

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

IN RE: NATIONAL HOCKEY LEAGUE  
PLAYERS' CONCUSSION INJURY  
LITIGATION

This Document Relates to: ALL ACTIONS

MDL No. 14-2551 (SRN/JSM)

**DECLARATION OF LAWRENCE S.  
ELSWIT IN SUPPORT OF  
RESPONDENT TRUSTEES OF  
BOSTON UNIVERSITY'S  
MEMORANDUM IN OPPOSITION TO  
NATIONAL HOCKEY LEAGUE'S  
MOTION TO COMPEL**

My name is Lawrence S. Elswit. I am an attorney representing Respondent Trustees of Boston University in the above-referenced matter and submit this Declaration in support of Respondent Trustees of Boston University's Memorandum in Opposition to National Hockey League's Motion to Compel.

1. Attached as Exhibit 1 is a true and correct copy of the subpoenas duces tecum served upon Dr. Ann McKee and Dr. Robert Stern, dated October 1, 2015.
2. Attached as Exhibit 2 is a true and correct copy of a letter dated February 3, 2016, from Daniel J. Connolly, Esq., to Lawrence S. Elswit, Esq.
3. Attached as Exhibit 3 is a true and correct copy of a letter dated March 30, 2016, from Lawrence S. Elswit, Esq., to Daniel J. Connolly, Esq.
4. Attached as Exhibit 4 is a true and correct copy of an email exchange, dated August 15, 2016, between Lawrence S. Elswit, Esq., and Daniel J. Connolly, Esq.
5. Attached as Exhibit 5 is a true and correct copy of an email dated October 12, 2016, from Daniel J. Connolly, Esq., to Lawrence S. Elswit, Esq., attaching the subpoena duces tecum served upon Boston University CTE Center, dated October 11, 2016.

6. Attached as Exhibit 6 is a true and correct copy of letters dated December 9, 2016, from Lawrence S. Elswit, Esq., to Daniel J. Connolly, Esq., and dated December 12, 2016, from Daniel J. Connolly, Esq., to Lawrence S. Elswit, Esq.

7. Attached as Exhibit 7 is a true and correct copy of a letter dated October 24, 2016, from Gary B. Bettman, NHL Commissioner, to members of Congress.

8. Attached as Exhibit 8 is a true and correct copy of four Certificates of Confidentiality issued by the National Institutes of Health.

I declare under penalty of perjury that the forgoing is true and correct.

Dated: February 6, 2017

/s/ Lawrence S. Elswit\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Lawrence S. Elswit, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

I hereby certify that a true copy of the above document was also served upon Daniel J. Connolly, Esq., Faegre Baker Daniels LLP, 2200 Wells Fargo Center 90 South Seventh Street, Minneapolis, Minnesota, 55402, John H. Beisner, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, DC, 20005, and to Charles S. Zimmerman, Esq. and Brian C. Gudmundson, Esq., Zimmerman Reed LLP, 1100 IDS Center 80 South Eighth Street, Minneapolis, Minnesota, 55402 by FedEx, and by electronic mail on this 6<sup>th</sup> day of February, 2017.

/s/ Lawrence S. Elswit \_\_\_\_\_

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

**UNITED STATES DISTRICT COURT**

for the  
District of Minnesota

In re Nat'l Hockey League Players Concussion Injury

Plaintiff

v.

Defendant

Civil Action No. 14-2551

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To:

Ann McKee

*(Name of person to whom this subpoena is directed)*

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:  
See Exhibit A

Place: Skadden, Arps, Slate, Meagher & Flom, LLP, 500 Boylston Street, Boston, Massachusetts 02116	Date and Time: 10/01/2015 2:00 pm
-------------------------------------------------------------------------------------------------------	--------------------------------------

**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: September 1, 2015

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Daniel J. Connolly*  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) defendant  
the National Hockey League, who issues or requests this subpoena, are:  
Daniel J. Connolly, 90 S. 7th St, Minneapolis, MN 55402, 612-766-7806, daniel.connolly@FaegreBD.com

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 14-2551

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**

**(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**EXHIBIT A**

**DEFINITIONS**

1. "CTE" means Chronic Traumatic Encephalopathy.
2. "Document" means any kind of written, typewritten, printed, electronic, or recorded material whatsoever (including, without limitation, notes, memoranda, letters, reports, emails, publications, contracts, recordings, photographs, video, transcriptions of proceedings, and business records, relating to or pertaining in any way to the subject matter to which this subpoena refers, and includes, without limitation, originals, all file copies, all other copies (with or without notes or changes thereon), no matter how prepared, and all drafts, working papers, routing slips and similar materials prepared in connection with such documents, whether used or not, which is in your actual or constructive possession, custody or control, or available or obtainable by you, or of which you have knowledge.
3. "NHL" means the National Hockey League, or anyone acting under the authority of the same, including but not limited to representatives and consultants.
4. "NHL Player" means any person who, at any time, currently or in the past, has been listed on the active roster of any NHL member club, regardless of whether listed during the preseason, regular season, or postseason.
5. "NHLPA" means the National Hockey League Players' Association.
6. "Player Agent" means any person currently or previously certified or otherwise recognized by the NHLPA as a player representative, whether under the NHLPA's Certified Player Agent program or otherwise, or any person You believe or believed represents the interests of any NHL Player.

7. The terms "relating to" or "related to" mean referring to, reflecting or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.
8. "You" or "your" means the person responding to this request, individually and all of his attorneys or representatives.
9. All other terms should be given their common and typical meanings and usage.

**INSTRUCTIONS**

1. Each request contained herein extends to any items in your possession, custody or control.
2. The singular herein includes the plural and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including without limitation."
3. In the event a document or portion thereof is withheld for any reason, you shall indicate the following information for each such withheld document, or portion thereof:
  - a. the date of the document;
  - b. the general character or type of document (e.g., letter, memorandum, notes, minutes, etc.);
  - c. the identity of the person in possession of the document;
  - d. the identity of the author of the document;
  - e. the identity of the recipient or holder of the document; and
  - f. the reason, including, but not limited to, any legal obligation or privilege for withholding the document, or portion thereof.



4. Each request for documents shall be construed independently and no document request shall limit the scope of any other document request.

**DOCUMENTS TO BE PRODUCED**

**Request No. 1:** All Documents related to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems, including CTE, for hockey players generally or NHL Players specifically.

**Request No. 2:** All Documents provided, presented or relied upon during meetings with Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any other representative or consultant of the NHL, any NHL team, any representative or consultant of the NHLPA, or any current or former NHL Player or Player Agent that relate to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems for athletes.

**Request No. 3:** All communications between You and Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any member of the NHL-NHLPA concussion working group or any predecessor or successor committee thereto, any other representative or consultant of the NHL, any NHL team, the NHLPA, or any current or former NHL Player or Player Agent.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Minnesota

In re Nat'l Hockey League Players Concussion Injury

Plaintiff

v.

Defendant

Civil Action No. 14-2551

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Robert Stern

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Table with 2 columns: Place (Skadden, Arps, Slate, Meagher & Flom, LLP, 500 Boylston Street, Boston, Massachusetts 02116) and Date and Time (10/01/2015 2:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: September 1, 2015

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Daniel J. Connolly (handwritten signature)

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) defendant the National Hockey League, who issues or requests this subpoena, are: Daniel J. Connolly, 90 S. 7th St, Minneapolis, MN 55402, 612-766-7806, daniel.connolly@FaegreBD.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 14-2551

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
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**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**EXHIBIT A**

**DEFINITIONS**

1. "CTE" means Chronic Traumatic Encephalopathy.
2. "Document" means any kind of written, typewritten, printed, electronic, or recorded material whatsoever (including, without limitation, notes, memoranda, letters, reports, emails, publications, contracts, recordings, photographs, video, transcriptions of proceedings, and business records, relating to or pertaining in any way to the subject matter to which this subpoena refers, and includes, without limitation, originals, all file copies, all other copies (with or without notes or changes thereon), no matter how prepared, and all drafts, working papers, routing slips and similar materials prepared in connection with such documents, whether used or not, which is in your actual or constructive possession, custody or control, or available or obtainable by you, or of which you have knowledge.
3. "NHL" means the National Hockey League, or anyone acting under the authority of the same, including but not limited to representatives and consultants.
4. "NHL Player" means any person who, at any time, currently or in the past, has been listed on the active roster of any NHL member club, regardless of whether listed during the preseason, regular season, or postseason.
5. "NHLPA" means the National Hockey League Players' Association.
6. "Player Agent" means any person currently or previously certified or otherwise recognized by the NHLPA as a player representative, whether under the NHLPA's Certified Player Agent program or otherwise, or any person You believe or believed represents the interests of any NHL Player.

7. The terms “relating to” or “related to” mean referring to, reflecting or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.
8. “You” or “your” means the person responding to this request, individually and all of his attorneys or representatives.
9. All other terms should be given their common and typical meanings and usage.

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1. Each request contained herein extends to any items in your possession, custody or control.
2. The singular herein includes the plural and vice versa; the words “and” and “or” shall be both conjunctive and disjunctive; the word “all” means “any and all”; the word “any” means “any and all”; the word “including” means “including without limitation.”
3. In the event a document or portion thereof is withheld for any reason, you shall indicate the following information for each such withheld document, or portion thereof:
  - a. the date of the document;
  - b. the general character or type of document (e.g., letter, memorandum, notes, minutes, etc.);
  - c. the identity of the person in possession of the document;
  - d. the identity of the author of the document;
  - e. the identity of the recipient or holder of the document; and
  - f. the reason, including, but not limited to, any legal obligation or privilege for withholding the document, or portion thereof.

4. Each request for documents shall be construed independently and no document request shall limit the scope of any other document request.

**DOCUMENTS TO BE PRODUCED**

**Request No. 1:** All Documents related to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems, including CTE, for hockey players generally or NHL Players specifically.

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**Request No. 3:** All communications between You and Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any member of the NHL-NHLPA concussion working group or any predecessor or successor committee thereto, any other representative or consultant of the NHL, any NHL team, the NHLPA, or any current or former NHL Player or Player Agent.

FaegreBD.com

**FAEGRE BAKER  
DANIELS**

USA • UK • CHINA

Daniel J. Connolly  
+1 612 766 7806  
daniel.connolly@FaegreBD.com

**Faegre Baker Daniels LLP**  
2200 Wells Fargo Center • 90 South Seventh Street  
Minneapolis • Minnesota 55402-3901  
**Phone +1 612 766 7000**  
**Fax +1 612 766 1600**

February 3, 2016

Larry Elswit  
Associate General Counsel  
Boston University  
Office of the General Counsel  
125 Bay State Road  
Boston, MA 02215

**BY EMAIL AND U.S. MAIL**

**In Re: *National Hockey League Players' Concussion Injury Litigation*  
MDL No. 14-2551 (SRN/JSM)**

Dear Mr. Elswit:

We appreciate your assistance in responding to the document requests that accompanied the National Hockey League's ("NHL's") subpoenas on Drs. Ann McKee and Robert Stern. We have had a chance to review the responses you forwarded, and thought it would be helpful to outline in a letter some questions we have regarding the responses, and if it makes sense schedule a call to discuss those questions further.

First, your October 26, 2015 email transmitting this document production indicates that the documents are "Boston University's response to subpoenas issued to Drs. Ann McKee and Robert Stern." Please confirm that the production includes all responsive documents in the possession of Boston University. Please also confirm that the personal emails and files of Drs. McKee and/or Stern have been searched for relevant materials. To the extent Drs. McKee and/or Stern maintain any emails or documents at the Sports Legacy Institute, please also confirm that those files have been searched for relevant materials.

Second, we have identified several apparent deficiencies in your clients' responses:

- **Emails and other written correspondence:** The production does not include emails or other written correspondence regarding:
  - Meetings or other communications with Gary Bettman, Bill Daly, Julie Grand, John Rizos, Brendan Shanahan, Ruben Echemendia, Winne Meeuwisse, or any other NHL, NHL Clubs, or NHLPA employee, representative, or consultant, including but not limited to communications between Robert Cantu, Chris



- Nowinski, or other representatives of the Sports Legacy Institute or Boston University in advance of or regarding such meetings or communications with the NHL, NHL Clubs, or NHLPA;
- Presentations or speeches that Drs. McKee and/or Stern have given, including but not limited to panels where they wear speaking on their personal behalf or on behalf of Boston University, as well as notes or summaries of interviews with family members or;
  - All communications with NHL hockey players, the families of NHL hockey players, or agents of NHL hockey players, including but not limited to communications about their decisions to donate brain tissue samples to the Sports Legacy Institute or Boston University;
  - Work related to head injuries and hockey, including communications with other employees of Boston University or the Sports Legacy Institute about that work;
  - Published papers that they have produced; and/or
  - Requests for comments or quotations from the media related to head injuries and sports, including hockey.
- **Other Document Files:** The production does not include documents regarding:
    - Notes or summaries of interviews with family members and others about any player for whom Drs. McKee and/or Stern have performed autopsies in connection with their research on head trauma;
    - Decision by Drs. McKee and Stern offered not to join as a signatory (or to remove his or her name) from the Consensus Statement issued by the 2012 International Convention on Concussion in Sport held in Zurich, Switzerland, dated February 8, 2013.
  - **Documents Provided or Relied Upon:** The production does not include documents provided, presented or relied upon in meetings with representatives of the NHL.
  - **Publications:** The production includes several published articles, but it does not include drafts, notes, and/or reviewer comments regarding these papers. The production also does not include any of the background research or backup data created or collected in connection with work on these publications, including death certificates, family interviews, case files, and/or statistical analysis.
  - **Speeches and Presentations:** The production does not include drafts, speaker's notes, slides, or transcripts of any speeches or presentations Drs. McKee and/or Stern have given related to head injury and hockey. The production also does not include

Larry Elswit

Page 3

February 3, 2015

correspondence with the organizers of the events at which any speeches or presentations were given.

