

**HELMET TO HELMET: THE STATE OF THE
NATIONAL FOOTBALL LEAGUE’S
UNSUBSTANTIATED POLICIES IN
HANDLING PLAYER USE OF OPIOIDS
AND MARIJUANA**

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THE CURRENT STATE OF PLAY

Even the most casual viewer of football understands the pain that football players undergo, but far fewer viewers understand the procedures for combating that pain and the long road to recovery these players face. The misconception begins with the rampant prescription drug use masking the stress and the pain of these injuries unbeknownst to the common viewer. A Vicodin here, a Toradol there, painkillers are rampant in football culture today. Team doctors pass out painkillers like candy during Halloween, and the players become addicted. There may be a simple solution to the opioid addiction that plagues the NFL: Marijuana.

Currently, the NFL has marijuana on its banned substances list. A first-time offender can receive a 4-game suspension, then a

second-time offender will miss an entire season.¹ It is high time the NFL rethinks its policy as it pertains to marijuana. The NFL's current policy on marijuana reflects a larger systemic complaint that its laser-focus on current earnings wantonly disregards the future health of its players as seen in the now infamous backpedaling of their stance on player concussions.² Players reel from their work in the NFL as though they had post-traumatic stress disorder,³ and the NFL could be a hero to millions, players and viewers alike, by leading the way in progressive pain management techniques, especially in regards to decriminalizing the substance in the court of public opinion. Many players would refrain from accepting opioid-based painkillers if team doctors had the option to prescribe medical marijuana treatments after practice or after games, and this would possibly lead to a reduction in addiction to opioids.⁴

A recent study conducted by researchers at Washington University in St. Louis School of Medicine demonstrated systemic painkiller abuse in the NFL.⁵ According to the study, retired NFL players misuse opioid pain medications at a rate more than four times of that of the general population.⁶ In the study, 52% of the retired players claim to have used painkillers during their career, and 71% of those players admitted to abusing or misusing the drugs.⁷

¹ Gray, Jeff. NFL releases details of new drug policy, SBINATION (Sep. 19, 2014), <http://www.sbnation.com/nfl/2014/9/19/6559533/nfl-new-drug-policy-details-nflpa>

² McDonald, Jerry. *NFL doubles back, confirms football's link with CTE*, THE MERCURY NEWS (March 15, 2016), <http://www.mercurynews.com/2016/03/15/nfl-doubles-back-confirms-footballs-link-with-cte/>.

³ Perrotti, Dr. Michael J. *Posttraumatic Stress Disorder (PTSD), Suicide, Personality Alterations, and Dementia in Athletes: A Call for Change and Reform*, (2017), <http://www.experts.com/Articles/Athletes-Posttraumatic-Stress-Disorder-Suicide-Personality-Alterations-Dementia-Call-for-Change-By-Michael-Perrotti>

⁴ Seifert, Kevin. *Survey: Two-thirds of NFL players say legal pot equals fewer painkillers*, ESPN.com (Nov. 2, 2016) http://www.espn.com/nfl/story/_id/17951858/nfl-players-legal-pot-equals-fewer-painkillers.

⁵ Dryden, Jim. *Retired NFL Players Misuse Painkillers More than General Population*, THE SOURCE (Jan. 28, 2011), <https://source.wustl.edu/2011/01/retired-nfl-players-misuse-painkillers-more-than-general-population/>

⁶ Barr, John. *Painkiller Misuse Numbs NFL Pain*, ESPN.com (2016), <http://www.espn.com/espn/eticket/story?page=110128/PainkillersNews>.

⁷ See Barr, *supra*, footnote 6.

According to the Washington University study, the current prescription painkiller misuse originates with undiagnosed concussions and heavy drinking.⁸ The spotlight on the NFL player's brain has never been more focused. The league has a unique opportunity to fix its mistake of hiding concussions through painkiller abuse, by altering its position on the use of medical marijuana, especially as the change in policy would likely eradicate problem of painkiller abuse.

A. The NFL Systemically Neglects the Brains of its Players in Covering-Up Concussions, Prescription Drug Addiction

The NFL reported 271 documented game-related concussions in the 2015 season—the most since 2011.⁹ However, this could be just a side-effect of the NFL's concussion protocol. According to the NFL's protocol, officials must observe signs of potential concussion signs, and should an official receive a report from a player experiencing a headache or other side effect of a blow to the head, the official must report it.¹⁰ The official's report requires the player to be removed from the game by the team's medical staff, where he must be evaluated specifically for concussion-related injuries.¹¹ In the earlier years of the NFL, a player would either not report a concussion, or would be placed back onto the field with a serious head injury. Now that the NFL has been caught trying to hide the seriousness of these concussions, these new protocols demonstrate the league's persistence to sideline a player who has been concussed, rather than sending him back on gridiron.¹²

But these subsequent remedial measures do no more than attempt to ameliorate the public relations nightmare it caused to

⁸ See Barr, *supra*, footnote 6.

