

The Maragos Verdict & Its Possible Chilling Effect on Team Physicians

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American Academy
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**Former Philadelphia
Eagles captain Chris
Maragos
awarded \$43.5 million in
medical malpractice case
February 2015**

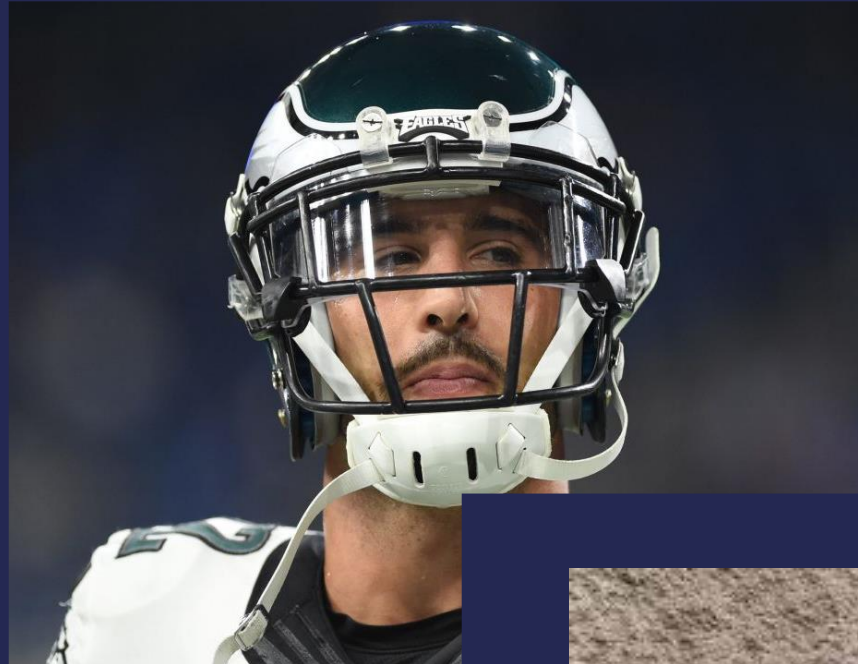


“Former Philadelphia Eagles captain Chris Maragos was awarded \$43.5 million in a lawsuit against his doctors over a career-ending knee injury.

“The jury at the Philadelphia County Court of Common Pleas found that orthopedic surgeon James Bradley and Rothman Orthopaedics were negligent in the medical malpractice case, causing harm to two-time Super Bowl-winning safety and forcing him to end his NFL career prematurely.”

“Bradley was found to be 67% negligent (\$29.2 million) and Rothman Orthopaedics 33% (\$14.3 million), according to court documents.”

Source: CNN



The Case & Verdict: A Perfect Storm?

The case which related to an injury Maragos, the Special Teams Captain of the Philadelphia Eagles, suffered in 2017 went to the jury two days in after the Eagles lost Super Bowl 57 to the Kansas City Chiefs 38-35 after leading much of the game in February 2023. The game was heartbreaking to Philadelphia fans.

The Case & Verdict: A Perfect Storm?

Maragos testified to his feelings and sense of emotions at watching his Eagles teammates playing in the Super Bowl just after that loss, the reporting blurs as to whether he was speaking of the 2017 or 2023 Super Bowl. It likely also did in the jurors' minds too.

The Case & Verdict: A Perfect Storm?

Maragos testified to his feelings and sense of emotions at watching his Eagles teammates playing in the Super Bowl just after that loss. This is despite the fact that Maragos' injury took place in 2017 prior to that year's Super Bowl and the odds of his still being on the team in the 2022 season post-season were somewhat speculative. The jury impact was already felt.

“On Sunday, my team played the Super Bowl, and I could only watch and wonder whether I could have been out there with them had I received proper medical care,” Maragos said in a statement. “While I live in constant pain and will never get back on the field, I hope this decision sends a message to teams’ medical staffs that players are people, not just contracts.” Source: Sportico

The Case & Verdict: A Perfect Storm?

The trial judge permitted testimony from three of Maragos' Eagle teammates including former Eagles Super Bowl winning QB Nick Foles. But coming after an emotional build-up to and let down from another Super Bowl run for Philadelphia, both Maragos' and Foles' testimony had exceptional emotional impact on the jury.



What Was Alleged?

Maragos argued, according to Michael McCann writing in Sportico, “that orthopedic surgeon James Bradley and Rothman Orthopaedics were negligent in their diagnosis and care of a meniscus tear in his right knee. The injury occurred during a game in 2017 against the Carolina Panthers and Bradley performed surgery. Unfortunately for Maragos, surgery not only didn’t heal his injury, but his condition worsened as time went on.



ROTHMAN
ORTHOPAEDICS

What Was Alleged?

“To that point, Maragos’ attorneys (which included Peter Flowers of Meyers & Flowers and Dion Rassias of The Beasley Law Firm) focused on a failure of key notes in a medical chart concerning his injury and recovery. The physicians and other health professionals treating Maragos were depicted as urging him to resume physical activities, including running, far too quickly and failing to properly utilize MRI results. That aggressive course of action prevented Maragos from recovering and effectively ended his NFL career.” Source: McCann, Sportico



What Was Alleged?

- Perhaps overlooked McCann's informed reporting there were in essence two causes of injury in the Maragos case
- The first for issues resulting from whether the physician failed to note and repair a meniscus injury
- The second relating to Maragos being cleared back into resuming physical activities including running
- This was the most direct cause of the jury award-meaning that a portion events in this case were not directly in the physician's or the clinic's control, but in the hands of the team's athletic training staff.