- **Notes:** The production does not include any handwritten or other notes, including notes related to the aforementioned publications and presentations or from meetings at which topics relevant to the subpoenas were discussed.

If all documents related to these topics have not been produced, please let us know when the remaining documents will be produced. If Drs. McKee and/or Stern are withholding any otherwise responsive documents for any reason, please supply a log detailing the basis for the claim of privilege or setting forth any other reasons for withholding the document. If Drs. McKee and/or Stern disagree with any of the deficiencies identified in the letter and are unwilling to supplement as we have requested, please let me know the earliest times at which you would be available for a meet-and-confer discussion.

We request that you provide full and complete responses to the NHL's subpoena no later than February 12, 2016. Thank you for your attention to this matter. Please feel free to call me if it would be helpful to discuss these matters further.

Very truly yours,

  
Daniel J. Connolly

DJC/djb

Boston University Office of the General Counsel

125 Bay State Road  
Boston, Massachusetts 02215  
T 617-353-2326 F 617-353-5529



Lawrence S. Elswit, Associate General Counsel  
lelswit@bu.edu

March 30, 2016

BY FIRST CLASS MAIL

Daniel J. Connolly  
Faegre Baker Daniels LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402

Re: National Hockey League Players' Concussion Injury Litigation  
(MDL No. 14-2551)

Dear Dan:

I write in response to your February 3 letter, in which you describe "several apparent deficiencies" in my clients' October 26, 2015 document production.

I appreciate that you are trying to corral a substantial body of information in a hotly-contested lawsuit, but a neutral review of your document request to a third party with no stake in the outcome supports the conclusion that it is both overbroad, burdensome, and seeks information that is protected by a range of privacy statutes and common law interpretations. That said, my clients have produced additional information, enclosed on a disc with this letter. I will also respond briefly to each of the categories of information requested in your letter.

Emails and other written correspondence: see enclosed. There is simply not very much here. To the extent that some correspondence is missing, that is because it is difficult for a scientist with a modest staff to spend his or her time digging through years of correspondence, most of which, as you will see, is fairly innocuous.

You have asked for all presentations, speeches, public comments and other miscellaneous communications. That is impossible. There is simply no database containing all of Dr. McKee's and Dr. Stern's remarks, and now that the relationship between head trauma and CTE has become a more "visible" public issue my clients are the target of virtually constant inquiries from the media. One staff member told me that it would take in excess of 50 hours to pull together an incomplete list of all of their public remarks relating to concussions, and that it

Daniel J. Connolly  
Page 2  
March 30, 2016

would be based on notes, memos, and a review of their calendars. There is no central database. That request is simply too burdensome to impose on Boston University. Nonetheless, I have enclosed what we could find that is easily accessible.

Enclosed with this letter are a few samples of my clients' published papers. They are all identified on their respective CVs and are available via the journals or other sites where they were published. As my clients' CVs (enclosed) show, both Dr. McKee and Dr. Stern are prolific authors. I'm not being glib when I say that printing and producing copies of everything they have written on the subject of your inquiry would be an environmental offense. If, upon review of their CVs followed by a search on your own, you cannot find a particular publication, please let me know and we can continue the conversation.

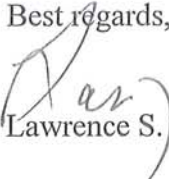
To the extent that my clients communicated with the families of hockey players (which was infrequent if at all), those communications are protected by privacy concerns. Last fall I sent you files for those athletes whose families authorized the release of information; there is nothing more we can do without a court order.

Regarding your request for documents relating to the "Decision by Drs. McKee and Stern offered [sic] not to join as a signatory . . . from the Consensus Statement . ." (p. 2 of your letter): Dr. McKee was not offered the opportunity to sign, and Dr. Stern did not participate in that work.

You have also asked for handwritten notes relating to Drs. McKee and Stern's publications or presentations, etc. My clients have none – but even if they did, my view of that request is consistent with what I have already written. It is overbroad, burdensome, and excessive.

I believe I have addressed all the issues contained in your February 3 letter. Again, I apologize for the delay. If it is necessary to continue this conversation I suggest that we speak by phone, as it will save both of us a lot of time and energy.

Best regards,

  
Lawrence S. Elswit

**From:** [Elswit, Lawrence S](#)  
**To:** ["Connolly, Daniel J."](#)  
**Subject:** RE: NHL  
**Date:** Monday, August 15, 2016 2:02:00 PM

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Dan,

Your inquiry goes far beyond a request for substantive information relating to litigation in which Boston University has no role. You are now asking about my clients' efforts to produce that information. Boston University has complied with a far-reaching, and arguably, overbroad, subpoena – after I already sent you two significant “productions.” Please indicate the authority on which you rely to seek this information, which at least arguably is covered by the attorney-client privilege.

Notwithstanding the preceding, I can report that the answer to question no. 3 is “no.”

Regards,  
Larry

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**From:** Connolly, Daniel J. [mailto:[Daniel.Connolly@faegrebd.com](mailto:Daniel.Connolly@faegrebd.com)]  
**Sent:** Friday, August 12, 2016 5:12 PM  
**To:** Elswit, Lawrence S <[lelswit@bu.edu](mailto:lelswit@bu.edu)>  
**Subject:** NHL

Larry,

Thanks for your response. Here are the issues that we'd like to discuss.

1. What searches were performed to find relevant emails and documents related to former NHL players, including Larry Zeidel.
2. What searches were performed to identify presentations or notes related to meetings with the NHL, NHLPA, and/or NHL players
3. Whether any additional files exist related to the NHL players who have authorized release of their records, including, but not limited to, correspondence with the families of these individuals relating to their inclusion in the research of Drs. McKee and Stern, digitized slides, and/or records from other tests conducted at the autopsies of those individuals
4. The specific basis for your withholding of information based on "privacy concerns" identified in your March 30, 2016 letter (i.e., what are the specific federal laws, local regulations, etc. that you believe are implicated by these records)

We may have additional questions based on your answers, but as a preliminary matter, these were the issues. If it would be easier to discuss these issues by phone, we are happy to set up a time to discuss next week.

Thanks,  
Dan

Daniel J. Connolly  
FAEGRE BAKER DANIELS LLP  
2200 Wells Fargo Center  
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Minneapolis, MN 55402-3901, USA  
[daniel.connolly@FaegreBD.com](mailto:daniel.connolly@FaegreBD.com)  
Direct: +1 (612) 766-7806

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**From:** Elswit, Lawrence S [<mailto:lelswit@bu.edu>]  
**Sent:** Thursday, August 04, 2016 4:54 PM  
**To:** Connolly, Daniel J.  
**Subject:** RE: NHL

Sure, give me a call at your convenience and if I'm not available I'll get back to you ASAP.

Since I have not thought about this matter since our last document production, our conversation may be more efficient if you let me know what issues you would like to discuss. Up to you, of course.

Larry

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**From:** Connolly, Daniel J. [<mailto:Daniel.Connolly@faegrebd.com>]  
**Sent:** Thursday, August 04, 2016 4:48 PM  
**To:** Elswit, Lawrence S <[lelswit@bu.edu](mailto:lelswit@bu.edu)>  
**Subject:** NHL

Mr. Elswit

As you may recall, you and I have corresponded concerning the materials that the NHL has subpoenaed from Drs. McKee and Stern. Would you have time tomorrow morning or mid afternoon to discuss some follow up questions we have concerning those materials? If not, do you have time next week when we could talk?

Thanks in advance for your time and attention to this matter.

Dan

Daniel J. Connolly  
Faegre Baker Daniels LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901, USA  
[daniel.connolly@FaegreBD.com](mailto:daniel.connolly@FaegreBD.com)  
Direct: +1 (612) 766-7806

**From:** Connolly, Daniel J.  
**To:** [Elswit, Lawrence S](#)  
**Subject:** In Re NHL Concussion Injury Litigation - Subpoena  
**Date:** Wednesday, October 12, 2016 6:08:06 PM  
**Attachments:** [2016-10-11 Boston CTE Center subpoena.pdf](#)

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Larry

Yesterday we sent out for service a subpoena for records at the BU CTE Center. I've attached a copy to this email. This subpoena follows on our earlier, more limited, subpoena seeking documents from Drs. McKee and Stern. This follow on subpoena was necessitated by the addition of Larry Zeidel to the NHL Concussion litigation. As you may know, Mr. Zeidel's brain was examined at the CTE center.

As we did before, we are certainly willing to work with you in responding to this new subpoena. If you have any questions or comments, please feel free to contact me.

Regards,  
Dan

Daniel J. Connolly  
FAEGRE BAKER DANIELS LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901, USA  
[daniel.connolly@FaegreBD.com](mailto:daniel.connolly@FaegreBD.com)  
Direct: +1 (612) 766-7806

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

**UNITED STATES DISTRICT COURT**  
for the  
District of Minnesota

In re Nat'l Hockey League Players Concussion Injury )

*Plaintiff* )

v. )

Civil Action No. 14-2551 )

*Defendant* )

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Boston University CTE Center, c/o Larry Elswit, Associate General Counsel,  
Boston University Office of General Counsel, 125 Bay State Road, Boston, MA 002215

*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A

Place: Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, NY 10036-6522 c/o Matthew Lisagar	Date and Time:  10/31/2016 9:00 am
---------------------------------------------------------------------------------------------------------------------	------------------------------------------

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/11/2016

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant, the National Hockey League, who issues or requests this subpoena, are:  
Daniel J. Connolly, 90 S. 7th Street, Minneapolis, MN 55402, 612-766-7806. Email: daniel.connolly.FaegreBD.com

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 14-2551

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. "BU CTE Center" shall mean the Chronic Traumatic Encephalopathy Center at Boston University and any predecessor organizations.
2. "CLF" shall mean the Concussion Legacy Foundation and any predecessor organizations, including the Sports Legacy Institute.
3. "Communication" shall mean any disclosure, transfer, or exchange of information or opinion, however made.
4. "CTE" means Chronic Traumatic Encephalopathy.
5. "Document" means any kind of written, typewritten, printed, electronic, or recorded material whatsoever including, without limitation, notes, memoranda, letters, reports, emails, publications, contracts, recordings, photographs, video, transcriptions of proceedings, and business records, relating to or pertaining in any way to the subject matter to which this subpoena refers, and includes, without limitation, originals, all file copies, all other copies (with or without notes or changes thereon, no matter how prepared, and all drafts, working papers, routing slips and similar materials prepared in connection with such documents, whether used or not, which is in Your actual or constructive possession, custody or control, or available or obtainable by You, or of which You have knowledge.
6. "NHL Player" means any person who, at any time, currently or in the past, has been listed on the active roster of any NHL member club, regardless of whether listed during the preseason, regular season, or postseason.

7. "NHLPA" means the National Hockey League Players' Association.
8. "Player Agent" means any person currently or previously certified or otherwise recognized by the NHLPA as a player representative, whether under the NHLPA's Certified Player Agent program or otherwise, or any person You believe or believed represents the interests of any NHL Player.
9. The term "person" shall mean and include any natural person, association, partnership, joint venture, corporation, trust, and governmental, business or professional entity.
10. "You" or "Your" shall mean the BU CTE Center and any of its employees, representatives, and/or consultants.
11. "Zeidel" shall mean Lawrence Zeidel.
12. The terms "relating to" or "related to" mean referring to, reflecting or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.
13. All other terms should be given their common and typical meanings and usage.

#### INSTRUCTIONS

1. Each request contained herein extends to any items in Your possession, custody or control.
2. The following rules of construction apply:
  - a. The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to make the requests inclusive rather than exclusive.

- b. The terms “any” and “each” shall be construed as encompassing any and all.
  - c. The use of the singular form of any word includes the plural and vice versa.
3. As used herein, all phrases following the term “including” are intended to illustrate the kinds of matters that are responsive to the request. Such examples are not intended to be exhaustive of the information sought and shall not be read to limit the scope of the request.
4. In the event a document or portion thereof is withheld for any reason, You shall indicate the following information for each such withheld document, or portion thereof:
- a. the date of the document;
  - b. the general character or type of document (e.g., letter, memorandum, notes, minutes, etc.);
  - c. the identity of the person in possession of the document;
  - d. the identity of the author of the document;
  - e. the identity of the recipient or holder of the document; and
  - f. the reason, including any legal obligation or privilege for withholding the document, or portion thereof.
5. Each request for documents shall be construed independently, and no document request shall limit the scope of any other document request.

**DOCUMENTS TO BE PRODUCED**

1. Documents sufficient to demonstrate the working relationship between the BU CTE Center and CLF.
2. Documents sufficient to show what persons were examined by the BU CTE Center and were not diagnosed with CTE.
3. Documents sufficient to identify all athletes, other than Zeidel, who have donated or who have agreed to donate their brains to You or whose brains have been examined by You, including: (i) the date each athlete agreed to donate his/her brain; (ii) the date(s) on which the brain was examined; (iii) Your finding with regard to CTE pathology; and (iv) the stage of CTE found, if any.
4. Documents sufficient to show the methodology You employ to reach a finding that a person has CTE pathology, as well as Documents demonstrating any changes to such a methodology.
5. Documents sufficient to show the methodology You employ for creating, staining, examining, and/or analyzing sections of brains in connection with research related to CTE, as well as Documents demonstrating any changes to such a methodology.
6. Pathology photographs, including those obtained from autopsy materials, of brains and/or other organs of Zeidel, other hockey players, including NHL Players, and other athletes, examined by You in connection with research related to CTE.

