



TACKLING

the Work Comp Connection to CTE

A White Paper by

IWP

The Patient Advocate Pharmacy®

WHAT IS ALL THE TALK ABOUT?

Chronic Traumatic Encephalopathy (CTE) is a degenerative brain disease commonly found in athletes or others with a history of repetitive brain trauma, such as concussions or hits to the head. Professional athletes in high contact sports such as football and hockey are ground zero for CTE. In fact, a recent study found that among the brains of 111 deceased NFL players who donated their brains to CTE research, 110 of them had CTE.¹

WHAT DOES CTE LOOK LIKE?

The repeated injuries, commonly suffered by NFL players and other athletes, cause a protein to form clumps in the brain that slowly spread, killing brain cells. While concussion symptoms manifest themselves immediately, CTE symptoms do not begin to appear until years after the impacts. A player diagnosed with CTE usually exhibits problems with thinking, memory, confusion, depression, impaired judgment, and often progresses into dementia.²

WHY ALL THE TALK ABOUT CTE AND PROFESSIONAL ATHLETES?

Science is still fairly new on CTE and it's even newer when you link it to professional sports, where it's attracted a lot of attention. If our understanding of CTE is correct, that it's caused by repeated hits to the head, then a professional football player would experience that regularly as part of the work. And an on the job injury opens the door to a workers' comp claim. Easy right? Not so fast.

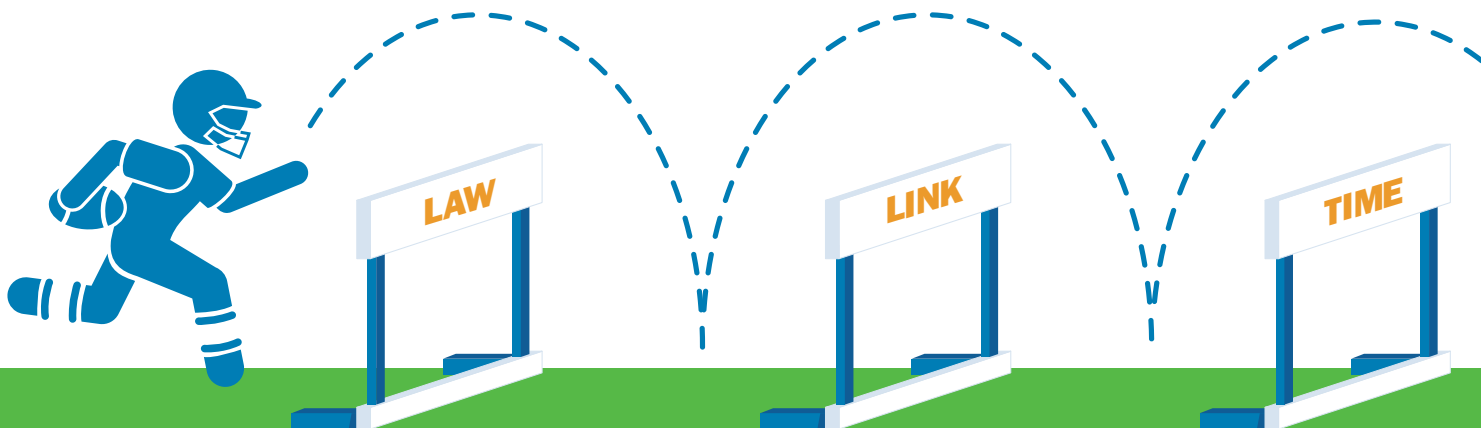
CAN WORKERS' COMP HELP?

Professional athletes face a number of hurdles when trying to secure workers' comp coverage for CTE.

First, does the state
LAW
even allow professional athletes
to make a claim?

