

Chapter 31

Blow to the Head: The Legal and Ethical Implications of Chronic Traumatic Encephalopathy (CTE) in Professional Sports

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ABSTRACT

Chronic traumatic encephalopathy (CTE) is a degenerative disease that has begun to be discovered in various deceased professional athletes across sports. The pathology of CTE involves repeated traumatic blows to the head. Due to the longitudinal and cumulative aspects of this disease as well as the high financial stakes involved in professional sports, its discovery has led to many important issues that need to be investigated. This chapter explores some of the legal and ethical implications of CTE in professional sports.

INTRODUCTION

Chronic traumatic encephalopathy (CTE) is a neurodegenerative disease that has begun to be discovered in a variety of deceased professional athletes across various contact sports (Omalu, Hamilton, Kambogh, DeKosky, & Bailes, 2010; Rabadi & Jordan, 2001). These include boxing, ice hockey, mixed martial arts, soccer, and finally football, the main focus of this paper.

The pathology of CTE is believed to normally involve repeated traumatic blows to the head, usually through contact with other players when it occurs while playing sports (Gardner, Gardner, Iverson, & McCrory, 2014; Omalu, Bailes, Hammers, & Fitzsimmons, 2010; Rabadi & Jordan, 2001). Due to the longitudinal and cumulative aspects of this disease as well as the high financial stakes involved across all major North American professional sports, CTE's discovery has led to the need to investigate many important related issues to safeguard players as well as the integrity of football and contact sports as a whole. This chapter explores a number of the legal and ethical implications of CTE in professional sports

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with a specific focus on the National Football League (NFL). It also informs this debate within broader medical, scientific, and sociocultural environments that contextualize these legal and ethical issues.

BACKGROUND: ALL THE WORLD'S A FOOTBALL FIELD

The National Football League (NFL) is one of the preeminent professional sports leagues in the United States. Its broadcasts are an important weekly habit for many and a common cause for celebration across the country as beloved local teams clash on the field.

The annual NFL Super Bowl telecast is an iconic event that garners incredibly high viewership and is normally among the top television broadcasts in the country and even across the world. For example, in 2017, 111.3 million viewers watched Super Bowl LI on Fox, although it should be noted that ratings have slipped over the past two years (Battaglio & James, 2017). The halftime show alone is a major production that features the hottest entertainers of the day. Recent shows included musical superstars like Beyoncé, Lady Gaga, Bruno Mars, Katy Perry, and Coldplay.

Weekly broadcasts of regular season games and playoff games leading up to the Super Bowl finale are also popular and have become an incredibly lucrative revenue source for the league. For example, CBS, Comcast, and Fox signed a \$27 billion deal in 2011 to broadcast NFL games through 2022 (Berr, 2016). In addition, Walt Disney's ESPN paid \$1.9 billion for the right to broadcast the iconic show Monday Night Football broadcast (Berr, 2016) that was earlier popularized on ABC starting in 1970 and arguably revolutionized the sport (Shapiro & Maske, 2005). Similarly, CBS and NBC signed a recent deal for \$900 to broadcast games occurring on Thursday nights (Berr, 2017). As a result, negotiating television rights is a bitter battle that can cost broadcasters billions of dollars as proven by the steep deals mentioned above (Berr, 2016; Berr, 2017).

The NFL also demonstrates its financial clout through its partner organizations that make a great deal of money and gain valuable exposure through their association with the league. For example, fantasy sports league DraftKings reported that there was a 25% increase in players who signed up for its NFL services during the first couple of weeks of the 2016 season, signaling expanding interest in the sport (Tanier, 2016). Apparel giant Nike replaced Reebok as the official gear supplier for the league at the cost of \$220 million per year for a five-year deal starting in 2012 (Bloomberg News, 2015). Although it is estimated that Nike may actually lose money despite selling official jerseys, experts believe being associated with the league helps the company's overall business by further marketing its iconic swoosh logo to television viewers blazoned on players' apparel in person on game days, during broadcasts, and seeing regular fans wearing jerseys in public (Bloomberg News, 2015).

NFL players like Tom Brady, the wildly popular quarterback of the highly successful New England Patriots franchise, have become global sports icons. Star players use this celebrity to endorse major products; Brady's portfolio includes watchmaker Tag Heuer, UGG boots, Under Armour apparel, and most recently Aston Martin automobiles (Forbes, n.d.; McIntyre, 2017; Nathan, 2017). Peyton Manning, the recently retired star quarterback of the Denver Broncos and Indianapolis Colts, has also stood atop the NFL's endorsements list over the past decade (Badenhausen, 2015). He earned \$12 million in 2015 alone from endorsing Buick, DirecTV, Gatorade, Nationwide, Nike (previously Reebok), and Papa John's International (Badenhausen, 2015).

Player salaries also pay incredibly well. As of late August 2017, Detroit Lions quarterback Matthew Stafford is the league's highest paid player after signing a five-year deal averaging \$27 million annually

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