

NFL Players Association. "Outside of being knocked out, I stayed in the game."

After a player suffers a concussion, his team's medical staff determines when he is fit to return to play. Studies vary on whether a quick return puts the player at risk of more severe injury.

The NFL commission, after reviewing five years of on-field concussions, found no evidence for an increase in secondary brain injuries after a concussion, a conclusion that has met with skepticism.

"Science is very clear that returning guys to play in the same game, or quickly within a few days, contributes to neuron loss and long-term problems," said former pro wrestler Christopher Nowinski, who retired after repeated concussions and has written a book on the controversy. "With the NFL being both the only and most prominent voice to say it doesn't exist, it slows down acceptance and adoption of policies to reduce risk."

While the NFL commission has focused on short-term effects of concussions, recent findings suggest players may suffer depression, dementia and other symptoms later in life. (Emphases added).

157. The result of this conference was a complete whitewash of the problem by the NFL. The League issued a press release and pamphlet to players on August 14, 2007. It stated that:

Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems.... It is important to understand that there is no magic number for how many concussions is too many. (Emphases added).

158. This act of denial and deception was consistent with the positions taken by Pellman, Casson, Lovell, and Viano as described above.

159. The NFL's refusals to face reality and its attempts to cover up the links between on-field concussions or head impacts and brain injuries are exacerbated by the way its member clubs provide medical services top players. As one 2009 article explained:

The conflicted interests that burden many NFL trainers exacerbate the NFL's concussion problem. An emerging practice in sports medicine involves medical providers "auctioning off the right to be an NFL team's 'official' medical provider, hospital, or physician-group." The privilege of being selected comes with the right to advertise in one's promotional materials that her group has been named the "official healthcare provider" of a particular team. "In return, the team is provided with medical care for free or at reduced cost."

NFL players are the victims of this pay-to-play system as they receive medical care compromised by the financial interests of NFL trainers. It is no secret that the NFL is a business, and an extremely successful one at that. When trainers are intertwined with team management, their medical decisions become clouded by the number one money-making criterion in the NFL business: *winning*. In order for teams to maximize profit through winning games, it stands to reason that coaches and management place incredible pressure on trainers to return their most talented athletes to the playing field as soon as possible. Concussions might represent one of the injuries that trainers send their patient-athletes back on the field with before players are completely healed.

Former New York Jets lineman Peter Kendall efficiently articulated the conflict-ridden nature of team physicians' return-to-play decisions: "I see guys playing in games that I don't think a personal advocate would allow them to do[.] The doctor who is supposed to be looking out for you is also the same guy who may put you into a game that the team has to win. You're mixing business with medicine." Thus, in three sentences, Kendall summarized the risk involved with trainers practicing medicine under conflicted financial and medical interests.

The physician-patient dynamic of the New York Jets presents a paradigm conflict of interest. Dr. Elliot

Pellman serves as *both* the Director of Medical Services for the New York Jets *and* as NFL Concussion Committee member. Because of Pellman's dual role, the Jets concussion policies and procedures have drawn heightened scrutiny from outside observers.

Pellman's management of the concussion Jets wide receiver Wayne Chrebet sustained on November 2, 2003 triggered significant criticism from both scientists and players. In this November 2, 2003 game against the New York Giants, Chrebet's concussion left him face down in an unconscious state for several minutes. Pellman elected to send Chrebet back into contact during the *same* game despite Chrebet's prolonged state of unconsciousness. Chrebet was subsequently placed on injured reserve for the remainder of the season. "Chrebet, 34, has recently acknowledged that he has bouts of depression and memory problems so severe that he cannot make the routine drive from his New Jersey home to his Long Island restaurant without a global positioning system." (Emphases partly in original; footnotes omitted).