Many states don't mention professional athletes in their workers' comp statutes. Exceptions include Kansas,³ which includes professional athletes in the definition of employee but other states like Florida⁴ specifically exclude professional athletes from the definition of employment. States like Massachusetts⁵ prohibit professional athletes from collecting workers' comp when they are under contract which provides wages during periods of disability. Other states that talk about professional athletes, like Michigan⁶ and Pennsylvania⁷, cap benefits and compensation available to professional athletes differently than other employees in the state.

Assuming an athlete is eligible to file for workers' comp, they still face several more hurdles to establishing a claim. Does the state recognize cumulative traumas? The injury isn't from one hit, it's from repeated hits over the span of years. The single hit is not the cause, it's the repetition and not all states recognize that kind of injury.



Can they prove a **LINK**

between being hit on the football field and the development of CTE several years later?

While the medical community is leaning towards a link, there isn't consensus around the concept, which means there is no guarantee a claim will be accepted under this argument. There are plenty of studies out there. An entire CTE Center at Boston University is dedicated to researching it, but it's hard to provide hard evidence for the link between injury and claim.

Despite recent efforts to identify a way to diagnose CTE in living patients, currently, there is no test to prove CTE conclusively until after an individual dies and their brain is examined. The current data is collected from brains donated to research, creating a selective pool from which we gain data. Usually only people experience symptoms of CTE donate.

Finally, assuming we get past all of these hurdles, is the claim coming in **TIME?**

Has the statute of limitations already gone by? Symptoms of CTE develop years after a player is out of the NFL but does a state start counting based on when you learn of the injury or from the day you are injured?



DIDN'T THAT NFL CONCUSSION SETTLEMENT HELP THIS?

Not so much. In 2015, the NFL settled a class action lawsuit from former players that argued the NFL knew about the link between brain injuries and long-term neurological problems and covered it up. The settlement, which faced several legal challenges, finally started paying out claims in June of 2017 to former players who suffered from brain injuries while working in the NFL and now suffer from neurological impairments. Even with the billion dollar settlement, there still remains a gap for CTE coverage. Under the settlement, the only claims payable involving CTE are former players who died with CTE before the final approval date of the settlement (April 22, 2015). This means no current players, or even former living players who have CTE, would qualify for benefits.⁸ There are reasons for the exclusion, most notably the only test we have to show CTE is after death. So while there is money out there for former NFL players suffering from neurological impairments associated with their time on the field, CTE coverage still remains elusive.



WHAT ABOUT THOSE PLAYERS THAT OPTED-OUT OF THE SETTLEMENT?

Players who opted out of the settlement have the option to pursue their own individual claims against the NFL. In fact, thirty eight of those former players filed a case in federal court trying to force the NFL, and its thirty two teams, to recognize CTE as a covered disease under workers' comp. While there is no conclusive test to prove CTE when an individual is alive, the players argued that there is plenty of scientific and statistical evidence to prove a connection.⁹ The court never got to decide. Long after filing suit the players dropped the case and decided to pursue their own individual claims in their individual states. Since workers' comp is state based, varying as you cross state-lines, the decision to take it state-by-state might prove more successful.

SOURCES

1. Joe Ward, Josh Williams & Sam Manchester, 110 N.F.L. Brains, N.Y. Times, July 25, 2017, at <https://www.nytimes.com/interactive/2017/07/25/sports/football/nfl-cte.html>.
2. Frequently Asked Questions about CTE, Boston University's Chronic Traumatic Encephalopathy (CTE) Center, <https://www.bu.edu/cte/about/frequently-asked-questions>.
3. KAN. STAT. ANN. § 44-508(b).
4. FLA. STAT. § 440.02 17(c)(3).
5. MASS. GEN. LAWS ch. 152, § 1(4).
6. MICH. COMP. LAWS § 418.360.
7. 77 PA. STAT. § 565.
8. N.F.L. Concussion Settlement: Injury Definitions, available at <https://www.nflconcussionsettlement.com/Documents.aspx>.
9. Gaiter et al v. National Football League et al, No. 0:16-cv-62755 (S.D. Fla.).

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