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Stephanie Assi

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THE NFL SHOULD STOP TRYING TO WEED OUT MARIJUANA: WHY MEDICAL MARIJUANA REMEDIES THE LEAGUE'S MISUSE OF PAIN KILLERS

*Stephanie Assi*¹

I. Introduction

The National Football League (“NFL”) last updated its drug policy in 2014.² Currently, league players are tested for certain drugs, and are prohibited from having certain amounts of tetrahydrocannabinol (THC) in their urine.³ A positive drug test violates this policy, and comes with a range of ramifications for players—anywhere from a large fine to multiple game suspensions.⁴

Recently, hundreds of former NFL players sued all thirty-two NFL teams for the misuse of powerful painkillers in *Evans v. Arizona Cardinals Football Club LLC*.⁵ In March 2017, the plaintiffs filed a second amended complaint, alleging that the defendant’s actions violated federal drug laws, which included specific examples of the defendant’s illegal conduct.⁶ Although the allegations in this case are serious, the problem is greater than simply NFL teams violating federal laws. The *Evans* plaintiffs are seeking compensatory and punitive damages, as well as an injunction to create a court-imposed medical monitoring program to help with diagnosis, treatment, and prevention of injuries and disabilities.⁷ The proper remedy to the NFL’s misuse of pain killers and controlled substances, however, is simple—allow, and encourage, the use of medical marijuana as an alternative form of pain treatment for players. The real issue here is player safety, as players are forced to expose themselves to the danger of opioid addictions without any alternatives. The NFL should not only stop testing for marijuana, but should *encourage* medical marijuana use as an alternative pain treatment for its players.

¹ Stephanie Assi is a 3L student at Texas A&M University School of Law, where she serves as President of the Sports and Entertainment Law Society and Notes & Comments Editor for *Texas A&M Law Review*.

² Nicki Jhabvala, *NFLPA: Marijuana Policy in NFL is “a CBA issue, not a Law-Enforcement Issue”*, DENVER POST (Feb. 24, 2017, 4:33 PM), <http://www.denverpost.com/2017/02/24/nflpa-marijuana-policy/>.

³ *Id.*

⁴ *See* NAT’L FOOTBALL LEAGUE: POLICY AND PROGRAM ON SUBSTANCES OF ABUSE (2016); *see also* Jhabvala, *supra* note 1.

⁵ *Evans v. Ariz. Cardinals Football Club LLC*, No. C 16-01030 WHA, 2016 WL 3566945 at *1 (N.D. Cal. July 1, 2016).

⁶ *See* Plaintiffs’ Second Amended Complaint, No. 3:16-cv-01030-WHA, 2017 WL 963181, *Evans v. Ariz. Cardinals Football Club LLC* (N.D. Cal. Mar. 10, 2017).

⁷ *See id.*

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II. Current NFL Drug Policy

Substance abuse can lead to on-the-field injuries, to alienation of the fans, to diminished job performance, and to personal hardship. The deaths of several NFL Players have demonstrated the potentially tragic consequences of substance abuse. NFL Players should not by their conduct suggest that substance abuse is either acceptable or safe.⁸

Not testing for marijuana would still conform with these policies, and even further them; players would not have to turn to controlled painkillers, and, thus, suffer from the stronger negative effects of painkillers. A proposal for the NFL to stop marijuana testing goes beyond the simple benefit of players not being suspended and fined. It is deeper than that—the NFL has faced serious backlash in recent years regarding the dangers of the sport. For example, besides substance abuse issues, there is a rise in concussions and long-term brain injuries. Marijuana use for medicinal purposes—something that twenty-eight states have already implemented—is something the NFL should encourage, rather than condemn and punish. The NFL’s stated policy, in terms of drug use, aims to protect players, but is it really protecting the players if it forbids a safer pain treatment alternative that could positively benefit the players both short-term and long-term?

Studies have recently, and consistently, demonstrated the benefits of medical cannabis, not only for lower pain centralization, but also for reduction in opioid usage.⁹ For example, the University of Michigan conducted a study in June 2016 that suggests many chronic-pain patients, who were usually treated with opioids, experienced many benefits when medical cannabis was substituted in place of opioids.¹⁰ Those benefits included improvement in quality of life, decreased opioid use, fewer side effects, and less chronic pain.¹¹ Further, in March 2017, a study showed that the rate of hospitalization due to painkiller and opioid abuse and dependence dropped an average of 23% in states where medical marijuana was legalized.¹² Not only did opioid overdoses alone drop 13% overall for hospitalization, but fears that medical marijuana would lead to hospitalizations were proven to be unfounded.¹³ “[S]parked by a quadrupling since 1999 in sales of prescription painkillers such as Oxycontin and Vicodin,” the opioid epidemic “kills 91 Americans a day.”¹⁴ The voluminous number of studies that consistently show the benefits of medical marijuana, coupled with the extensive number of studies that show the dangers of opioids, leads one to question why the NFL is taking so long to get on board.

The NFL’s current drug policy goes against its stated purpose. Substance abuse results from the use and misuse of opioids—the same opioids that all thirty-two NFL teams improperly

⁸ NAT’L FOOTBALL LEAGUE, *supra* note 3, at 1.

⁹ See Kevin F. Boehnke et al., *Am. Pain Soc’y, Medical Cannabis Use is Associated With Decreased Opiate Medication Use in a Retrospective Cross-Sectional Survey of Patients with Chronic Pain*, 17 J. OF PAIN 739, 742 (2016).

¹⁰ *Id.* at 739.