⁹ Giles, Matt. *What Happens to A Football Player's Brain During A Concussion?*, POPULAR SCIENCE (Feb. 5, 2016), <http://www.popsi.com/what-happens-to-football-players-brain-during-concussion>.

¹⁰ NFL Head, Neck and Spine Committee's Protocols Regarding Diagnosis and Management of Concussion https://images.nflplayers.com/mediaResources/lyris/pdfs/NFL_Diagnosis_Mgmt_Concussion.pdf

¹¹ See Giles, *supra*, footnote 9.

¹² Fainaru-Wada, Mark. *How the NFL Worked to Hide the Truth About Concussions and Brain Damage*, SCIENTIFIC AMERICAN (March 7, 2014), <https://www.scientificamerican.com/article/how-the-nfl-worked-to-hide-the-truth-about-concussions-and-brain-damage-excerpt/>

its sterling reputation when journalists revealed that league officials had been hiding the effects of head injuries from its players.¹³ Without admitting fault, the NFL has agreed to pay one billion dollars to settle a class action lawsuit brought by retired players claiming head injuries.¹⁴ It likewise became known that the NFL is a gateway drug to prescription abuse.

According to future Hall of Famer Calvin Johnson, powerful and addictive opioids were handed out “like candy.”¹⁵ Johnson shed some light on the attitude that the trigger-happy environment gives to players, “You can’t take Toradol and pain medicine every day, you know. You’ve got to give that stuff a rest, and that was one thing I wasn’t willing to do.”¹⁶ Toradol has been outed as the most common anti-inflammatory taken in the NFL.¹⁷

Painkiller addiction among football players is often an unfortunate reality for those who make their living by pushing their bodies to the breaking point.¹⁸ One tragedy related to painkiller addiction involved former Kansas City Chiefs linebacker Jovan Belcher. Belcher committed suicide shortly after shooting his girlfriend and mother of his child.¹⁹ A friend of Belcher’s disclosed that he was using painkillers and alcohol to help battle career-related head trauma.²⁰ Parallel evidence from studies with veterans of the armed forces suggest that using marijuana to

¹³ See Fainaru-Wada, *supra*, footnote 12.

¹⁴ Sliwoski, Vince. *Grass and the Gridiron*, THE PORTLAND MERCURY (Jan. 11, 2017), <http://www.portlandmercury.com/ask-a-pot-lawyer/2017/01/11/18782508/grass-and-the-gridiron>.

¹⁵ Bieler, Des. *Calvin Johnson says Painkillers were handed out ‘like candy’ to NFL Players*, THE WASHINGTON POST (July 6, 2016), <https://www.washingtonpost.com/news/early-lead/wp/2016/07/06/calvin-johnson-says-painkillers-were-handed-out-like-candy-to-nfl-players/>. (“More than 1,500 former NFL players, not including Johnson, have filed a class-action lawsuit against the NFL... The suit, which names each of the league’s 32 teams, alleges that doctors and trainers often distributed painkillers without examinations or prescriptions, and that players were deliberately misled about their dangerous side effects.”)

¹⁶ See Bieler, *supra*, footnote 16.

¹⁷ Dunne, Tyler. *The NFL’s Drug of Choice*, BLEACHER REPORT (Jan. 11, 2017), <http://thelab.bleacherreport.com/nfl-toradol-use-players-survey/>.

¹⁸ Grimes, Randy. *Prescription Painkiller Abuse Alive and Well and Well in the NFL*, BEHAVIORAL HEALTH (2017) <https://www.bhpalmbeach.com/recovery-stories/prescription-painkiller-abuse-alive-and-well-nfl>.

¹⁹ See Grimes, *supra*, footnote 19.

²⁰ See Grime, *supra*, footnote 19. (“The problem has plagued the NFL for decades, an organization who itself, has bared some culpability in the problem.”)

combat the pain and the unique occupational PTSD associated with professional football would contribute to the elimination of tragedies like these.²¹ The damage caused by PTSD cannot be fully unraveled by any medication, but for some, cannabis provides respite when nothing else can.²²

B. Obstacles and Opportunities for NFL Policy Reforms in Approaches to Player Use of (Formerly) Illicit Substances

The league may be able to rectify past and current wrongs by allowing players in states that allow medical use to heal using medical marijuana. Nearly two-thirds of NFL players in an ESPN survey say they feel the use of chemical painkillers would be reduced if the league approved marijuana for the same use.²³ Marijuana is allowed for medicinal use in 25 states but remains banned under the NFL's policy and program on substances of abuse.²⁴ Seven NFL teams are in states that allow recreational use, and 16 teams are located in states with approved medicinal use.²⁵