7. Slides, or copies of slides, related to Zeidel, other hockey players, including NHL Players, and other athletes, examined by You in connection with research related to CTE, including:
  - a. Slides stained with hematoxylin and eosin (brain, as well as other organs and tissues if examined);
  - b. "Special stains," including Bielschowsky silver and luxol-fast blue;
  - c. Immunohistochemical stains, including immunohistochemical stains using antibodies directed against tau protein (e.g., AT8), alpha-synuclein, amyloid-beta, TDP-43, phosphorylated TDP-43 or phosphorylated neurofilaments (e.g. SMI31, SMI34); and/or
  - d. Slides that contain thick (at least 50 micron) immunohistochemical stains produced by the "free-floating" method (such as depicted in McKee et al., *The Spectrum of Disease in Chronic Traumatic Encephalopathy*, Brain 2013, 136:43-53 (e.g., Figure 3, page 52)). Antibodies for these preparations would include antibodies directed against tau protein (such as AT8), amyloid beta, TDP-43, phosphorylated TDP-43, PHF-1 and CP13.
8. Documents and Communications related to any finding or assertion by You that:
  - a. Zeidel's CTE pathology was caused by concussions and/or subconcussive blows sustained while playing hockey;
  - b. CTE pathologies of other hockey players, including NHL Players, were caused by concussions and/or subconcussive blows sustained while playing hockey; and

- c. Other athletes' CTE pathologies were caused by concussions and/or subconcussive blows sustained while playing contact sports.
9. Documents and Communications related to the biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes and concussions and/or subconcussive blows that occurred while playing hockey or other contact sports.
10. Documents and Communications related to the methodology You use to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes were caused by concussions and/or subconcussive blows sustained while playing hockey or other contact sports, as well as any Documents demonstrating any changes to such a methodology.
11. Documents and Communications related to any finding or assertion by You that:
  - a. Zeidel's CTE pathology caused any clinical symptoms Zeidel purportedly experienced;
  - b. CTE pathologies of other hockey players, including NHL Players, caused any clinical symptoms those players purportedly experienced; and
  - c. Other athletes' CTE pathologies caused any clinical symptoms those players purportedly experienced.
12. Documents and Communications related to the biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel,



other hockey players, including NHL Players, or other athletes and any clinical symptoms those players purportedly experienced.

13. Documents and Communications related to the methodology You use to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes caused any clinical symptoms those players purportedly experienced, as well as any Documents demonstrating any changes to such a methodology.
14. Death certificates and autopsy reports, including any general autopsy or neuropathology reports of Zeidel, other hockey players, including NHL Players, and other athletes examined by You in connection with research related to CTE.
15. Medical records of Zeidel, other hockey players, including NHL Players, and other athletes examined by You and/or other affiliated entities, such as CLF, including: (i) clinical records; (ii) medical histories or summaries; and (iii) interviews conducted with family members or acquaintances.
16. Documents and Communications related to any meeting between or among You and/or other affiliated entities, including CLF, with: Julie Grand; Gary Bettman; Brendan Shanahan; Bill Daly; any other representative, employee or consultant of the NHL; any representative, employee or consultant of an NHL team; any representative, employee or consultant of the NHLPA; or any NHL Player or Player Agent.
17. Communications between or among You and/or other affiliated entities, including CLF, and: (i) any representative, employee or consultant of any NHL

team; (ii) any representative, employee or consultant of the NHLPA; or (iii) any NHL Player or Player Agent.

18. Documents related to publications or potential publications (even if not submitted) related to CTE or other long-term neurodegenerative diseases that You prepared for peer-reviewed journals or that You considered for submission, including: (i) abstracts; (ii) presentations; (iii) draft publications; and/or (iv) Communications between or among employees, representatives, and/or consultants of the BU CTE Center and/or other affiliated entities, including CLF, about those Documents, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications or potential publications.
19. Documents related to publications or draft publications related to CTE or other long-term neurodegenerative diseases You prepared for peer-reviewed journals constituting (i) reviewer comments or questions and (ii) responses to reviewer comments or questions, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications or draft publications.

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December 9, 2016

**BY ELECTRONIC MAIL**

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Faegre Baker Daniels LLP  
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Re: **In re National Hockey League Players Concussion Injury Litigation**  
C.A. 14-2551 (D. Minn.)  
Subpoena Issued to Boston University, Chronic Traumatic Encephalopathy  
Center

Dear Mr. Connolly:

Thank you for your December 7<sup>th</sup> email and for sharing the transcript from the November 29<sup>th</sup> status conference. We appreciate your collegial approach to bridging the gap between the demands of the subpoena and our clients' concerns, but we remain concerned with the overly broad scope of your requests. Our clients have legitimate concerns with both the burden imposed by these requests and with the potential impact of a response on the scientific integrity of ongoing and future work in this critical area of research.

We are willing to continue our productive discussions, however, and can make ourselves available for another conversation on Tuesday, December 13<sup>th</sup>. In advance of that conversation, what follows is a description of the documents and items that our clients can and will produce in response to each inquiry.

1. Request 1: We can provide a copy of the Collaboration Agreement, dated September 16, 2008, by and between Trustees of Boston University and the Sports Legacy Institute, Inc., as amended. The agreement expired on January 15, 2014.
2. Request 2: We cannot provide documents responsive to this request. As previously noted, provision of this information would violate specific confidentiality agreements promised by Boston University's Chronic Traumatic Encephalopathy (CTE) Center's investigators to all study participants, their families, and/or federal funding agencies. Redacting identifiable patient information from the documents is not only costly and

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burdensome, but is also impractical. The extent of personally identifiable information in the records is extensive and effective anonymization would require redaction of nearly all of the patient information. Moreover, de-identification would undermine the request's directive seeking documents "sufficient to show what persons were examined by the BU CTE Center and were not diagnosed with CTE".

3. Request 3: We cannot provide documents responsive to this request for the reasons stated in response to Request 2. In addition, compelled disclosure of such information could negatively impact ongoing and future research by discouraging individuals from participating in research and/or donating their brains for study due to concerns about compelled involvement in third party litigation and disclosure of personal information.
4. Request 4: We can provide citations to multiple peer-reviewed publications that set forth the methodology employed by researchers at the CTE Center in evaluating whether an individual has CTE pathology.
5. Request 5: We can provide citations to multiple peer-reviewed publications that set forth the methodology employed by researchers at the CTE Center for creating, staining, examining and/or analyzing sections of brains in connection with research related to CTE pathology.
6. Request 6: We cannot provide materials responsive to this request. First, the VA-BU-CLF Brain Bank is housed at the Edith Nourse Rogers Memorial Veterans Hospital (VA Hospital) in Bedford, Massachusetts. Much of the research related to CTE is conducted in cooperation with the VA Hospital. As a result, the pathology photographs and other raw materials requested are, in some cases, controlled by the VA Hospital and, in other cases, may require coordination with and approval of the VA Hospital. In addition, the number of photographs at issue, which may be tens of thousands per brain, is voluminous. Production of that material – even to a third-party “neutral” (a procedure our clients greeted with skepticism) will create an enormous burden on the ongoing operations of the CTE Center and the VA Hospital and will interfere with ongoing research. Provision of the information sought in this request would violate specific confidentiality agreements promised by our CTE Center's investigators to all study participants, their families, and/or federal funding agencies.
7. Request 7: We cannot provide documents responsive to this request for the reasons stated above in response to Request 6. In addition, the materials requested include human biological specimens and cannot be transferred unless in compliance with all applicable laws pertaining to the transfer of such specimens.

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8. Request 8: We have already provided documents responsive to Request 8(a). In response to Request 8(b), we can provide specific citations to multiple peer-reviewed publications that discuss a correlation of CTE pathologies and repetitive sub-concussive impact.
9. Request 9: We can provide specific citations to multiple peer-reviewed publications that discuss a correlation of CTE pathologies and repetitive sub-concussive impact and the related biological mechanism.
10. Request 10: We can provide specific citations to multiple peer-reviewed publications that set forth the methodology employed by researchers in examining the brains of participants and in evaluating evidence of CTE pathologies.
11. Request 11: We have already provided documents responsive to Request 11(a). We cannot provide documents responsive to Request 11(b) or 11(c) for the reasons stated above in response to Request 3.
12. Request 12: We can provide specific citations to multiple peer-reviewed publications that discuss a correlation of CTE pathologies and repetitive sub-concussive impact. We have already provided specific documentation related to the *Zeidel* case.
13. Request 13: We can provide specific citations to multiple peer-reviewed publications that discuss clinical symptoms experienced by athletes and correlated CTE pathologies.
14. Request 14: We cannot provide documents responsive to this request for the reasons stated above in response to Request 3 and Request 6.
15. Request 15: We cannot provide documents responsive to this request for the reasons stated above in response to Request 3 and Request 6. We can provide specific citations to multiple peer-reviewed publications that discuss clinical symptoms and correlated CTE pathologies.
16. Request 16: Our clients met briefly with Gary Bettman several years ago and if it is still available, will produce a copy of the presentation that was delivered to him. We also understand that there may have been a brief, chance meeting with Mr. Shanahan, but that no documentation or presentation was delivered. Finally, as you know, Dr. Cantu is a consultant with the NHLPA. Our clients interact with Dr. Cantu frequently, but have not interacted with him in his role as a consultant for the NHLPA.

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17. Request 17: Our response to this request will mirror our response to Request 16. We cannot produce any documents on behalf of CLF, which is not a formal affiliate of Trustees of Boston University.
18. Request 18: We can provide specific citations to multiple peer-reviewed publications that discuss CTE pathologies that have been published by our clients. We will not produce drafts or informal communications related to these publications. This is an invasion of our clients' privacy, is overly burdensome and will negatively impact the integrity of the scientific peer review process.
19. Request 19: We can provide specific citations to multiple peer-reviewed publications that discuss CTE pathologies that have been published by our clients. We cannot produce reviewer comments or responses to reviewer comments related to these publications. In some cases, this may violate confidentiality obligations to journals. More importantly, this strikes at the heart of the integrity of our scientific peer review process. The quality of our scientific publications rely on a vigorous and confidential process that allows for vetting by peer scientific, not legal, experts. This process has been long established and its unnecessary inclusion in an unrelated litigation could have serious negative consequences.

We are available to discuss these issues on December 13, as you requested; please propose a few time slots (before 2:00 PM) that work for you and your colleagues. We look forward to that conversation, and to receiving what your December 7 note describes as "a revised version of the requests by Monday morning."

Best regards,



Lawrence S. Elswit

Cc: Kristin Bittinger, Esq.

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December 12, 2016

Lawrence S. Elswit  
Boston University  
Office of the General Counsel  
125 Bay State Road  
Boston, MA 02215

Re: In re National Hockey League Players Concussion Injury Litigation

Dear Larry:

Thank you for your December 9, 2016 letter setting forth your positions with respect to each of the requests in the NHL's subpoena to the Boston University CTE Center.

While we understand the concerns that you have raised, we hope that you appreciate that the NHL must preparing its defense in the litigation brought by plaintiffs who squarely rely upon the work of doctors at the Center to bring their claims. Among other things, plaintiffs specifically rely on the Center's post-mortem diagnosis of Mr. Zeidel.

To date, the NHL has only received a limited production from the Center and its doctors. Drs. McKee and Stern produced materials that can largely be summarized in the following categories: (a) some emails with people at the NHL or NHLPA discussing logistics of meetings with the Center; (b) some other limited emails, including with Dr. Robert Cantu and others from the Sports Legacy Institute/Concussion Legacy Foundation, about press releases and this litigation but not discussing methodology, conclusions, or limitations of their peer-reviewed work; (c) some press releases; (d) two undated presentations about CTE that do not indicate the intended audience; (e) various versions of a 2013 Ice Hockey Summit paper; and (f) documents related to brain donations and autopsies for a few hockey players. Other than as indicated, they did not produce general communications regarding their work or any drafts, abstracts, presentations, reviewer comments, or other related materials. Notably, they did not produce any emails or underlying data related to the autopsies of former NHL players Rick Martin, Reggie Fleming, and Derek Boogaard, despite the fact that the Center has publicly stated in press releases that these players' were diagnosed with CTE by doctors at the Center.

The materials requested by the NHL in its subpoena are significant to the litigation. Indeed, in class certification papers filed on December 8, 2016, plaintiffs' experts opine on the purported causal link between head injury and neurodegenerative disease, including CTE. These expert reports rely on articles published by and autopsies conducted by doctors from the Center related to athletes across multiple sports, including various publications from 2009 to present by Drs. McKee and Stern. To

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respond to these claims, the NHL's scientific experts need access to the underlying testing, data, and contemporaneous assessment contained in summaries of this work that was ultimately included in the Center's published articles. The NHL also needs to understand how this research has evolved during the proposed class period from 1967 to present.