¹¹ *Id.*

¹² See Reuters, *Legalized Marijuana Could Help Curb the Opioid Epidemic, Study Finds*, NBC NEWS (Mar. 27, 2017, 9:47 PM), <http://www.nbcnews.com/health/health-news/legalized-marijuana-could-help-curb-opioid-epidemic-study-finds-n739301>.

¹³ See *id.*

¹⁴ *Id.*

provided to 1800 former players, who now suffer the consequences from using powerful painkillers.¹⁵ Interestingly, the NFL actively promotes alcohol through partnerships and advertising, which arguably directly results in the dangers the NFL aims to prevent through its drug policy. Roger Goodell, in February 2017, commented on the NFL's marijuana policies:

What we do is rely on our medical experts, and we have joint medical experts between the players' association and the league. To date, those medical advisers have not recommended that we change our policy to permit marijuana use. Obviously, we're aware of the fact that marijuana use, particularly in medical areas, is something that there's a lot of research behind. And we'll follow that closely. If for some reason we believe that there's a potential change that can benefit our players and it's medically supported with research and facts, then we will certainly consider that. But I do know that the players' association is looking at this also, and they may be presenting a proposal to us in the context of the next CBA.

What Goodell is missing, however, is that medically supported research and facts that medical cannabis would benefit the players actually *exists*. And the *Evans* case should serve as a wake-up call for the NFL to realize the dangers and problems with opioids and powerful painkillers. Goodell's statement came after the NFL Players' Association ("NFLPA") recently announced it planned to propose an alternative approach to marijuana use.¹⁶ The NFLPA's proposal includes having the NFL take a less punitive approach when dealing with players' recreational marijuana use.¹⁷ While this would help lessen the fines and suspensions that players face when testing positive for marijuana, it is not what the NFLPA should be fighting for. The NFLPA, which represents the interests of the players first and foremost, should be primarily concerned with player safety and the long-term effects of powerful painkillers.

The NFLPA needs to go beyond the recreational argument, and, perhaps, even leave that off the bargaining table. The proper, and more likely to succeed, argument is that medical marijuana should be allowed; but the NFLPA should not stop there. It should fight for the league to adopt a safer, scientifically-proven alternative treatment for pain. The NFL "should limit [its] testing to drugs used to give athletes an illegitimate competitive advantage, most of which are far riskier than pot."¹⁸ The argument seems obvious, but this is not the first time the NFL waited until serious damage was done before taking steps to remedy the harm.¹⁹ For example, in 2007 the

¹⁵ See *Evans*, 2016 WL 3566945, at *1.

¹⁶ Nicki Jhabvala, *Possible NFL Marijuana Policy Change? Commissioner Roger Goodell Chimes In.*, DENVER POST (Feb. 1, 2017, 4:52 PM), <http://www.denverpost.com/2017/02/01/nfl-marijuana-policy-change-roger-goodell/>.

¹⁷ *Id.*

¹⁸ Steve Chapman, Opinion, *Commentary: NFL Should Let Players Use Marijuana*, CHICAGO TRIB. (May 16, 2016, 11:38 AM), <http://www.chicagotribune.com/news/opinion/chapman/ct-medical-marijuana-nfl-brain-damage-20160516-story.html>.

¹⁹ The aggregate number of head injuries and concussions is a prime example of this. See Jarryd Werts, *Ringling the Bell on Concussions: The Rise of Head Injuries and Cognitive Decline in Football Players, and the NFL's Obligation to Improve Safety Measures*, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 173, 191-92 (2012) ("After establishing the Mild Traumatic Brain Injury Committee in 1994, it should not have taken 13 years for the NFL to develop a league-wide policy on concussions.").

NFL's concussion policy did not allow players to return to a game or practice if they were injured as a result of being knocked unconscious from a head injury.²⁰ Before that, players were allowed to return to play or practice even after being knocked unconscious since an NFL committee determined there was no evidence of adverse effects.²¹ The NFL ignored various recommendations before first amending its policy in 2007 and 2009.²² Similarly, the NFL is already repeating history by ignoring data and medical opinions that demonstrate the dangers of opioids and benefits of medical cannabis. If the league does not change its policy soon, it will look back at its distribution of powerful painkillers—instead of the safer alternative of medical marijuana—and realize it waited too long.

III. Conclusion

Today the NFL realizes the dangers of the sport and the resulting long-term brain injuries and concussions. It took scientific studies and decades of serious injuries before the league made changes and implemented measures and precautions to prevent this type of harm. The concussion epidemic should serve as a lesson to the league. How can the league ignore scientific studies, law suits, and allegations from both current and former players of a harm from which the NFL is not protecting them, and still claim its actions and decisions are in the best interest of the players? The *Evans* suit gives the NFL an opportunity to stand up and take the initiative to make a change in its drug policy. At the current rate, if the NFLPA only proposes a less harsh penalty for recreational marijuana as a subject of collective bargaining, it will be years before the league implements medical marijuana. The NFL and the NFLPA need to come up with a solution that is in the best interest of their players' health and safety. If the NFL cares about its players and their safety, it not only should—but must—curb its addiction to dangerous opioids, and veer toward medical marijuana as an alternative solution to player pain.

²⁰ *Id.* at 192.

²¹ *Id.*

²² *See id.* at 191–93. It was not until December 2009 when the NFL finally acknowledged the link between concussions and football. Kristina M. Gerardi, *Tackles That Rattle the Brain*, 18 SPORTS LAW. J. 181, 213–14. “On December 20, 2009, the NFL ‘not only announced . . . that it would support research by its most vocal critics, but also conceded publicly for the first time that concussions can have lasting consequences.’ The NFL’s spokesperson, Greg Aiello, admitted that from all the research that has been done on the subject that it is quite obvious that ‘concussions can lead to long-term problems.’” *Id.* at 213–14.