A study by the *Journal of the American Medical Association* found medical marijuana effective in treating chronic pain, which represents the most common manifestation of pain that concussions produce.²⁶ Cannabinol, the "C" in THC or tetrahydrocannabinol,

²¹ Wentling, Nikki. *Volunteers Needed for Clinical Trial of Marijuana for PTSD Symptoms*, MILITARY.COM (Feb. 10, 2017), <http://www.military.com/daily-news/2017/02/10/volunteers-needed-for-clinical-trial-of-marijuana-ptsd-symptoms.html> ("Researchers started this week the first-ever clinical trial of marijuana for treating the effects of post-traumatic stress disorder in veterans.")

²² Rahn, Bailey. *Cannabis and Post-Traumatic Stress Disorder (PTSD)*, LEAFLY (2016) <https://www.leafly.com/news/health/cannabis-and-post-traumatic-stress-disorder-ptsd>

²³ Seifert, Kevin. *Survey: Two-thirds of NFL players say legal pot equals fewer painkillers*, ESPN.com (Nov. 2, 2016) http://www.espn.com/nfl/story/_/id/17951858/nfl-players-legal-pot-equals-fewer-painkillers. ("Marijuana has less known side effects than Toradol, and 41 percent of players surveyed thought it would control pain more effectively... and 42 percent believe they have had a teammate become addicted to chemical painkillers.")

²⁴ See Seifert, *supra*, footnote 24.

²⁵ Rapoport, Ian. *Several NFL Owners, Execs eyeing marijuana discipline changes*, NFL.COM (Nov. 13, 2016), <http://www.nfl.com/news/story/0ap3000000738074/article/several-nfl-owners-execs-eyeing-marijuana-discipline-changes>.

²⁶ Sliwoski, Vince. *Grass and the Gridiron*, THE PORTLAND MERCURY (Jan. 11, 2017), <http://www.portlandmercury.com/ask-a-pot-lawyer/2017/01/11/18782508/grass-and-the-gridiron>. ("Head trauma can lead to many terrible afflictions, including chronic

popularly known as CBD, is the highly touted miracle ingredient in CBD-only strain of Charlotte's Web, is the anti-inflammatory component found in cannabis that could potentially help players as a *preventive measure* against concussions.²⁷ If the league is truly focused on the health and safety of its players, the league should work to provide their players with the most cutting-edge pharmacology as one facet to its care of players. So long as the options do not help athletes gain a competitive advantage, it would seem as if this would be a no-brainer for the NFL.²⁸ Cannabis was not on the banned substances list in the Olympics until 1999, and it was added not because it was known to give athletes an unfair advantage. More so it was added to the banned substances list because cannabis is illegal in much of the world.²⁹

With many states legalizing the use of medical or recreational marijuana through the election process, the NFL Players Association (NFLPA) started to actively study the possibilities and ramifications associated with allowing players to use marijuana as a pain-management tool.³⁰ The NFLPA is a players' union that only has as much bargaining power as the terms of its collective bargaining agreement with the league allows. George Atallah, the NFLPA's assistant Executive Director of External Affairs stated, "[m]arijuana is still governed by our collective bargaining agreement... And while some states have moved in a more progressive direction, that fact still remains."³¹ The issue is that

traumatic encephalopathy (CTE), memory loss, impaired judgment, aggression, confusion, Parkinson's disease, Alzheimer's disease, depression, dementia, and suicide")

²⁷ Maske, Mark. *As More States Legalize Marijuana, NFLPA to Study Potential as a Pain Management Tool*, THE WASHINGTON POST (Nov. 9, 2016), <https://www.washingtonpost.com/news/sports/wp/2016/11/09/as-more-states-legalize-marijuana-nflpa-to-study-potential-as-a-pain-management-tool/>.

²⁸ Yasmin, Seema. *Is Marijuana a Performance-Enhancing Drug for Athletes?*, DALLAS MORNING NEWS (Sep. 22, 2016), <http://www.dallasnews.com/news/debunked/2016/09/22/marijuanaa-performance-enhancing-drug> ("Is cannabis a performance enhancing drug?—difficult to answer... what we do know is some athletes use cannabis and say it helps relieve anxiety and facilitates focus.")

²⁹ See Yasmin, *supra*, footnote 29.