Because the NHL is cognizant of the privacy and cost concerns raised you raised in earlier conversations, the NHL also has agreed to (a) accept de-designated materials for any subjects for whom there is no authorized medical release; (b) use a HIPAA-compliant protective order to maintain the confidentiality of produced materials; and (c) pay for the costs of having an independent third party review the materials and of producing any relevant materials that are identified. These approaches are standard solutions used in third-party discovery requests under Federal Rule of Civil Procedure 45 and have already been used at the Court's direction in response to other third party discovery in this case. *See, e.g.*, Dkt. # 556, Order on Motion to Enforce Chubb Subpoena at 8 (finding that "by requiring de-identification of certain identifying fields of information, the Court determined that privacy concerns in those records had been ameliorated").

With this background in mind, we hope we can resolve our outstanding issues on a call at [] a.m. on Tuesday, December 13th. In advance of that conversation, we wanted to share the following modifications to the document requests in the subpoena, which we believe will address a great majority of your concerns while also providing the NHL with the third party discovery it needs for the litigation.:

**Request 1:** The NHL will accept the Center's proposal to produce the Agreement between the Center and CLF, provided the Center confirms in writing that there are no other formal or informal agreements currently governing the relationship between those entities.

**Request 2:** The NHL will agree to pay for the costs of using a third-party reviewer to redact the names of individual patients, will agree to be subject to HIPAA-compliant protective order the Court has already entered, and will agree to sign an affidavit attesting that no one working on the litigation will use the information to try to identify the patient identities.

**Request 3:** The NHL will stipulate to the same proposed agreements set forth for Request 2.

**Request 4:** The NHL will agree to accept the citations to the publications offered in your December 9, 2016 letter, provided the Center confirms that all methodologies used to reach a finding that a person has CTE pathology (including any changes over time) are described in those publications.

**Request 5:** The NHL agrees to accept the citations to the publications offered in your December 9, 2016 letter, provided the Center confirms that all methodologies employed by researchers at the CTE Center for creating, staining, examining and/or analyzing sections of brains in connection with research related to CTE pathology (including any changes over time) are described in those publications.

**Request 6:** These underlying materials are crucial to understanding the pathological bases for CTE diagnoses, as well as comorbidities and other relevant information. The NHL is willing to accept de-identified copies of photographs from autopsies pursuant to the Court's protective order. The NHL also offers to pay any reasonable costs for the review and production of these



materials. If the Center's position is that it does not have control of these materials, please identify which entities the NHL should subpoena to obtain these materials.

**Request 7:** These underlying materials are crucial to understanding the pathological bases for CTE diagnoses, as well as comorbidities and other relevant information. The NHL is willing to accept de-identified, digitized copies of slides from autopsies pursuant to the Court's protective order. It will pay reasonable costs for the review and production of these materials. If the Center's position is that it does not have control of these materials, please identify which entities the NHL should subpoena to obtain these materials.

**Request 8:** In the earlier production, you provided materials related to the autopsy of Larry Zeidel. Please confirm that this production reflects the results of a search of all computer files, emails, and hard copy files for materials related to a finding or assertion that his "CTE pathology was caused by concussions and/or subconcussive blows sustained while playing hockey." Because plaintiffs' complaint, class certification motion, and other arguments involve other hockey players and athletes from other sports, materials responsive to 8(b) and 8(c) also are relevant. For any athletes or hockey players for whom the Center does not have medical releases, the NHL is willing to accept de-identified materials from the findings of those autopsies pursuant to the Court's protective order. As noted previously, the NHL has offered to pay reasonable costs for the review and production of these materials.

**Request 9:** The NHL will agree to accept the citations to the publications offered in your December 9, 2016 letter, provided the Center confirms that these citations include all descriptions of the Center's work describing the "biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes and concussions and/or subconcussive blows that occurred while playing hockey or other contact sports" (including any changes in such theories over time).

**Request 10:** The NHL will agree to accept the citations to the publications offered in your December 9, 2016 letter, provided the Center confirms that these citations include all descriptions of the Center's "methodology [] use[d] to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes were caused by concussions and/or subconcussive blows sustained while playing hockey or other contact sports (including any changes in such methodologies over time).

**Request 11:** In the earlier production, you provided materials related to the autopsy of Larry Zeidel. Please confirm that this production reflects the results of a search of all computer files, emails, and hard copy files for materials related to a finding or assertion that his "CTE pathology caused any clinical symptoms Zeidel purportedly experienced." Because plaintiffs' complaint, class certification motion, and other arguments involve other hockey players and athletes from other sports, materials responsive to 11(b) and 11(c) also are relevant. For any athletes or hockey players for whom there are not medical releases, the NHL is willing to accept de-identified materials from the findings of those autopsies pursuant to a protective order. It will pay reasonable costs for the review and production of these materials.

**Request 12:** The NHL will agree to accept the citations to the publications offered in your December 9, 2016 letter, provided the Center confirms that these citations include all

descriptions of the Center's work describing the "biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel, other hockey players, including NEIL Players, or other athletes and any clinical symptoms those players purportedly experienced" (including any changes in such theories over time).

**Request 13:** The NHL will agree to accept the citations to the publications offered in your December 9, 2016 letter, provided the Center confirms that such citations include all descriptions of the Center's "methodology [] use[d] to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes caused any clinical symptoms those players purportedly experienced" (including any changes in such methodologies over time).

**Request 14:** These underlying materials are crucial to understanding the pathological bases for CTE diagnoses, as well as comorbidities and other relevant information. Because plaintiffs' complaint, class certification motion, and other arguments involve other hockey players and athletes from other sports, materials related to all athletes autopsied at the Center are relevant to this litigation. The NHL agrees to pay the reasonable costs of using a third-party reviewer to redact the names of individualized patients for whom there is no authorized medical release, to be subject to a HIPAA-compliant protective order, such as that already entered by the Court, and to sign an affidavit attesting that no one working on the litigation will use the information to try to identify the patient identities.

**Request 15:** These underlying materials are crucial to understanding the pathological bases for CTE diagnoses, as well as comorbidities and other relevant information. Because plaintiffs' complaint, class certification motion, and other arguments involve other hockey players and athletes from other sports, materials related to all athletes autopsied at the Center are relevant to this litigation. The NHL agrees to pay the reasonable costs of using a third-party reviewer to redact the names of individual patients for whom the Center does not have a medical release, to be subject to a HIPAA-compliant protective order, and to sign an affidavit attesting that no one working on the litigation will use the information to try to identify individualized patient identities.

**Request 16:** The NHL will accept the presentation described in your December 9, 2016 letter (if it can be located). Please confirm that this and previous productions include a search of all computer files, emails, and hard copy files for responsive materials related to any meetings between employees of the Center and anyone from the NHL, NHLPA, and/or any NHL player or representative.

**Request 17:** Please confirm that your production in response to this Request reflects the results of a search of all computer files, emails, and hard copy files for relevant communications between employees of the Center and anyone from the NHL, NHLPA, and/or any NHL player or representative.

**Request 18:** The NHL will modify its request to cover only published publications. The NHL continues to request documents related to those publications, including (i) abstracts; (ii) presentations; and/or (iii) Communications between or among employees, representatives, and/or consultants of the BU CTE Center and/or other affiliated entities, including CLF, about those

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Documents, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications.

The publications referenced in Request 18 are the basis for plaintiffs' allegations about CTE and the NHL needs the requested underlying materials to prepare its defense and to understand whether the Center's work supports plaintiffs' allegations related to CTE and the Center's findings. Because a key issue in this case is the timing of when it was possible for the NHL to know about the purported risks of head injury, the NHL needs all of the Center's presentations to evaluate what was publicly being said about CTE over time. Because another key issue in this case is understanding the limitations of the Center's research (and how those limitations have evolved over time), the NHL needs the Center's presentations and communications about those publications to understand the researcher's understandings of what was known (or unknown) about CTE over time.

Because of the confidentiality concerns raised in your letter and our discussions, as we have discussed before any materials produced by the Center will be protected by a HIPAA-compliant protective order. In addition, to defray the costs of this review and production, the NHL agrees to pay the reasonable costs of an independent third party to perform an initial review of potentially responsive documents, as well as the reasonable costs of producing these materials.

**Request 19:** The NHL will modify its request to cover only published publications. Because a key issue in this case is whether the Center's research proves a causal link between head injury and clinical symptoms and/or pathology consistent with CTE, the NHL needs to understand whether peer reviewers have made inquiries about that research and how the Center's doctors have responded.

Because of the confidentiality concerns raised in your letter, any materials produced by the Center will be protected by a HIPAA-compliant protective order. Because of the potential costs associated with the review and production of these materials, the NHL agrees to pay the reasonable costs of an independent third party to perform an initial review of potentially responsive documents, as well as the reasonable costs of producing these materials.

As we can discuss on our Tuesday call, third party researchers are often required to produce similar materials to those requested here, when their research is relevant to litigation and relied upon by parties. Courts routinely use redactions, protective orders, and cost-shifting to overcome confidentiality and burden concerns. The NHL hopes we can agree to such measures and resolve our remaining issues.

Very truly yours,



Daniel J. Connolly

cc: Kristin Bittinger



Gary B. Bettman | Commissioner

October 24, 2016

Representative Frank Pallone, Jr.  
Representative Gene Green  
Representative Diana DeGette  
Representative Jan Schakowsky  
Committee on Energy and Commerce  
2322A Rayburn House Office Building  
Washington, D.C., 20515

Dear Representatives Pallone, Green, DeGette and Schakowsky,

I am writing in response to your October 6, 2016 letter requesting information about National Hockey League (“NHL”) policies and procedures relating to concussions.<sup>1</sup>

The health and safety of NHL players is a top priority for the NHL, its member Clubs and the National Hockey League Players’ Association (“NHLPA”). Head injuries, including concussions, are an important subject and receive serious attention from both the NHL and NHLPA. Primarily through collectively bargained rules, policies and other measures, the NHL and NHLPA jointly seek to reduce the risk of head injuries while preserving the core physicality of the sport, which is an essential attribute of the game itself. Indeed, for almost two decades, the NHL and NHLPA have worked closely together—through the NHL/NHLPA Concussion Program—to jointly promote the health and safety of all NHL players.

Your letter requests information concerning the NHL’s policies and procedures regarding concussions. We address those requests below.

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<sup>1</sup> As you may recall, Deputy Commissioner Daly testified in March 2014 before the Subcommittee on Commerce, Manufacturing and Trade and subsequently answered additional questions posed by Subcommittee Members. We attach copies of Mr. Daly’s prepared statement and subsequent written responses as Appendix A for your convenience.

***1. News reports indicate that the NHL plans to release a new concussion protocol for the 2016-2017 season. Please provide the new concussion protocol, and explain how it differs from the previous protocol. Who is responsible for implementing and enforcing the concussion protocol during practices and games? What is the penalty if a team fails to enforce the concussion protocol?***

**The 2016-17 Concussion Protocol.** As you correctly note, a newly revised Concussion Protocol has been implemented for the 2016-17 NHL season. (As requested, a complete copy of the Concussion Protocol is attached to this letter as Appendix B.) As you also correctly note, certain changes have been made to the Concussion Protocol.<sup>2</sup> The key modifications that are included in the 2016-17 Concussion Protocol are: (1) the addition of Central League Spotters to the Concussion Spotter Program; (2) the empowering of on-ice officials to mandate the removal of a player for concussion evaluation; (3) the adoption of a policy barring any player designated for mandatory evaluation from re-entering the game unless and until he is evaluated by his Club's medical staff and cleared to play in accordance with the Concussion Protocol; and (4) the formal implementation of specified sanctions for non-compliance with the Concussion Protocol.

***First***, we have enhanced the Concussion Spotter Program.

Under the Concussion Protocol, it remains each individual Club's responsibility to identify players who display one or more visible signs of concussion that require removal from play and evaluation for possible concussion.<sup>3</sup> The Concussion Spotter Program provides Clubs additional support to help to identify players who require such an evaluation under the NHL/NHLPA Concussion Protocol.

Last season, a Club had the option to designate its own spotter or to rely on an "In-Arena League Spotter"—an off-ice official employed by the League whose sole responsibility during a game was to watch the game live (with access to video) and notify the Club if he or she observes a player who exhibits visible signs of concussion under the Concussion Protocol. This season, we have enhanced the Concussion Protocol to provide for "Central League Spotters"—a new staff of certified athletic trainers hired by the League who have clinical experience working in

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<sup>2</sup> The League's first formal and comprehensive Concussion Protocol was issued in 2010 and constituted a written memorialization of existing League-wide practices for concussion evaluation and management that were developed over time through the NHL/NHLPA Concussion Program. The Concussion Protocols, like the League-wide practices developed prior to the first Concussion Protocol, have been subject to modification to track the evolving recommendations issued after each of the International Conferences on Concussion in Sport held in 2001, 2004, 2008 and 2012.

<sup>3</sup> As set forth in the Concussion Protocol, a player must be removed from play if he manifests certain visible signs of concussion, include lying motionless on the ice, motor incoordination/balance problems, a blank or vacant look, and, following certain mechanisms of injury, being slow to get up and clutching the head. In addition to spotters, team physicians, trainers/therapists, coaches, players and officials also help identify players who display visible signs of concussion.

elite-level hockey—who will monitor every game via television broadcast from the NHL Department of Player Safety room in New York.<sup>4</sup> Central League Spotters are authorized to require a player's removal from play for evaluation for a concussion if he displays visible signs of concussion that require a mandatory removal, following a direct or indirect blow to the head. In-Arena League Spotters (and on-ice officials, as described below) will complement the Central League Spotters and will continue to monitor play for visible signs of possible concussion. While Central and In-Arena League Spotters will be able to communicate freely with one another during games, it will be the Central League Spotter's responsibility to communicate with the Club's medical staff if he or she concludes that a player requires removal and evaluation under the Concussion Protocol.

