBA, *supra* note 19, art. XXXI; 2023 CBA, *supra* note 62, art. XXXI.



with “prompt notice” of “any illness or other medical condition related to mental health” which could adversely impact his ability to perform under his contract and that medical information from a Second Opinion Physician must be provided in a “timely” manner.¹⁶⁴

Thus, the player cannot argue that he was under no obligation to disclose a mental health condition that might affect his ability to play,¹⁶⁵ was not required to provide such information promptly,¹⁶⁶ or that medical records from the Second Opinion Physician did not need to be delivered in a timely manner.¹⁶⁷ This greatly reduces the number of defenses a player can give for refusing to authorize the disclosure of mental health information, especially given that the information he is required to disclose remains “all information [his team] may request concerning any condition that in the judgment of the Team’s physician may affect the Player’s ability to play skilled basketball.”¹⁶⁸

The player is effectively mandated to disclose this information to the team or at least to the NBA itself,¹⁶⁹ or else he risks being fined by his team.¹⁷⁰ If the player refuses to play basketball while this process is ongoing, the team may deem this, in combination with his noncompliance with the disclosure rules, a failure to render the services required by the player’s contract “without proper and reasonable cause or excuse,” thus allowing the team to withhold the player’s salary payments.¹⁷¹ The player’s remaining options are to file a formal grievance through the designated League channels,¹⁷² continue his leave of absence until he feels ready to play, or play through his mental health struggles. Since the latter two options are far from preferable, the player’s best course of action is to file a grievance.

However, as previously discussed,¹⁷³ the player is less likely to succeed under the 2023 CBA since it forecloses many defenses that may have had merit under the 2017 CBA.¹⁷⁴ Further, the 2023 CBA takes extra care to communicate that psychiatrists

¹⁶⁴ See 2023 UPC, *supra* note 106, §§ 7(d), 7(h)(i).

¹⁶⁵ See *id.* § 7(h)(i).

¹⁶⁶ See *id.*

¹⁶⁷ See *id.* § 7(d).

¹⁶⁸ *Id.* § 7(h)(i); 2017 UPC, *supra* note 71, § 7(h)(i).

¹⁶⁹ 2023 UPC, *supra* note 106, § 7(i).

¹⁷⁰ See *id.* § 5(c).

¹⁷¹ See *id.* § 6; 2023 CBA, *supra* note 62, art. VI, § 4.

¹⁷² See 2023 CBA, *supra* note 62, art. XXXI.

¹⁷³ See *supra* text accompanying notes 164–68.

¹⁷⁴ Compare 2017 UPC, *supra* note 71, §§ 7(d), 7(h)(i), with 2023 UPC, *supra* note 106, §§ 7(d), 7(h)(i).



are included under the term “physician,”¹⁷⁵ thus preventing an argument that the Grievance Arbitrator cannot require the disclosure of information relating to psychiatric counseling under § 8(b) of Article XXXI. For all of these reasons, a team may be less willing to settle such a dispute and may be more inclined to push the proceeding toward a final decision.

Mental Health Leaves in Practice Today

Since the 2023 CBA only recently came into effect, there have been few instances under its purview of NBA athletes missing games for mental health reasons. Since there have been no recent situations as contentious as Ben Simmons’, the 2023 CBA amendments are yet to be fully tested. However, there has been one particularly prominent recent instance of an NBA athlete taking a mental health leave of absence.

In August of 2023, following the July enactment of the 2023 CBA, Cleveland Cavaliers guard Ricky Rubio announced that he would be stepping away from his professional career to take care of his mental health.¹⁷⁶ The Cavaliers announced in a press release that they “remain fully supportive of Ricky and his efforts which for now are best continued away from the team and have excused his absence from camp.”¹⁷⁷ Out of respect for his privacy, they refused to comment further or answer any questions.¹⁷⁸

While details concerning his leave of absence are sparse, reports indicate that Rubio’s agent first alerted the Cavaliers’ president of basketball operations about Rubio’s need to step away for mental health reasons sometime “over the summer” of 2023.¹⁷⁹ This likely would have satisfied the CBA’s requirement that Rubio provide the team with “prompt notice” of “any illness or other medical condition related to mental health ... that is likely to affect adversely [his] ability to render the services required under this Contract.”¹⁸⁰ Since this notice was given over the summer, it allowed the team to prepare ahead of time for Rubio’s absence and ensure he was receiving proper support—in line with the goals of the 2023 CBA athlete mental health amendments.

¹⁷⁵ See 2023 UPC, *supra* note 106, § 7(h)(i); 2023 CBA, *supra* note 62, art. XXII, § 10(b).