What Was Alleged?

- The physician's work was supported by three separate NFL Team physicians at the trial.
- The issue of failing to properly use MRIs were an issue in the return to activity issue.
- Which does bring up, the issue of the rehabilitation aspects of this case- which while based on the physician's plan takes place outside of the physician's direct involvement. This does bring up the issue of contractual relationships and coaching interference

One More Perfect Storm Data Point

Philadelphia Eagles head athletic trainer steps down after 19 seasons February 18, 2018

The Philadelphia Eagles officially announced that their director of sports medicine and head athletic trainer is stepping down after 19 seasons with the team.

The Eagles were one of the healthiest teams in the NFL from 2013 through 2016. The injury bug bit Philadelphia hard in 2017, however, with a number of key players going down to season-ending injuries: Carson Wentz (ACL), Jason Peters (ACL), Darren Sproles (ACL and broken arm), Jordan Hicks (Achilles), and Chris Maragos (PCL). Despite these injuries, the Eagles still managed to win the Super Bowl. Yes, that really happened.

Source: www.bleedgreenation.com

Yet Another Perfect Storm Data Point

Despite reporting that the amount of the award was based on the lost earnings, but Maragos' claim for lost earnings was only approximately \$8.7 million dollars, perhaps high based on his age and position but defensible.

The Jury award, five times his economic demands, was based principally on Maragos' pain and suffering which is the portion of any award that is the most speculative and the most subject to being reduced in an application for remittitur or on appeal.



Yet Another Perfect Storm Data Point

The lawyer's adage I grew up with is, "it is better to go to the bank than to the Appellate Division." Meaning this award is either likely to be settled or set aside on appeal. But that is after the chilling affect of the verdict is felt by the medical community and that it is quietly resolved is cold comfort after the publicity the award created.



The Propensity to Chill

- The Maragos award from its pure size and extreme pain and suffering award has had a reverberating effect across the medical and specifically the orthopaedic and team physician community.
- Even if the case and award is an outlier has the harm already been done?

The Propensity to Chill: Other Cases

Taken with the September 2022 New York State Supreme Court (NY County) award of \$28 million dollars in the case of *Cox v. Lorch and Hospital for Special Surgery* anticipating a chilling effect on doctors and orthopaedic clinics is a natural result.

Cox may also be a factual outlier and has been settled on more favorable terms.



The Propensity to Chill: The Team Physicians View

- Dr. Mark Miller, the AOSSM president, told ESPN the reason and timing for the statement is simple.
- "If not now, when?" he said. "We want to raise public awareness that this issue affects the care of all people we take care of. Our ability to serve all of our patients from the playground to the professional level is at risk."
- As salaries have risen for professional athletes, and as college and even some high school athletes have secured big-money Name Image Likeness deals, the liability for future earnings has increased significantly, the group wrote. That could keep some of the nation's top doctors and surgeons away from treating high-level athletes of all ages.
- Dr. Scott Rodeo, the head team physician for the New York Giants, told ESPN potential liability concerns may impact the availability of qualified sports medicine experts for athletes.
- "Recent cases may be the tip of the iceberg," Rodeo said, "and some physicians may decide the visibility associated with caring for athletes may not be worth the liability risk anymore."

Source: Stephania Bell, ESPN

The Lawyer's View: Cold Comfort?

There is no crisis in sports medical malpractice despite the jury awards in Maragos and Cox. These cases are outliers and likely to be settled on more favorable terms or knocked down on appeal.

The availability of indemnification by more valuable businesses in the chain- the professional franchises themselves. The need for team physicians and the care they provide is a matter of concern for every professional team.

Brad Sohn, Attorney, Brad Sohn Law

Leading Benefits & Care Attorney



Practical Solutions

Maintaining awareness of a potential loss of care is critical

The Maragos case shows the existence of a chain of care that is not in the direct control of the physician or clinic. These chains of care need to be more carefully reviewed by physicians both practically and in establishing the initial contractual relationship.

Physicians and clinics need to raise concerns about team employees in rehabilitation roles immediately when they become known.

Practical Solutions

Maintaining awareness of a potential loss of care is critical

Seeking remittitur and appealing jury awards is not always advisable but should be considered when in a climate of outlier awards.

Settlement agreements after outlier jury awards should include mutual resolution statements.

Clinic contracts with multi-billion dollar professional franchises should consider indemnification provisions for some types of jury awards for medical providers.



My Bio

- **About Bob:** Robert Boland, J.D. is a faculty member at Seton Hall Law School. Prior to joining Seton Hall, Bob served as the Athletics Integrity Officer at Penn State University. In this role he oversaw the University's Intercollegiate Athletics Department's compliance with all NCAA, Big Ten and legal and ethical mandates, reporting to the University's Board of Trustees and President, including NIL implementation and policy development.
- He previously was the head of two well-known sports management programs at New York University and Ohio University, which has been ranked by *Sports Business International* as the "Top Post-Graduate Program in Sports Business in the World." He has also taught at New York University Law School and currently teaches "Labor Law" and "Collective Bargaining in Professional Sports" in Penn State's School of Labor & Employment Relations. He also holds a teaching appointment at Penn State Law School where he teaches "Representing the Professional Athlete."
- He has 25 years experience as a prosecutor, defense attorney, administrative law judge but the primary focus of his legal practice has focused on advising coaches, athletes and institutions on sports law related issues.



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