*Second*, given the proximity of on-ice officials to the players, the NHL and NHLPA determined that officials are well-positioned to observe visible signs and to mandate the removal of players who require an evaluation. Accordingly, this season's Concussion Protocol adds yet another level of observation and empowers on-ice officials (along with the Central League Spotters) to require a player's removal for evaluation if they observe a player displaying certain visible signs of a possible concussion under the Concussion Protocol, following a direct or indirect blow to the head.

*Third*, if a player has been designated for mandatory evaluation following identification of a visible sign by a Central League Spotter, an on-ice official or team personnel, the player will not be permitted to re-enter the game unless and until he is evaluated by his Club's medical staff and cleared to play in accordance with the Concussion Protocol.

*Fourth*, this season's Concussion Protocol provides that Clubs that violate the Protocol will be subject to a mandatory minimum fine of \$25,000 for a first offense, with substantially increased fine amounts for any subsequent offenses.

### **Implementation and Enforcement of the Concussion Protocol.**

Numerous people are involved in the implementation and enforcement of the Concussion Protocol.

*First*, with regard to *identification of possible concussions*, many individuals share responsibility for identifying a possible concussion, including team athletic trainers, team physicians, coaches and players. (During games, as explained above, additional support is provided by In-Arena League Spotters, Central League Spotters and on-ice officials.) All of these individuals have received training on the visible signs of concussion in the Concussion Protocol.

Once a player is identified as displaying one or more visible signs of a possible concussion requiring mandatory removal, the Club must remove the player from the playing

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<sup>4</sup> In 2011, the NHL created the Department of Player Safety, the first league department of its kind in professional sports, that, among other things, monitors every regular season and playoff game and assesses every hit for compliance with NHL playing rules.

environment, and medical personnel must evaluate him for a concussion. Even absent *visible signs* of a possible concussion, if a player exhibits or reports any *symptom* of a possible concussion, the Concussion Protocol requires that he be removed from the playing environment and evaluated by Club medical personnel.<sup>5</sup>

*Second*, with regard to *evaluation of possible concussions*, the team physician and/or team athletic trainer/therapist (and when reasonably possible, together) must conduct the evaluation of a player suspected of having a concussion in a distraction-free environment (away from the playing area) using an acute evaluation tool (the NHL and NHLPA currently mandate that Clubs use the “NHL SCAT3”).<sup>6</sup> And to be clear, in all circumstances, before a player returns to play, the Concussion Protocol mandates that the team physician assess the player in person and is solely responsible for determining whether the player is diagnosed as having a concussion. That requirement is not new. Since the NHL and NHLPA began their Concussion Program in 1997, a cornerstone of the Program has been the principle that a team physician is responsible for making the ultimate concussion diagnosis. (Indeed, team physicians bore this responsibility even prior to the implementation of the Concussion Program.)

In this respect, the statements in your letter that the “NHL relies heavily upon players to self-report concussion symptoms rather than proactively assessing and monitoring player health” and that the NHL does not require a physician to diagnose a concussion, are both incorrect. While the Concussion Protocol does place an important emphasis on players reporting symptoms of a possible concussion (and provides extensive education to players on this issue), as described above there are many League and Club professionals who are charged with looking for objective visible signs to identify possible concussions.

*All diagnoses* regarding concussions in the NHL, however, are made by team physicians, which to be sure often involve important input from the player. Unlike other injuries, such as a broken bone, a concussion cannot be diagnosed based on medical imaging, such as an x-ray, a CT scan or an MRI. There are some circumstances in which a player may not display any observable sign of a possible concussion or demonstrate impairment upon completing a standardized evaluation, but may still have suffered a concussion in light of the mechanism of injury and the player’s report of symptoms. In all circumstances, but particularly in this scenario, a player’s report of his symptoms experienced (whether immediately or in a delayed-onset scenario) is critical to the team physician’s ability to detect and diagnose a concussion.

Finally, education is an essential component of the Concussion Program. Both the NHL and NHLPA recognize that NHL players are fiercely competitive and often want to return to play as soon as possible. This, in part, is why the NHL and NHLPA have, for many years, developed

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<sup>5</sup> As set forth in the Concussion Protocol, such symptoms include headache, dizziness, balance or coordination difficulties, nausea, amnesia for the circumstances surrounding the injury (i.e., retrograde/anterograde amnesia), cognitive slowness, light/sound sensitivity, disorientation, visual disturbance and tinnitus.

<sup>6</sup> NHL SCAT3 is a standardized assessment tool developed and used by NHL medical professionals as part of an evaluation for a possible concussion.

educational initiatives intended to explain to players the seriousness of concussions, the need to inform the Club medical staffs of their symptoms and the importance of ensuring those symptoms fully resolve before returning to play. (Indeed, it is now not uncommon for players to report concerns about other players displaying signs of a possible concussion.)

**Penalties for Failure to Enforce the Concussion Protocol.** Compliance with the Concussion Protocol is a serious issue and is treated as such. As mentioned above, the NHL implemented a mandatory schedule of fines this season, starting with fines of \$25,000, in part because we believe our Concussion Protocol and Concussion Program have evolved to the point where mandatory fines are the most appropriate way to deal with non-compliance.<sup>7</sup>

*2. How does the NHL document diagnosed concussions—both in games and in practices? What is the average length of time a player diagnosed with a concussion is benched before returning to play? How is a player diagnosed with a concussion monitored over time? What precautions are taken to limit the risks of a subsequent head injury?*

**Documentation of Diagnosed Concussions.** Club medical staffs have the responsibility to document and track concussions during games and practices via a comprehensive, League-wide electronic medical record system (the Athlete Health Management System or “AHMS”).<sup>8</sup> Records are created and maintained by team athletic trainers/therapists and physicians.

**Average Length of Time Before Return to Play.** The Concussion Protocol prohibits same-day return to play for players diagnosed with a concussion, as recommended by the most recent Consensus Statement on Concussion in Sport issued in 2013. Since the 2013-14 season, the Concussion Protocol has expressly provided that “[a] player who is diagnosed with a concussion shall not return to practice or a game on the same day that the event occurred.” Thus, your suggestion that the NHL’s “Concussion Protocol has ‘no mandatory period of time that a player must be withheld from play following a concussion’” takes part of the Concussion Protocol out of context.<sup>9</sup>

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<sup>7</sup> Prior to this season, when questions of compliance with the Concussion Protocol arose, League personnel regularly followed up with Club medical staff and requested an explanation of the circumstances surrounding the events in question. In many cases, these follow-ups provided important context for why an incident was handled in a certain fashion, and historically this feedback has been used to further refine the Concussion Protocol. While Club fines also were used as an enforcement tool in recent years, such fines generally were discretionary and based on the particular circumstances involved in each case.

<sup>8</sup> The NHL was the first professional sports league to adopt a league-wide electronic medical records (“EMR”) system for tracking player injuries. EMR systems are now the gold standard for injury tracking in professional sports.

<sup>9</sup> Your statement that Major League Baseball (“MLB”) “places players diagnosed with concussions on a mandatory seven-day disabled list” also should be clarified. MLB’s Collective Bargaining Agreement provides that Clubs *may* place players on a seven-day disabled list, but notes that “the Club, in consultation with the [Certified Athletic Trainer] and the Club Physician,  
(cont’d)



The 2013 Consensus Statement recognizes that, after that mandatory time period, a one-size-fits-all approach to return to play is not appropriate, and return-to-play decisions necessarily “remain in the realm of clinical judgment on an individualized basis.” Accordingly, under the Concussion Protocol, after the player has sat out for at least one day, the player only may return to play once the team physician determines that three criteria are satisfied: (1) the complete absence of symptoms while at rest; (2) no emergence of symptoms upon exertion; and (3) a determination that the player has returned to baseline following post-injury neuropsychological testing.

Relevant data, as well, reflects the careful approach to return-to-play decisions by team physicians. The mean time loss for NHL players diagnosed with a concussion before being cleared to play was 20 days during the 2015-16 season. The median time loss due to concussion before being cleared to play was 9 days during that same season.<sup>10</sup>

**Concussion Monitoring and Precautions.** As described in detail below, the procedures for monitoring concussed players and the precautions taken to limit the risks of a subsequent head injury are interrelated: Clubs monitor players diagnosed with a concussion to ensure their symptoms have fully resolved both at rest and upon exertion; and these same precautions also limit the risks of a subsequent head injury. Likewise, a player may not return to play until he has returned to his neurocognitive baseline (as detailed below), which again is both an important monitoring procedure and precautionary measure.

In practical terms, the process works as follows: After a player sustains a concussion (or it is suspected that a concussion was sustained), Club medical staff monitors and evaluates the player over the following days. Consistent with established guidelines for concussion management, for players diagnosed with a concussion, the first step is simply for the player to rest until his acute concussion symptoms resolve. A player whose symptoms have resolved at rest must next complete a graded progression of increasingly more strenuous levels of exertion. A trainer oversees this progression and monitors the player’s symptoms. If symptoms re-emerge, the player discontinues that level of activity and returns to a period of rest and, when he is able, starts the progression again.

Once acute symptoms of concussion have resolved at rest and with exertion, additional tools are employed to monitor when the player is ready to return to play. One important tool Club medical staffs employ in this regard is neuropsychological testing. Before the beginning of the regular season, team neuropsychologists perform neuropsychological testing on each player in his normal, asymptomatic state to establish each player’s “baseline” neuropsychological test

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will determine ***if the concussed Player should be placed on a Disabled List (“DL”), and if so, which one.***” (emphasis added).

<sup>10</sup> The injury time loss is calculated for the season in which players are injured (i.e., up to June 30), to allow for valid comparisons of time loss from season to season. Approximately 5% of players who have suffered concussions accrue days lost beyond the end of the season in which their concussions occurred.

score. If a player is diagnosed with a concussion, the team neuropsychologist repeats the test once the player's symptoms have resolved at rest to establish a post-injury score. The neuropsychologist then compares the two test results to assess whether an injured player has returned to his cognitive baseline. The test results become part of an overall assessment by the team physician, in consultation with the team neuropsychologist and the player, on when a player may be cleared to return to play.<sup>11</sup> If the post-injury neuropsychological test indicates that the player has not yet returned to baseline, the test will be repeated later during the player's recovery. As Mr. Daly explained in his 2014 testimony, the NHL's Concussion Program confirmed that neuropsychological testing—which had not previously been validated as a useful tool in making return-to-play decisions—in fact provides additional important information regarding a player's cognitive functioning and, therefore, is a proper factor to consider in determining a player's readiness to return to play.

Finally, concussion management also has been greatly enhanced through a "Second Medical Opinion List," which gives NHL players paid access, at their discretion, to an agreed-upon list of leading concussion experts and neurologists/neurosurgeons to review the player's diagnosis and/or course of treatment. This extra layer of concussion management and treatment was formalized in the most recent NHL/NHLPA Collective Bargaining Agreement and builds upon a preexisting "Second Opinion Network." Players also have (and have had since before the beginning of the Concussion Program) the ability to seek another opinion from their own doctors if they want to review the fitness-to-play decision made by a Club doctor. Many players have taken advantage of these additional resources, including with respect to return-to-play decisions.

***3. What recent rule changes have been implemented to reduce the risk of head injury? What was the impetus behind the 2013-2014 rule change, which created the Game Misconduct category of penalties, requiring players who incur two misconducts—such as charging, elbowing, or head-butting—to be automatically suspended for one game?***

**Recent Rule Changes.** In recent years, the NHL and NHLPA have implemented several rule changes to reduce the incidence of head injuries, including concussions. The primary rule change, which you address in your question five below, was Rule 48, which penalizes illegal checks to the head. Rule 48 currently penalizes "hits resulting in contact with an opponent's head where the head was the main point of contact and such contact to the head was avoidable." Rule 48 was first implemented in 2010 and has been revised on several occasions since its original implementation. (Because you specifically address Rule 48 in question five, it is discussed it in greater detail in response to that question.)

In addition, effective with the start of the 2011-12 season, the NHL and NHLPA changed the Boarding rule to punish contact initiated against the boards and glass that could have been avoided or that was made against defenseless players, further reducing the risk of possible injury, including head injury, resulting from contact with the barriers to the playing surface. More recently, effective with the commencement of the 2013-14 season, the NHL and NHLPA agreed

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<sup>11</sup> The NHL and NHLPA adopted mandatory, League-wide neuropsychological testing for all NHL players commencing with the 1997-98 season. This program was the *first* of its kind in professional sport and has been a model for other professional sports leagues.

to change the League's historic "Icing" rule (requiring a touch of the puck by a retreating defensive player) to what has become known as a "Hybrid Icing" rule (allowing an official to make an Icing call prior to the defensive player actually touching the puck along the end boards). This rule change was designed specifically to reduce the risk of injury resulting from the potentially dangerous collisions into the boards between players racing for the puck on Icing plays. The NHL and NHLPA also negotiated rules for the 2013-14 season mandating the use of properly affixed face visors and penalizing any player who removes his helmet prior to engaging in a fight, both in an effort to improve player safety.

