# Client Alert: More Pain, Less Gain: Opioid Abuse in the NFL

Playing hurt, willingly, is a common phenomenon for athletes. Minor scrapes are disregarded, especially when a bruise or sprain need little more than ice or aspirin. But to cope with major injuries, athletes often resort to powerful painkillers to compete. In his memoir, "Open," Andre Agassi admitted that, had it not been for routine cortisone shots, his storied tennis career would have been drastically shortened due to severe and excruciating back pain. This week, federal prosecutors began laying out their case against former Los Angeles Angels employee, Eric Kay, for his role in the death of Angels' pitcher, Tyler Skaggs. The pitcher was found dead in his hotel room on July 1, 2019, having overdosed on ethanol, oxycodone, and fentanyl. Kay, the team's former communications director, is accused of illegally supplying the drugs to help Skaggs, and other Angels players, manage persistent pain throughout the 2017-2019 MLB seasons.

It is not difficult to understand why professional athletes choose to "numb the pain" and play on while injured instead of sitting on the sidelines. An innate competitive spirit readily coalesces with a team culture that favors "gritting it out." There are also enormous financial incentives at work, especially when compensation is delivered on a per-game basis or linked to post-season performance. To a certain extent, sports fans lionize athletes who persevere despite obvious injury, who fight on "broken, but not beaten." The examples are many: Tiger Woods won the 2008 US Open with a broken leg. Curt Schilling pitched game 6 of the 2004 World Series as blood from a percutaneous tendon repair soaked his sock. Kerri Strug vaulted Team USA to a gold medal when she landed a dismount on a broken ankle. Michael Jordan's playoff "flu game" against the Utah Jazz was recently featured in a Netflix documentary. The NHL center for the Boston Bruins, Patrice Bergemon, played the deciding game of the 2013 Stanley Cup Finals with a separated shoulder, cracked ribs, torn cartilage, and a punctured lung. And, (although his team did not win,) he said afterward: "I'd do it all again in a second."

However, no major sport can compare to the NFL when it comes to the sheer scale of playing despite the hurt. In other sports, ignoring an injury is a question most often relegated to the playoffs. In contrast, during the *regular* season, footballers continue to compete in games and full-contact practices while dealing with painful injuries. According to official statistics, there is an average of 7 injuries per NFL game, which is roughly 4-5 times greater than the in-game injury rate of the NBA, MLB, or NHL. With all major sports, there is a need for medical surveillance amid competition. For hockey, which can be an undeniably brutal game, the NHL requires each team to carry three rink-side doctors. By comparison, every NFL game has at least 30 medical personnel in attendance. Yet, it is the prevalence of opioid use among football players that best reveals what players endure in order to compete at the professional level.

According to a 2011 survey of 644 former players conducted by ESPN, 52% stated they had used opioids during their NFL careers, of whom 71% admitted to misusing them. Calvin Johnson, a former wide receiver, reflected that team doctors gave out prescription painkillers "like candy" during his career. Brett Favre, the former NFL quarterback, admitted to taking up to 14 Vicodin at one time in order to suppress his pain and play the game. The QB had this to say about his 1995 MVP season: "It is really amazing, as I think back, how well I played that year. That was an MVP year for me. But that year, when I woke up in the morning, my first thought was, 'I got to get more pills.'" Unfortunately, team doctors often do not share with players, the risk of dependence, that accompanies heavy opioid use. Travis Kelce, who just finished his 9th season playing for the Kansas City Chiefs, remarked, "During my first NFL surgery, I had no idea that these pain medications were something that I was going to want, that my body was going to want, and that I was going to feel uncomfortable if I didn't have these."

Opioid dependence does not end once players stop playing professionally. Harvard University has been actively engaged in multi-year health studies of both current and former football players. Researchers have shown that the cumulative impact of NFL careers (featuring frequent concussions, torn ACLs, MCLs, and other health afflictions) commonly cause significant degradation of physical and neurological function in later life. But a paper published in 2020 also reported that **27% of retired NFL players suffer from chronic pain**, with **1 in 4 having taken prescription opioids** in the 30 days prior to the survey. In an interview with the NY Times, Aaron Gibson, a former lineman, said that after he retired he took as many as 200 pills a day because of his dependence on painkillers.

Getting NFL players financial assistance for physical and behavioral health issues has been an ongoing struggle. For NFL veterans, healthcare insurance expires 5 years after retirement. Lifetime health insurance—which would

significantly benefit players as they age—has been a non-starter in negotiations between the NFL and the Players Association, as no health insurer would write such a policy. There have been two major litigation attempts by NFL players to hold the League accountable for its negligent attitude toward protecting players from opioid abuse. In 2014, a class-action suit was filed against the NFL organization. While in 2016, another class-action was filed against the individual owners of each of the 32 teams in the NFL. Both cases were blocked at the appellate level because they could not circumvent union and labor statutes that favor collective bargaining over court litigation to resolve disputes.

As the opioid crisis has shifted from prescription medications to illicit opioids, including fentanyl and fentanyl analogs (which are exponentially more toxic), the stakes for drug abuse have never been higher. In the past year, drug overdoses were blamed for the deaths of multiple football players, including Colt Breenan, Keith McKants, as well as Jake Ehlinger.

Sports fans love statistics, but there is one number that gets bolded on the NFL Players Association website: "**This game has a 100% injury rate."**

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