¹⁷⁶ Tim Reynolds, *Citing Mental Health, Ricky Rubio Taking a Break from Basketball*, NBA (Aug. 5, 2023, 11:21 AM), <https://www.nba.com/news/citing-mental-health-ricky-rubio-taking-break-from-basketball>.

¹⁷⁷ Spencer German, *Cavaliers Provide Update on Ricky Rubio*, CLEVELAND CAVALIERS SPORTS ILLUSTRATED (Oct. 2, 2023), <https://www.si.com/nba/cavaliers/news/cavaliers-provide-update-on-ricky-rubio>.

¹⁷⁸ *Id.*

¹⁷⁹ Adrian Wojnarowski, *Sources: Ricky Rubio, Cavaliers Agree to Contract Buyout*, ABC NEWS (Jan. 4, 2024, 9:29 AM), <https://abcnews.go.com/Sports/sources-ricky-rubio-cavaliers-agree-contract-buyout/story?id=106102452>.

¹⁸⁰ 2023 UPC, *supra* note 106, § 7(d).



Rubio announced in January of 2024 that his mental health struggles had led him to make the decision to retire from the NBA.¹⁸¹ He agreed to a buyout with his team for the two remaining years on his contract, in which the Cavaliers agreed to pay him roughly 60% of his contract for the 2023–24 season and roughly 30% for 2024–25.¹⁸² The 60% payment for the 2023–24 season roughly equates to the number of games played by the Cavaliers team that season before Rubio’s January announcement.¹⁸³ This indicates that the Cavaliers paid Rubio the full amount he would have earned that season had he played in every game up until announcing his retirement.

While the details surrounding Rubio’s psychiatric visits and treatment plan appropriately remain private, his situation seems to illustrate a successful application of the 2023 CBA’s rules governing player mental health leaves. Rubio informed the team of his mental struggles far in advance of when he might miss games and received full support in return. While the CBA required Rubio to initially be evaluated by a team-designated psychiatrist,¹⁸⁴ it is unclear whether he sought a second opinion. Regardless, Rubio was able to prioritize his mental health while his team was able to support him and prepare for his potential absence. Although retired from the NBA, Rubio has made progress in his recovery and in February of 2024 signed to play for European club FC Barcelona.¹⁸⁵ He did not begin playing immediately, leading his new team to put out a statement that “[t]his agreement depends on the player’s progress as he finds himself in the final stages of his recovery ... Ricky Rubio’s return to competition will come when the player himself decides the time is right.”¹⁸⁶ Rubio

¹⁸¹ Joe Vardon & Shams Charania, *Ricky Rubio Retires from NBA After 12 Seasons; Cavaliers Agree to Buyout with Guard*, ATHLETIC (Jan. 4, 2024), <https://theathletic.com/5179066/2024/01/04/ricky-rubio-cavaliers-buyout/>.

¹⁸² *Ricky Rubio*, SPOTRAC, <https://www.spotrac.com/nba/cleveland-cavaliers/ricky-rubio-6305/> (last visited Nov. 17, 2024).

¹⁸³ The Cavaliers had played 34 out of 82 (30.6%) games before Rubio announced his retirement on January 4. *Cavaliers 2023–24 Schedule, NBA*, <https://www.nba.com/cavaliers/schedule> (last visited Nov. 17, 2024). Given Rubio’s per game salary of roughly \$74,955, this equates to just over \$2,548,483 earned at this point in the season. See *Ricky Rubio*, *supra* note 182. 30.6% of his remaining salary would be just over \$1,110,994, which when added to his earned salary, equals \$3,649,477. This is just below his buyout amount of \$3,695,311 for the 2023–24 season, which, assuming a common percentage fee paid out for the games remaining in 2023–24 and 2024–25, indicates that the Cavaliers paid Rubio his salary for the games already passed in the 2023–24 season.

¹⁸⁴ 2023 UPC, *supra* note 106, § 7(e).

¹⁸⁵ *Ricky Rubio Rejoins Barcelona on Deal Through End of Season*, ESPN (Feb. 6, 2024, 4:48 PM), https://www.espn.com/nba/story/_/id/39472249/ricky-rubio-rejoins-barcelona-deal-end-season.