Finally, the NHL—with the NHLPA's involvement and consent—over the years also has increased the frequency and length of suspensions imposed for many types of dangerous hits through supplemental discipline. The imposition of supplemental discipline involves a collectively-bargained process that provides, among other things, that a suspended player must forfeit a portion of his salary, which can cost a player tens of thousands of dollars (and in some cases, hundreds of thousands of dollars).<sup>12</sup> The NHL believes that supplemental discipline helps to deter player conduct that is dangerous and otherwise inconsistent with the physical contact permitted in NHL hockey and that supplemental discipline, in particular, has been an effective tool to deter, and discipline players for, dangerous contact involving another player's head.<sup>13</sup>

As Mr. Daly explained in his 2014 testimony, enforcement of the rules and the imposition of supplemental discipline to reduce the risk of head injury are tasks entrusted to the Department of Player Safety, which monitors every regular season and playoff game and assesses every hit to ensure proper enforcement of these rules. This enforcement mechanism is yet another example of how the NHL and the NHLPA have been at the forefront in professional sports regarding efforts to reduce the risk of head injuries in our game.

**Change to Game Misconduct Penalties.** Your question also addresses a change to Game Misconduct penalties. Currently, if a player receives two Game Misconduct penalties within 41 games (i.e., half the NHL regular season), he is automatically suspended for one game, with the potential for additional supplemental discipline. Automatic suspensions for multiple Game Misconduct penalties predate the rule change referenced in your inquiry by many years.

Although your letter notes this rule changed for the 2013-14 season, the change you mention actually first took effect with the 2014-15 season. The rule change that created the "Physical Fouls" Game Misconduct Category was merely a reorganization of existing game

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<sup>12</sup> The forfeited money is placed in a collectively bargained Emergency Assistance Fund, which is used primarily for the benefit of retired NHL players in need.

<sup>13</sup> By the 1996-97 season, the NHL (with the NHLPA's involvement and consent) had applied a supplemental discipline standard to punish illegal hits in which a player intentionally directed contact to an opponent's head. And, effective with the commencement of the 2000-01 season, the NHL enumerated specific acts that would give rise to more severe discipline than in past seasons, including blows delivered to the head forcefully by a deliberately raised elbow, forearm or stick, as well as hits from behind. Beginning with the 2007-08 season, the NHL emphasized it would further increase supplemental discipline for such hits when directed at the heads of unsuspecting, vulnerable players.

misconduct penalties that were already part of our playing rules; no new Game Misconducts were created at that time. The impetus for the realignment of game misconduct penalties and the ultimate creation of a “Physical Fouls Category” reflected an effort to group together similar infractions so that they would carry similar consequences. For example, Boarding and Charging are similar penalties, but they were in different “Categories” of game misconduct treatment prior to the rule change. This change was made solely for the purpose of allowing better consistency in rule application.

***4. The NHL implemented the instigator rule in 1992, later amended in 1996, which levies a two-minute minor, a five-minute major, and a ten-minute misconduct penalty to a player deemed to be an instigator of a confrontation by the rule’s standards. The penalty also requires “[a] player who is deemed to be the instigator of an altercation in the final five (5) minutes of regulation time or at any time in overtime” to be “suspended for one game” pending review. What motivated the changes to the fighting rules?***

For background purposes, we note that fighting, though always penalized, has been a frequently discussed and debated topic both within the League office and between the NHL and the NHLPA. There also has been long-standing debate among various League personnel (as well as fans and the media) with respect to the role of fighting in the game. One view, shared by many current and former NHL players, is that some types of fights are important to protect “skilled players” from being targeted by more aggressive opponents, because any such “targeting” activity is best “policed” by the threat of physical retribution from a targeted player’s teammate. Another view is that fighting should result in automatic disqualification from the game, although those holding this view agree that even such a rule change cannot and would not eliminate fighting completely.

For its part, the NHLPA has consistently maintained that the rules regarding fighting in the game are terms and conditions of employment and, therefore, are mandatory subjects of collective bargaining. The NHLPA has generally supported the view that fighting, as currently penalized, continues to provide an important self-policing mechanism that may help avoid more serious player injuries from the potential increased use of violent stickwork or other aggressive play (particularly when directed at skilled players) that may result if fighting were more stringently penalized.

Against this backdrop, the NHL and the NHLPA have worked together to establish rules and penalties that generally deter fighting and reduce the potential for serious injury. Examples of the changes the NHL and NHLPA have agreed upon over time include changes to the instigator rule, as well as rules designed to prevent bench-clearing brawls and rules prohibiting a “third man” from engaging in an ongoing fight between two other players.<sup>14</sup>

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<sup>14</sup> The NHL had proposed implementing more significant penalties for so-called “staged fights” (fights initiated immediately following a face-off without any clear provocation, as opposed to spur-of-the-moment altercations). The initiative has never gained the requisite NHLPA support required under the Collective Bargaining Agreement for implementation. Any  
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Your letter specifically requests information about changes to the instigator rule, which itself has been the subject of debate reflective of the larger discussion regarding the role of fighting in the game more generally. While the instigator rule, which has been in effect for almost 25 years, has helped to achieve its goal of reducing the incidence of fighting overall, and minimizing fighting incidents resulting from one player being the clear aggressor, it still gives rise to concerns about other, unintended consequences. Following implementation of the rule, and even in recent years, players have sporadically expressed concerns that the instigator rule inadvertently increases “cheap shots,” including hits to the head, because players were more reluctant to “police” dangerous behavior on the ice, as doing so carried a risk of more severe on-ice penalties. Indeed, the NHLPA, responding to the wishes of many players, has over time raised the possibility of potentially reducing the severity of—or even eliminating—the instigator penalty. Players have expressed concerns that the instigator rule has reduced the role of “self-policing” in the game and prevents players from coming to the defense of their teammates, which in turn potentially increases the number of targeted head hits in the game. Thus, while the instigator rule remains in the game, it illustrates the complicated considerations involved in any rule change of this type.

Ultimately, the NHL and NHLPA’s approach to the game and player safety has decreased fighting significantly in recent years, and relatively few concussions actually result from fighting. For example, independent of the continuing debate over the instigator rule, fighting has been reduced in part by NHL/NHLPA negotiated rules that mandate the use of face visors and penalize the removal of player helmets prior to engaging in a fight. Both rules enhance player safety and have helped significantly reduce the overall amount of fighting in NHL hockey in recent years. The following statistics are illustrative:

- Fighting is at an all-time low in the modern game with 76% of all regular-season games being fight free;
- Major penalties for fighting have declined by 37% since the 2011-12 season; and
- In the 2014-15 NHL regular season, only 2% of video-analyzed concussions resulted from fighting (i.e., two total concussions).

***5. In 2011, Rule 48 was broadened to prohibit illegal hits to the head. The rule defines such hits as those “resulting in contact with an opponent’s head where the head was the main point of contact and such contact to the head was avoidable.” What led the NHL to impose more stringent penalties regulating head contact?***

In 2011, the NHL, with the NHLPA’s consent, expanded Rule 48 to impose on-ice penalties for a broader group of conduct that involves contact to the head. Previously, Rule 48 had been introduced after a video analysis of concussions generated under the auspices of the

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discussion of “staged fighting,” however, is becoming increasingly academic, as the number of such fights in the NHL is at an historic low.

Concussion Program revealed that a disproportionate number of concussions occurred following lateral and blindside hits to the head. That analysis influenced the NHL and NHLPA's decision in March 2010 (during the season) to declare certain types of head hits illegal, by authorizing the imposition of supplemental discipline for lateral and blindside hits targeting an opponent's head. Because of the challenges associated with instructing players and officials regarding a mid-season rule change, the NHL, with the NHLPA's consent, decided to wait until the beginning of the 2010-11 season to formally authorize on-ice penalties under Rule 48 for lateral, blindside head hits.

After a full season (2010-11) of experience with the original version of Rule 48, prior to the 2011-12 season, the NHL and NHLPA made the decision to broaden Rule 48 beyond lateral and blindside hits—primarily with the intention to provide an easier standard for officials to enforce and players to follow. The modified Rule 48 prohibited hits resulting in contact with an opponent's head “where the head is targeted and the principal point of contact.” The new standard continued to remove the more potentially dangerous hits from the game and removed the need for any inquiry as to whether a hit was delivered laterally or from the blindside. Prior to the 2013-14 season, Rule 48 was amended again to prohibit hits to an opponent's head “where the head was the main point of contact and such contact to the head was avoidable.” This language, quoted in your letter, did not change the enforcement standard embodied in the 2011-12 version of the rule; it simply altered Rule 48's language to more clearly reflect the enforcement standard that had been developed over time and was currently being applied.

In sum, we firmly believe Rule 48 has had a significant and beneficial impact on the culture of NHL hockey and the way the game is played, with a net result that concussions caused by what is deemed to be intentional contact directed at an opponent's head have decreased notably. While direct hits to the head—from all types of play—accounted for 62% of all video-analyzed concussions in the 2010-11 season, that percentage dropped to 29% for the 2014-15 season.

***6. What new programs, initiatives, and protocols is the NHL considering for the 30 NHL teams to protect players from the risks of repetitive head trauma? What new programs, initiatives, and protocols is the NHL considering for its affiliated development leagues, the AHL and ECHL, to protect minor league players from the risks of repetitive head trauma?***

The NHL/NHLPA Concussion Program has continually evolved since its inception in 1997. It began as the result of the NHL Team Physicians Society's efforts to identify a common definition of concussion, as well as how concussions best could be treated in the context of managing a player's return to play. As noted above, the NHL, NHLPA and their respective medical experts have modified the Concussion Program and Concussion Protocol over time consistent with the current state of medical knowledge. Accordingly, there consistently have been new initiatives evaluated and considered for use in the NHL, and the Concussion Protocol has continued to evolve.

For example, over the years, the Concussion Program has investigated new diagnostic approaches and helped implement equipment and environmental changes to improve player safety, including changes to elbow pads and shoulder pads and changes to the boards and glass. And the Concussion Program continues to pursue various initiatives to ensure that the NHL

remains a leader in adopting player-safety measures consistent with the developing science in this field.

As to the portion of your question regarding the AHL and ECHL, these leagues have their own governing bodies, separate from the NHL, which perform the same functions the NHL's league office performs for NHL hockey. From time to time, when asked, the NHL has shared its concussion policies and procedures with other professional hockey leagues, including the AHL, but the NHL is neither directly affiliated with either league nor does it control the AHL or ECHL concussion programs, initiatives or protocols.

***7. How does the NHL work with youth hockey leagues to ensure players and parents understand the risks posed by the game? Does the NHL provide any training or guidance to parents and coaches on how to prevent and treat head injuries?***

The NHL and NHLPA for many years have undertaken efforts aimed at educating parents and youth players about the risks of head injuries and concussions in hockey.

For example, the NHL and NHLPA have contributed to several videos illustrating the potential dangers of concussions and recommending the best ways to play the game of hockey safely. In 2001, the NHL and NHLPA sponsored Dr. Charles Tator and ThinkFirst Canada in creating an educational video titled, "Smart Hockey: More Safety, More Fun." The video provides advice for hockey players of all ages (from youth players to "old-timers"), as well as advice for coaches, referees, trainers, instructors and parents. In the video, the narrator states that "[t]he worst thing a concussed player can do is to return to play before he or she is fully recovered. In fact, it is very risky to that player's long-term health." The video features six tips to avoid injury, six tips to avoid causing injury and a segment on the role played by coaches, referees and rules to ensure safe hockey. (In 2013, the NHL and NHLPA also endorsed a video by Parachute, the successor organization to ThinkFirst Canada, on the same subject.)

In 2008, the NHL and NHLPA, along with the National Academy of Neuropsychology, created a video to educate hockey players at all levels about concussions, entitled "Concussions in Hockey: Signs, Symptoms and Playing Safe!" The video, which features former NHL players Eric Lindros, Pat LaFontaine and Mike Modano (among others), addresses common signs and symptoms of concussions, warns players not to play through a concussion, stresses that youth athletes should be treated more cautiously and discusses recovery and return to play. It has been shown to NHL players and distributed to numerous youth hockey organizations.

In recent years, the NHL also has supported federal and state legislative efforts designed to establish concussion safety guidelines, create appropriate concussion management techniques and standards for student athletes, and increase concussion education for student athletes, as well as their parents and coaches. The League also has supported legislation prohibiting deceptive or fraudulent claims made with respect to the safety benefits of sporting equipment.

In addition, the League has supported and assisted in the development of concussion educational programs for youth and junior age hockey players. Pursuant to an agreement with the Canadian Hockey League, the NHL and its member Clubs agreed to finance and support the Ontario Hockey League's, Quebec Major Junior Hockey League's and Western Hockey

League's development of comprehensive concussion education programs focusing on diagnosis and treatment of concussions, as well as highlighting both the importance of players reporting symptoms and the dangers of head injuries generally.

NHL and NHLPA medical consultants also have contributed to all four Consensus Statements on Concussion in Sport, which have helped to establish the international consensus on guidelines and best practices for concussion management generally, with additional recommendations specifically for youth hockey.

The NHL will continue to look for opportunities to assist youth hockey organizations to make sure all hockey players understand the risks of head injuries and take appropriate steps—for the age of the participants involved—to prevent, identify and treat injuries when they do occur.