³⁰ Maske, Mark. *As More States Legalize Marijuana, NFLPA to Study Potential as a Pain Management Tool*, THE WASHINGTON POST (Nov. 9, 2016), <https://www.washingtonpost.com/news/sports/wp/2016/11/09/as-more-states-legalize-marijuana-nflpa-to-study-potential-as-a-pain-management-tool/>

³¹ *Id.*

marijuana is still subject to the collective bargaining agreement, and this means that both parties, the NFL and the NFLPA, would need to agree to any changes to that policy.³² The two sides review the sport's drug policies annually and occasionally make adjustments.³³ Meanwhile, the NFLPA is forming a committee for a study that, among other things, will examine if marijuana can be an effective pain-management option for players.³⁴ Therefore, the players and league may be able to amend the current drug policies; however, they may be forced to wait until the expiration of the current collective bargaining agreement which occurs in 2020.

Though there are positives to allowing the players to use marijuana as a pain-reducer, there are still negative hurdles that the players must overcome to have their wishes granted. A NFL spokesman has said, "Medical experts have not recommended making a change or revisiting our collectively-bargained policy and approach related to marijuana."³⁵ One NFL executive has discussed imbalance issues with the law in regards to marijuana.³⁶ For example, if a player in Indiana or Louisiana were arrested for possessing marijuana, he faces the possibility of an NFL suspension for 'conduct detrimental to the league' because of his arrest. On the other hand, a player in California could legally possess the same amount of marijuana and never be arrested nor suspended by the league.³⁷ Fairness and equity will be an issue when discussing the issue of marijuana legalization, but the greater issue of player safety is paramount to the NFL's stance on punishing offenders.

Although there is a trend towards the decriminalization of marijuana possession and use at the state level, it is almost unclear of how the new Presidential administration will enforce federal

³² *Id.*

³³ *Id.*

³⁴ Rapoport, Ian. *Several NFL Owners, Execs eyeing marijuana discipline changes*, NFL.COM (Nov. 13, 2016) <http://www.nfl.com/news/story/0ap3000000738074/article/several-nfl-owners-execs-eyeing-marijuana-discipline-changes>.

³⁵ See Rapoport, *supra*, footnote 35. ("Based on conversations with 10 NFL team owners and executives over the past few months, marijuana usage could emerge as a key issue when the collective bargaining agreement is renegotiated over the next few years.")

³⁶ *Id.*

³⁷ *Id.*

laws against marijuana.³⁸ The marijuana industry expanded rapidly under President Obama and the federal government refused to enforce federal marijuana laws in states where voters approved marijuana's recreational use.³⁹ The newly appointed Attorney General, Jeff Sessions, has suggested stricter enforcement in states with recreational marijuana, but members of Congress, including Senator Rand Paul, says Sessions has reassured Paul privately that is not the case.⁴⁰

The United States is also one of only two nations in the world that allows for drug-makers to market their products on television,⁴¹ which given the origins of the league's revenues, seems like a potential unresolvable conflict of interest as it relates to their stance on the use of prescription drugs which would cut into the revenue streams of those ad slot buyers.

Additionally, former players have recently brought a lawsuit accusing the league of irresponsibly distributing fistfuls of prescription painkillers to players. The main question in the lawsuit is how did and how do the players get all of these pills, which are, by federal law, supposed to be meticulously tracked and prescribed.⁴² This brings an interesting set of questions into the forefront of this issue. How powerful is the Big Pharma lobby in connection with the National Football League? And if there is such a powerful lobby, is this the answer as to why the League is not budging on its stance against marijuana use?

³⁸ Hughes, Trevor. *Trump Sends Mixed Message on Marijuana, but Pot Industry Pushes Ahead*, USA TODAY (March 9, 2017), <http://www.usatoday.com/story/news/2017/03/09/marijuana-industry-uncertain-about-trump/98948484/>

³⁹ *Id.* ("Medical marijuana is reserved for people who have gotten a doctor's recommendation to use it to alleviate specific symptoms, while states with that permit recreational use allow any adult to buy marijuana.")

⁴⁰ *Id.*

⁴¹ Mercola, Dr. *So Inherently Dangerous that Only Two Countries in the World Have Legalized This and the U.S. Is One of Them*, MERCOLA (July 16, 2012), <http://articles.mercola.com/sites/articles/archive/2012/07/16/drug-companies-ads-dangers.aspx>

⁴² Gordon, Aaron. *The Suppliers of the NFL's Painkiller Addiction*, VICE SPORTS (Dec. 4, 2014), https://sports.vice.com/en_us/article/the-suppliers-of-the-nfls-painkiller-addiction

CONCLUSION

The NFL should consider removing marijuana from its list of banned substances because of the health and safety benefits of marijuana and cannabis oils, as evidenced by the increasing number of states to legalize its medicinal and recreational use. Also, above all else, marijuana should be removed because of the dangerousness of opioid addiction seen today. Ultimately, it is up to the League and the players to decide which substances should be on the banned list. Hopefully, the League will open its eyes to the powerful effects that both opioids and marijuana have on the human body and make the correct choice.