¹⁸⁶ *Id.*



returned to professional basketball on March 1, 2024,¹⁸⁷ suiting up for FC Barcelona 13 times before the end of the season.¹⁸⁸

Conclusion

In recent years, the NBA has taken a proactive approach to supporting its athletes through mental health challenges. This support is apparent in the creation of the NBA Mind Health Initiative and the NBPA's Players' Mental Health and Wellness Department,¹⁸⁹ the implementation of the rookie transition program mental health sessions,¹⁹⁰ and the issuance and universal adoption of the 2019 team-directed memo.¹⁹¹ The NBA has also provided specific processes in the 2023 CBA and UPC that its players can follow in the event of any mental health afflictions that could jeopardize an NBA athlete's ability to play for his team.¹⁹² The differences between the 2017 and 2023 CBAs indicate that the League is focusing on balancing its teams' need for information on player availability with its players' interest in privacy.¹⁹³ The 2019 memo and 2023 CBA indicate that the NBA and NBPA are working to provide players with the mental health resources they need and are attempting to develop a collaborative process in which teams and players can work together toward the player's ultimate recovery and return to basketball activities.¹⁹⁴

Ben Simmons' high-profile mental health leave tested the 2017 CBA's mental health rules to their limits. Had Simmons' dispute reached a final verdict, it seems from the facts available that the Grievance Arbitrator may have ruled for the Sixers.¹⁹⁵ However, ambiguities in the 2017 CBA may have contributed toward the team's decision to settle.¹⁹⁶ The 2023 CBA contains a number of amendments resolving these ambiguities, thereby better defining the expectations and options of players and their

¹⁸⁷ *12 Years Later Ricky Rubio Is Back*, FC BARCELONA (Mar. 1, 2024, 3:25 PM), <https://www.fcbarcelona.com/en/news/3917121/12-years-later-ricky-rubio-is-back>.

¹⁸⁸ *Ricky Rubio*, TURKISH AIRLINES EUROLEAGUE, <https://www.euroleaguebasketball.net/en/euroleague/players/ricky-rubio/lfw/> (last visited Nov. 24, 2024).

¹⁸⁹ See Aldridge, *supra* note 34.

¹⁹⁰ See Lee, *supra* note 34.

¹⁹¹ See Amick, *supra* note 47.

¹⁹² See 2023 UPC, *supra* note 106, § 7; 2023 CBA, *supra* note 62, art. XXII, § 10.

¹⁹³ See 2017 UPC, *supra* note 71, §§ 7(d), 7(h)(i); 2023 UPC, *supra* note 106, §§ 7(d), 7(h)(i).

¹⁹⁴ See Amick, *supra* note 47; 2023 UPC, *supra* note 106, § 7(h)(i); 2023 CBA, *supra* note 62, art. XXII, § 10.

¹⁹⁵ See *supra* Part II (analyzing the Simmons dispute in detail); see also 2017 UPC, *supra* note 71, § 7(h)(i).

¹⁹⁶ 2017 UPC, *supra* note 71, §§ 7(h)(i), 7(d).



teams.¹⁹⁷ Since these clarifications foreclose a number of arguments Simmons and his team could have made under the 2017 CBA, Simmons would have been less likely to prevail under the provisions of the 2023 CBA.

In all, the NBA has developed intricate procedures surrounding player mental health leaves. However, these procedures can only be pieced together by combining various sections of the CBA and UPC. While the NBA has made significant strides in its player mental health policies, the potential for further improvement lies in the enactment of a dedicated place for these policies within the CBA or UPC. Players and teams alike could benefit from an explicitly designated CBA article or UPC section, as misinterpretations in the policy due to its currently scattered form could lead to otherwise avoidable future disputes. Further, such an article or section could serve to anchor the League's 2019 guidance on individual team policies in the text of the next CBA.¹⁹⁸

With the rapidly increasing prominence of player mental health,¹⁹⁹ it will be interesting to see how these policies evolve under future CBAs. The importance of this topic could lead to it becoming a primary focus of future CBA negotiations between the NBA and NBPA. The NBPA may push for increased athlete privacy measures and softer rules surrounding the disclosure of athlete mental health records, while the NBA may seek to lay out clearer rules aimed at further incentivizing teams and players to adopt a collaborative, rather than a contentious, approach toward future mental health leaves of absence. Regardless of the direction taken in future CBAs, the League's recent efforts and policies represent a significant step forward in the nuanced and important discussion of player mental health. The players have spoken and the NBA has shown it is listening.

Author's Note

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¹⁹⁷ Compare 2017 UPC, *supra* note 71, §§ 7(d), 7(h)(i), with 2023 UPC, *supra* note 106, §§ 7(d), 7(h)(i).

¹⁹⁸ See Amick, *supra* note 47.

¹⁹⁹ See Vardon, *supra* note 22; Pinto, *supra* note 24.