\* \* \*

Finally, we note that your letter cites articles discussing some recent research regarding the potential long-term effects of concussions, including research surrounding the brain pathology called CTE. As we have described before, the medical community believes CTE research is both relatively new and very much still developing, and we appreciate that your letter also acknowledges the evolving nature of this research. Indeed, as you are likely aware, the most recent Consensus Statement on Concussion in Sport concluded that ***“the speculation that repeated concussion or sub-concussive impacts causes CTE remains unproven.”***<sup>15</sup> Likewise, the “2015 Consensus Document” you cite itself highlights that there are many “gaps” in the CTE research, including that: (1) “[n]o evidence is currently available to show a causal link between repetitive subconcussive head impacts in youth and dementia later in life . . .”; (2) “[t]he prevalence and incidence of CTE in amateur and professional athletes is still unknown, adding to difficulties in discussing its epidemiology and population risks for athletes”; and (3) “[o]ur current lack of understanding of the basic biological underpinnings of . . . CTE underscores the need for more research.”<sup>16</sup> Moreover, one of the cited articles explains that “multiple other biological mechanisms” might trigger the CTE pathology, “including inflammation, glutamate excitotoxicity, and oxidative stress [which are] contributions to the molecular cascade in CTE [that] remain to be explored.”<sup>17</sup> And, unsurprisingly, another article cited in your letter readily

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<sup>15</sup> *Consensus Statement on Concussion in Sport—the 4th International Conference on Concussion in Sport, Held in Zurich, November 2012*, 23 CLINICAL J. OF SPORT MED. 89, 97 (2013) [http://journals.lww.com/cjsportsmed/Fulltext/2013/03000/Consensus\\_Statement\\_on\\_Concussion\\_in\\_Sport\\_the\\_4th.1.aspx](http://journals.lww.com/cjsportsmed/Fulltext/2013/03000/Consensus_Statement_on_Concussion_in_Sport_the_4th.1.aspx) (emphasis added).

<sup>16</sup> A.J. Carman, et al., *Mind the gaps—advancing research into short-term and long-term neuropsychological outcomes of youth sports-related concussions*, 11 NAT. REV. NEUROL. 230, 232-33 (Apr. 2015).

<sup>17</sup> Ann McKee, et al., *TDP-43 Proteinopathy and Motor Neuron Disease in Chronic Traumatic Encephalopathy*, 69 J. NEUROPATHOL EXP. NEUROL. 918, 927 (Sept. 2010).



concedes that “[i]t remains to be determined if the brain changes [of the CTE pathology] *produce any observable effects on behavior or cognition of the former athletes.*”<sup>18</sup>

Please be assured that medical consultants for both the NHL and NHLPA follow the research closely and have done so for many years in conjunction with the NHL/NHLPA Concussion Program. Indeed, beginning in September 2010 (following soon after the report that Reggie Fleming had become the first former NHL player found to have some level of CTE after his death), NHL and NHLPA representatives have met on several occasions with researchers from the Boston University CTE Center, who have spearheaded some of the early CTE research (including the findings with respect to Mr. Fleming). And, of course, NHL and NHLPA medical consultants regularly attend the International Conferences on Concussion in Sport, including the most recent one held in Zurich in 2012, which collected and discussed the most recent research relating to CTE. NHL and NHLPA representatives will also be in attendance when the Fifth International Conference on Concussion in Sport convenes in Berlin this week.

Importantly, in addition to monitoring the research concerning potential long-term effects of concussions, NHL and NHLPA representatives each brief their respective constituencies about the state of CTE research, among other developments. Most notably, beginning as early as 2011, the NHLPA and its medical consultants, Drs. John Rizos and Jeffrey Kutcher, conducted in-person information sessions with players on each Club to educate them about the potential long-term effects of concussions. It is my understanding that these educational sessions have continued and, most recently, the NHL and NHLPA jointly developed an educational video to be shown at training camp to all players and a brochure that provides information to players and their families, each of which addresses the status of CTE research.<sup>19</sup>

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<sup>18</sup> Kevin Punskey, *Evidence Suggests Amateur Contact Sports Increase Risk of Neurodegenerative Disorder*, Mayo Clinic News Network (Dec. 2, 2015) (emphasis added).

<sup>19</sup> The 2015 video states:

Narrator: “Some researchers have suggested a relationship exists between head impact in sport and CTE. Other researchers and international bodies state that a causal link between head impacts in sport and CTE has not been established. However, researchers agree that further study is needed to fully understand what relationship may exist between the two.”

Dr. Kutcher (NHLPA medical consultant): “At this stage of our understanding, our scientific understanding of CTE, we do not have a clear understanding of the precise risk factors, the precise things that go into defining who is at risk.”

Narrator: “The key is to become educated. Talk with trusted medical experts about CTE and other possible long-term consequences of head injuries.”

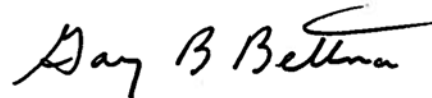
The brochure states:

- Chronic Traumatic Encephalopathy (CTE) is an abnormality that has been identified in some individuals following brain autopsy. However, how and if this condition manifests itself in living persons is unknown.

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In conclusion, the NHL and its member Clubs, together with the NHLPA, have and will continue to dedicate substantial time and resources to improving the detection, diagnosis and treatment of concussions; educate NHL players regarding concussions and the accurate reporting of head injuries; and work to reduce concussions and other injuries among NHL players.

Sincerely,

A handwritten signature in black ink that reads "Gary B Bettman". The signature is written in a cursive style with a long horizontal flourish at the end.

Gary B. Bettman

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- Some researchers have suggested that head impacts in sport cause CTE.
- Other researchers and international bodies state that a causal link has not yet been established between CTE and head impacts or sports-related concussion.
- The science continues to evolve; further study is needed.



DEPARTMENT OF HEALTH & HUMAN SERVICES

National Institutes of Health  
National Institute of Neurological  
Disorders and Stroke  
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Bethesda, Maryland 20892-2490

4/13/2012

Boston University Office of Sponsored Programs  
Dr. Robert Stern  
72 E. Concord Street, B7380  
Boston, MA 02118

Dear Dr. Stern,

Enclosed is the Confidentiality Certificate protecting the identity of research subjects in your project entitled, 'Longitudinal Examination to Gather Evidence of Neurodegenerative Disease (LEGEND)'. Please note that the Certificate expires on 09/22/2061.

Please be sure that the consent form given to research participants accurately states the intended uses of personally identifiable information (including matters subject to reporting) and the confidentiality protections, including the protection provided by the Certificate of Confidentiality with its limits and exceptions.

If you determine that the research project will not be completed by the expiration date, 09/22/2061, you must submit a written request for an extension of the Certificate three months prior to the expiration date. If you make any changes to the protocol for this study, you should contact me regarding modification of this Certificate. Any requests for modifications of this Certificate must include the reason for the request, documentation of the most recent IRB approval, and the expected date for completion of the research project.

Please advise me of any situation in which the Certificate is employed to resist disclosure of information in legal proceedings. Should attorneys for the project wish to discuss the use of the Certificate, they may contact the Office of the NIH Legal Advisor, National Institutes of Health, at (301) 496-6043.

Correspondence should be sent to:

Louise Ritz  
Certificate of Confidentiality Coordinator  
National Institute of Neurological Disorders and Stroke  
Neuroscience Center  
6001 Executive Blvd., Room 2188, MSC 9520  
Rockville, MD 20892  
Telephone: 301-496-9135  
Fax: 301-480-1080

Sincerely,

A handwritten signature in cursive script that reads "Louise Ritz".

Louise Ritz

**CERTIFICATE OF CONFIDENTIALITY**

**CC-NS-12-07**

issued to

**Boston University Office of Sponsored Programs**

**conducting research known as**

**Longitudinal Examination to Gather Evidence of Neurodegenerative Disease (LEGEND)**

In accordance with the provisions of section 301(d) of the Public Health Service Act 42 U.S.C. 241(d), this Certificate is issued in response to the request of the Principal Investigator, Dr. Robert Stern, to protect the privacy of research subjects by withholding their identities from all persons not connected with this research. Dr. Stern is primarily responsible for the conduct of this research, which is supported by This study is funded by an unrestricted gift from the National Football League (NFL)..

Under the authority vested in the Secretary of Health and Human Services by section 301(d), all persons who:

1. are enrolled in, employed by, or associated with the Boston University Office of Sponsored Programs and their contractors or cooperating agencies and
2. have in the course of their employment or association access to information that would identify individuals who are the subjects of the research pertaining to the project known as Longitudinal Examination to Gather Evidence of Neurodegenerative Disease (LEGEND)

are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

This is a longitudinal cohort study aimed to help us better understand the long-term effects of repetitive brain trauma and the progression of CTE. Participants will complete yearly online questionnaires and yearly telephone interviews with our study staff. These will cover how participants think, feel, and behave, and will also gather information on athletic and/or military history, concussion history, psychiatric and substance history, and medical history. All participants will also have the option to provide a saliva sample for analysis of genes believed to be related to CTE.

A Certificate of Confidentiality is needed because sensitive information will be collected during the course of the study. The certificate will help researchers avoid involuntary disclosure that could expose subjects or their families to adverse economic, legal, psychological and social consequences.

All subjects will be assigned a code number and identifying information and records will be kept in locked files at the Institution.

This research is currently underway and is expected to end on 09/22/2061.

As provided in section 301 (d) of the Public Health Service Act 42 U.S.C. 241(d):

'Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.'

This Certificate does not protect you from being compelled to make disclosures that: (1) have been consented to in writing by the research subject or the subject's legally authorized representative; (2) are required by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or regulations issued under that Act; or (3) have been requested from a research project funded by the National Institutes of Health (NIH) or the Department of Health and Human Services (DHHS) by authorized representatives of those agencies for the purpose of audit or program review.

**CERTIFICATE OF CONFIDENTIALITY**

**CC-NS-12-07**

**issued to**

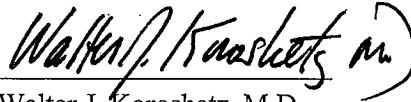
**Boston University Office of Sponsored Programs**

**conducting research known as**

**Longitudinal Examination to Gather Evidence of Neurodegenerative Disease (LEGEND)**

This Certificate does not represent an endorsement of the research project by the DHHS. This Certificate is now in effect and will expire on 09/22/2061. The protection afforded by this Confidentiality Certificate is permanent with respect to subjects who participate in the research during the time the Certificate is in effect.

Date: 4/13/2012



Walter J. Koroshetz, M.D.

Deputy Director, National Institute of Neurological Disorders and Stroke

National Institute of Neurological Disorders and Stroke

during the time the Certificate is in effect



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institute of Neurological  
Disorders & Stroke  
6001 Executive Blvd  
Rockville, MD 20852

8/4/2016

Boston University School of Medicine  
Dr. Robert Stern  
72 E. Concord Street  
E-712  
Boston, MA 02118

Dear Dr. Stern ,

Enclosed is the Confidentiality Certificate, protecting the identity of research subjects in your multi-site project entitled "Chronic Traumatic Encephalopathy: Detection, Diagnosis, Course, and Risk Factors. Also known as Diagnostics, Imaging, And Genetics Network for the Objective Study and Evaluation of Chronic Traumatic Encephalopathy (DIAGNOSE CTE) Research Project".

Please note that the Certificate expires on 11/30/2022.

Please be sure that the consent form given to research participants accurately states the intended uses of personally identifiable information and the confidentiality protections, including the protection provided by the Certificate of Confidentiality with its limits and exceptions.

If you determine that the research project will not be completed by the expiration date, 11/30/2022, you must submit a written request for an extension of the Certificate three (3) months prior to the expiration date. If you make any changes to the protocol for this study, you should contact me regarding modification of this Certificate. Any requests for modifications of this Certificate must include the reason for the request, documentation of the most recent IRB approval, and the expected date for completion of the research project.

Please advise me of any situation in which the certificate is employed to resist disclosure of information in legal proceedings. Should attorneys for the project wish to discuss the use of the certificate, they may contact the Office of the NIH Legal Advisor, National Institutes of Health, at (301) 496-6043.

Correspondence should be sent to:

***Lupe Aquino***  
***National Institute of Neurological Disorders & Stroke***  
***6001 Executive Blvd***  
***Rockville, MD 20852***

Sincerely,

Approved Date: 08/04/2016

---

***Lupe Aquino***

***National Institute of Neurological Disorders & Stroke***

Enclosure



## CONFIDENTIALITY CERTIFICATE

*CC-NS-16-016*

issued to

*Boston University School of Medicine*

conducting research known as

***"Chronic Traumatic Encephalopathy: Detection, Diagnosis, Course, and Risk Factors. Also known as Diagnostics, Imaging, And Genetics Network for the Objective Study and Evaluation of Chronic Traumatic Encephalopathy (DIAGNOSE CTE) Research Project "***

In accordance with the provisions of section 301(d) of the Public Health Service Act 42 U.S.C. 241(d), this Certificate is issued in response to the request of the Principal Investigator, Dr. Robert Stern, to protect the privacy of research subjects by withholding their identities from all persons not connected with this research. Dr. Robert Stern is primarily responsible for the conduct of this research, which is funded by:

Institution Center: NINDS, Grant Number:U01NS093334

Under the authority vested in the Secretary of Health and Human Services by section 301(d), all persons who:

1. are enrolled in, employed by, or associated with Boston University School of Medicine and its contractors or cooperating agencies, and
2. have in the course of their employment or association access to information that would identify individuals, who are the subjects of the research, pertaining to the project known as "Chronic Traumatic Encephalopathy: Detection, Diagnosis, Course, and Risk Factors. Also known as Diagnostics, Imaging, And Genetics Network for the Objective Study and Evaluation of Chronic Traumatic Encephalopathy (DIAGNOSE CTE) Research Project "
3. are hereby authorized to protect the privacy of the individuals, who are the subjects of that research, by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

The major goal of this research project is to develop methods of diagnosing CTE during life, so interventions can be developed to help those diagnosed with this disease. The study will also examine risk factors for developing CTE. The 240 participants will be examined at one of four study sites (Boston, Las Vegas, New York City, Scottsdale) over the course of a three day visit.