160. ESPN The Magazine reported vividly on this incident:

"There's going to be some controversy about you going back to play." Elliot Pellman looks Wayne Chrebet in the eye in the fourth quarter of a tight game, Jets vs. Giants on Nov. 2, 2003, at the Meadowlands. A knee to the back of the head knocked Chrebet stone-cold unconscious a quarter earlier, and now the Jets' team doctor is putting the wideout through a series of mental tests. Pellman knows Chrebet has suffered a concussion, but the player is performing adequately on standard memory exercises. "This is very important for you," the portly physician tells the local hero, as was later reported in the *New York Daily News*. "This is very important for your career." Then he asks, "Are you okay?" When Chrebet replies, "I'm fine," Pellman sends him back in.

A couple of days after Wayne Chrebet is knocked senseless by the Giants, he is sluggish and tired, and his head aches. "It was stupid, trying to get back out there," he says. "That's just me trying to convince them and

myself that everything is all right." The Jets staff, including Pellman and Barr, diagnose Chrebet with postconcussion syndrome. Ten days after the game, the Jets place Chrebet on injured reserve.

Pellman makes no apologies. "Wayne returned and was fine," he tells the media. "He did not suffer additional injury. If he had suffered additional injury, his prognosis would be no different.

"Let's say I didn't allow him to return to play, and he played the following week," he continues. "The same thing could have happened. The decision about Wayne returning to play was based on scientific evaluation. As we stand now, that decision made no difference as to what's happening today.

"This decision is so that I can sleep well at night and so Wayne's wife can sleep well at night," he says about ending Chrebet's season.

"Nobody gets second-guessed."

161. This incident corroborates another factor contributing to the NFL's practices—that NFL player contracts are structured in a manner to incentivize underreporting of concussions. Such contracts typically do not guarantee payment to players beyond the season in which an injury occurs. If the player cannot pass the medical check-up at the commencement of the subsequent season, the contract is voided and the player may end up paying medical expenses for brain injuries or cognitive impairment incurred on the playing field. This system operates to discourage players from admitting to concussions. As the same 2009 article quoted earlier explained:

A sad consequence of the NFL's player contract scheme is the tendency of players to withhold concussion symptoms from their trainers and team management for fear of losing their jobs. Dr. Kenneth Podell, director of the Sports Concussion Safety Program at the Henry Ford Health System, summarizes the problematic situation: "The pressure

is intense; there's always someone on the bench waiting to take your place."

When team management becomes privy to a player's concussion history, the team holds all leveraging power in restructuring a player's contract. Players are faced with the following Hobson's choice: (i) accept a less lucrative contract or (ii) face employment termination. Dan Morgan, former Carolina Panthers linebacker, suffered at least five concussions during his tenure with the Panthers. Faced with the alternative of termination, Morgan "agreed to restructure his \$2 million roster bonus into payments of \$125,000 for each game played. Beyond acknowledging the team's concerns about subsequent concussions, the contract gave Morgan financial incentive not to reveal any concussion for treatment."

Even when a player is confident enough to disclose his concussive symptoms to a team trainer, he will not likely refuse a coach's orders to return to play for fear of losing his starting position in the lineup. A recent example of this situation involved the New England Patriots franchise. While playing linebacker for the Patriots in 2002, Ted Johnson sustained a severe concussion. After Johnson discussed his symptoms with his team trainer, the trainer advised Patriots coach Bill Belichick not to return Johnson to contact play until he became asymptomatic.

Belichick disregarded the trainer's advice by continually sending Johnson back into full contact practices. In defending his decision to return Johnson to play against the trainer's orders, Belichick said: "If [Johnson] felt so strongly that he didn't feel he was ready to practice[,] he should have told me." The flaw in Belichick's logic is that it assumes Johnson was confident enough in his job security to defy his coach's orders. If Johnson informed Belichick of his inability to return to play, he would have effectively terminated his own contract with the Patriots. (Emphases added).

162. In November of 2008, Greg Aiello ("Aiello") sounded a similar theme, saying to the press that "[h]undreds of thousands of people have played football and other