A Certificate of Confidentiality is needed because sensitive information will be collected during the course of the study. The certificate will help researchers avoid involuntary disclosure that could expose subjects or their families to adverse economic, legal, psychological and social consequences.

Individual subjects will be recognized by a unique identifier for each subject and datasets will not contain identifying information (e.g. names, medical record numbers, etc.) unless necessary. Any data which must contain identifying information for subjects, e.g. contact information for follow up visits, will be stored separately from study forms. The subject tracking database, which must contain contact information necessary to contact and schedule follow up visits, will be stored in a separate, secure database. Only study staff will have access to all data in this database.

This research begins on 12/15/2015 , and is expected to end on 11/30/2022.

As provided in section 301 (d) of the Public Health Service Act 42 U.S.C. 241(d):

"Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

This Certificate does not protect you from being compelled to make disclosures that: (1) have been consented to in writing by the research subject or the subject's legally authorized representative; (2) are required by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or regulations issued under that Act; or (3) have been requested from a research project funded by NIH or DHHS by authorized representatives of those agencies for the purpose of audit or program review.

This Certificate does not represent an endorsement of the research project by the Department of Health and Human Services. This Certificate is now in effect and will expire on 11/30/2022. The protection afforded by this Confidentiality Certificate is permanent with respect to any individual who participates as a research subject (i.e., about whom the investigator maintains identifying information) during the time the Certificate is in effect.

Sincerely,

Signed Date:

---

*Alan Willard PhD*  
*Deputy Director, NINDS*  
*National Institute of Neurological Disorders & Stroke*





DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institute of Neurological  
Disorders & Stroke  
6001 Executive Blvd  
Rockville, MD 20852

8/19/2016

Trustees of Boston University, BUMC  
Dr. Robert Stern  
72 E. Concord Street  
B7380  
Boston, MA 02118

RE: CC-NS-12-10

Dear Dr. Stern,

The enclosed Confidentiality Certificate protecting the identity of research subjects in your project entitled "Diagnosing and Evaluating Traumatic Encephalopathy Using Clinical Test (DETECT); also known as Chronic Traumatic Encephalopathy: Clinical Presentation and Biomarkers", has been amended to extend the Certificate expiration date until 08/18/2020.

Please be sure that the consent form given to research participants accurately states the intended uses of personally identifiable information and the confidentiality protections, including the protection provided by the Certificate of Confidentiality with its limits and exceptions.

If you determine that the research project will not be completed by the expiration date, 08/18/2020, you must submit a written request for an extension of the Certificate three (3) months prior to the expiration date. If you make any changes to the protocol for this study, you should contact me regarding modification of this Certificate. Any requests for modifications of this Certificate must include the reason for the request, documentation of the most recent IRB approval, and the expected date for completion of the research project.

Please advise me of any situation in which the certificate is employed to resist disclosure of information in legal proceedings. Should attorneys for the project wish to discuss the use of the certificate, they may contact the Office of the NIH Legal Advisor, National Institutes of Health, at (301) 496-6043.

Correspondence should be sent to:

***Lupe Aquino***  
***National Institute of Neurological Disorders & Stroke***  
***6001 Executive Blvd***  
***Rockville, MD 20852***

Sincerely,

Approved Date: 08/19/2016

---

***Lupe Aquino***

***National Institute of Neurological Disorders & Stroke***



## CONFIDENTIALITY CERTIFICATE

*CC-NS-12-10*

issued to

*Trustees of Boston University, BUMC*

conducting research known as

**Diagnosing and Evaluating Traumatic Encephalopathy Using Clinical Test (DETECT);  
also known as Chronic Traumatic Encephalopathy: Clinical Presentation and Biomarkers**

In accordance with the provisions of section 301(d) of the Public Health Service Act 42 U.S.C. 241(d), this Certificate is issued in response to the request of the Principal Investigator, Dr. Robert Stern, to protect the privacy of research subjects by withholding their identities from all persons not connected with this research. Dr. Robert Stern is primarily responsible for the conduct of this research, which is supported by Primary funding source: NINDS; supported by: NIA and NICHD.

Under the authority vested in the Secretary of Health and Human Services by section 301(d), all persons who:

1. are enrolled in, employed by, or associated with the Trustees of Boston University, BUMC and their contractors or cooperating agencies, and
2. have in the course of their employment or association access to information that would identify individuals, who are the subjects of the research, pertaining to the project known as "Diagnosing and Evaluating Traumatic Encephalopathy Using Clinical Test (DETECT); also known as Chronic Traumatic Encephalopathy: Clinical Presentation and Biomarkers".
3. are hereby authorized to protect the privacy of the individuals, who are the subjects of that research, by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

This study examines a group of individuals at high risk of Chronic Traumatic Encephalopathy (CTE) as compared to group at low risk for CTE in the hopes of determining the clinical presentation and biomarkers of the disease. Measures to be compared include: findings from neuroimaging (MRI, MRS), APOE genotype, clinical, neurological, neuropsychological, and psychiatric examinations.

A Certificate of Confidentiality is needed because sensitive information will be collected during the course of the study. The certificate will help researchers avoid involuntary disclosure that could expose subjects or their families to adverse economic, legal, psychological and social consequences.

All subjects will be assigned a code number and identifying information and records will be kept in locked files at the Institution.

This research is currently underway and is expected to end on 05/31/2016.

As provided in section 301 (d) of the Public Health Service Act 42 U.S.C. 241(d):

"Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

This Certificate does not protect you from being compelled to make disclosures that: (1) have been consented to in writing by the research subject or the subject's legally authorized representative; (2) are required by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or regulations issued under that Act; or (3) have been requested from a research project funded by NIH or DHHS by authorized representatives of those agencies for the purpose of audit or program review.

This Certificate does not represent an endorsement of the research project by the Department of Health and Human Services. This Certificate is now in effect and will expire on 08/18/2020. The protection afforded by this Confidentiality Certificate is permanent with respect to any individual who participates as a research subject (i.e., about whom the investigator maintains identifying information) during the time the Certificate is in effect.

Sincerely,

Signed Date:

---

*Alan Willard PhD  
Deputy Director, NINDS  
National Institute of Neurological Disorders & Stroke*

12/30/2016

Boston University Medical Campus  
Dr. Ann McKee  
85 East Newton Street,  
M-921  
Boston, MA 02118

Dear Dr. McKee,

Enclosed is the Confidentiality Certificate, protecting the identity of research subjects in your single-site/single-protocol project entitled "CTE and Posttraumatic Neurodegeneration: Neuropathology and Ex Vivo Imaging".

Please note that the Certificate expires on 12/31/2017.

Please be sure that the consent form given to research participants accurately states the intended uses of personally identifiable information and the confidentiality protections, including the protection provided by the Certificate of Confidentiality with its limits and exceptions.

If you determine that the research project will not be completed by the expiration date, 12/31/2017, you must submit a written request for an extension of the Certificate three (3) months prior to the expiration date. If you make any changes to the protocol for this study, you should contact me regarding modification of this Certificate. Any requests for modifications of this Certificate must include the reason for the request, documentation of the most recent IRB approval, and the expected date for completion of the research project.

Please advise me of any situation in which the certificate is employed to resist disclosure of information in legal proceedings. Should attorneys for the project wish to discuss the use of the certificate, they may contact the Office of the NIH Legal Advisor, National Institutes of Health, at (301) 496-6043.

Correspondence should be sent to:

***Lupe Aquino***  
***National Institute of Neurological Disorders & Stroke***  
***6001 Executive Blvd***  
***Rockville, MD 20852***

Sincerely,

Approved Date: 12/30/2016

---

***Lupe Aquino***

***National Institute of Neurological Disorders & Stroke***

Enclosure

## CONFIDENTIALITY CERTIFICATE

*CC-NS-16-032*

issued to

*Boston University Medical Campus*

conducting research known as

*"CTE and Posttraumatic Neurodegeneration: Neuropathology and Ex Vivo Imaging"*

In accordance with the provisions of section 301(d) of the Public Health Service Act 42 U.S.C. 241(d), this Certificate is issued in response to the request of the Principal Investigator, Dr. Ann McKee, to protect the privacy of research subjects by withholding their identities from all persons not connected with this research. Dr. Ann McKee is primarily responsible for the conduct of this research, which is funded by:

Institution Center: NINDS, Grant Number:5U01NS086659-04

Under the authority vested in the Secretary of Health and Human Services by section 301(d), all persons who:

1. are enrolled in, employed by, or associated with Boston University Medical Campus and its contractors or cooperating agencies, and
2. have in the course of their employment or association access to information that would identify individuals, who are the subjects of the research, pertaining to the project known as "CTE and Posttraumatic Neurodegeneration: Neuropathology and Ex Vivo Imaging".
3. are hereby authorized to protect the privacy of the individuals, who are the subjects of that research, by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

The devastating effects of traumatic brain injury (TBI), including concussions and blast injury experienced by athletes and military personnel, are just beginning to be recognized. Repetitive mild TBI can trigger Chronic Traumatic Encephalopathy (CTE) and other destructive brain degenerations. Given the millions of Americans who experience TBI and are at high risk for CTE and brain degeneration, it is critical that we develop consensus criteria to diagnose and imaging tools to detect these disorders in living people.

A Certificate of Confidentiality is needed because sensitive information will be collected during the course of the study. The certificate will help researchers avoid involuntary disclosure that could expose subjects or their families to adverse economic, legal, psychological and social consequences.

Cases are assigned a unique identification number upon receipt of tissue. Whenever possible the number is used instead of the identifiable information. All data generated during the research process is labeled using this number. Documents/files with identifiable information (consent forms, medical records, etc.) and the information linking the number to the donor are stored on the Boston University Medical Center's Y Drive, a resilient data repository.

This research begins on 01/01/2014 , and is expected to end on 12/31/2017.

As provided in section 301 (d) of the Public Health Service Act 42 U.S.C. 241(d):

"Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

This Certificate does not protect you from being compelled to make disclosures that: (1) have been consented to in writing by the research subject or the subject's legally authorized representative; (2) are required by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or regulations issued under that Act; or (3) have been requested from a research project funded by NIH or DHHS by authorized representatives of those agencies for the purpose of audit or program review.

This Certificate does not represent an endorsement of the research project by the Department of Health and Human Services. This Certificate is now in effect and will expire on 12/31/2017. The protection afforded by this Confidentiality Certificate is permanent with respect to any individual who participates as a research subject (i.e., about whom the investigator maintains identifying information) during the time the Certificate is in effect.

Sincerely,

Signed Date:

---

*Alan Willard PhD*  
*Deputy Director, NINDS*  
*National Institute of Neurological Disorders & Stroke*

**Yolanda Sherman**

---

**From:** ecf-notice@mnd.uscourts.gov  
**Sent:** Monday, February 06, 2017 3:56 PM  
**To:** mndecfnofications@mnd.uscourts.gov  
**Subject:** Activity in Case 0:14-md-02551-SRN-JSM IN RE: National Hockey League Players' Concussion Injury Litigation Declaration

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**U.S. District of Minnesota**

### **Notice of Electronic Filing**

The following transaction was entered by Elswit, Lawrence on 2/6/2017 at 2:56 PM CST and filed on 2/6/2017

**Case Name:** IN RE: National Hockey League Players' Concussion Injury Litigation

**Case Number:** [0:14-md-02551-SRN-JSM](#)

**Filer:** Trustees of Boston University/CTE Center

**Document Number:** [681](#)

#### **Docket Text:**

**DECLARATION of Lawrence S. Elswit re [680] Memorandum in Opposition to Motion, by Trustees of Boston University/CTE Center . (Attachments: # (1) Exhibit(s), # (2) Exhibit(s), # (3) Exhibit(s), # (4) Exhibit(s), # (5) Exhibit(s), # (6) Exhibit(s), # (7) Exhibit(s), # (8) Exhibit(s))(Elswit, Lawrence)**

#### **0:14-md-02551-SRN-JSM Notice has been electronically mailed to:**

Aaron D Van Oort aaron.vanoort@faegrebd.com, deb.schuna@faegrebd.com

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hnpotteiger@locklaw.com, sljuell@locklaw.com

William Christopher Carmody bcarmody@susmangodfrey.com

William N. Sinclair bsinclair@mdattorney.com

William T Gibbs wtg@corboydemetrio.com, agonzalez@corboydemetrio.com,  
mbrophy@corboydemetrio.com, sdudak@corboydemetrio.com

Wm Dane DeKrey dane.dekrey@zimmreed.com

**0:14-md-02551-SRN-JSM Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1051215216 [Date=2/6/2017] [FileNumber=5837515-0]  
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8d9991789f150c13490ee70cb85686ab7df538623e23ef8b81868f7fd998]]

**Document description:**Exhibit(s)

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Exhibit(s)

**Original filename:**n/a

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**Original filename:**n/a

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**Original filename:**n/a

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**Document description:**Exhibit(s)

**Original filename:**n/a

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**Document description:**Exhibit(s)

**Original filename:**n/a

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**Document description:**Exhibit(s)

**Original filename:**n/a

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