

December 16, 2010

Via E-Mail

Dear Mr. Muchnick:

I read with interest your statements on your blog site regarding the extensive cover story recently published by Charlie Deitch in the Pittsburgh City Paper regarding WWE's Wellness Policy. You dismissed it as "very poor, possibly the least informative and coherent article of that length yet published on that subject." I gather you are less than thrilled that your plan to spew your malicious lies into the Pittsburgh community backfired when you encountered a journalist willing to actually go see things with his own eyes and actually talk with all the people you systematically malign from your position of studied ignorance.

Toward that end, I note that you made your typically false and malicious assertions not only in Mr. Deitch's article, but also in your blog site "criticism" of Mr. Deitch's article. Thus, in reference to WWE's drug testing program, a subject you know precisely nothing about, you are quoted in Mr. Deitch's article stating:

"That program is a joke. Although they have steroid testing, the control lab is controlled by the WWE. The decisions on suspensions and other discipline are completely controlled by Vince McMahon."

This statement is, of course, factually false. The lab which does WWE's drug testing, Aegis, is independently owned and operated. Aegis could not be "controlled" by WWE since WWE neither owns nor operates Aegis or its labs. And, as a simple review of WWE's actual drug testing policy reveals, decisions on suspensions and discipline are not "completely controlled" by Vince McMahon. Instead, the decisions regarding whether a drug test is positive or not is made by Dr. David Black of Aegis in consultation with the program's medical adviser, if necessary, and the discipline flows from Dr. Black's findings. Thus, consider this letter to be a demand for a retraction of the false statements highlighted above made by you in Mr. Deitch's article.

As to your criticism of Mr. Deitch's article,¹ it is emblematic of your reckless style that you should fault Mr. Deitch because his article failed to note the "non-suspension of Randy Orton after he appeared on the Signature Pharmacy customer list." As you no doubt recall, you previously had to retract prior false statements recklessly made by you regarding WWE's response to receipt of the Signature Pharmacy customer list from District Attorney Soares. As you learned during that prior retraction of a calculated lie, the WWE acted immediately against all talent on the customer list of Signature upon receipt from DA Soares. All talent on that list then performing for WWE were immediately brought to WWE in order to confirm the information supplied by District Attorney Soares and, once confirmed, action was taken immediately. Contrary to your false statements, no action was taken against Randy Orton because he was not on any customer list for Signature pharmacy ever provided to us by District

¹ As you know, this particular piece of distemper by you was published on your blog site under the heading "Further Reading on WWE Wellness Policy, Concussions, Dr. Joseph Maroon, University of Pittsburgh Medical Center."

Attorney Soares. Thus, kindly consider this letter to also demand a retraction of your false statement that WWE exempted Randy Orton from the disciplinary treatment given to all talent who in fact did appear on the Signature customer list, a lie I note you have been spewing elsewhere in your daily diatribes.

Aside from demanding these retractions and reserving all rights with respect to the myriad slanders, libels and defamations you have made regarding WWE and various persons now or ever involved with WWE, including myself, Dr. Maroon, and other professionals involved with the Wellness Program, there are certain matters regarding the so-called Benoit CTE findings which I want to be sure are a part of your documented knowledge. Thus, if you ignore such facts in your future writings or statements, you do so at your legal peril.

Preliminarily, I note that is is truly indicative of your existing malice towards WWE and all persons associated with WWE that you would actively assist the Blumenthal campaign to smear WWE by arranging for Michael Benoit to be sprung on an unsuspecting and uninformed press on October 25, 2010 amidst the Senatorial campaign. As you know, Mr. Benoit espoused his tale at that press conference that CTE caused his son to murder his wife and young son and blamed WWE for it. Indeed, in the farce of the book you wrote on the Benoit case, even you stated that Michael Benoit was “grasping at straws” and that Dr. Omalu² “exaggerated” his findings regarding CTE. Your book also proves that you knew at the time you facilitated Mr. Benoit’s appearance at the press conference that Michael Benoit’s lawyer had attempted to secure millions from WWE shortly after the so-called CTE findings were initially announced in September 2007. As you know, that press conference was convened to announce both the formation of the Sports Legacy Institute (“SLI”) and the so-called Benoit findings. Indeed, your book opines that improper conduct was directed at WWE by Mr. Benoit’s lawyer in the process of trying to obtain money from WWE. In your book, you even stated:

“[I]n this particular scenario, I found myself thinking WWE officials had a point when they complained that a Commission member who was also a lawyer contemplating a major lawsuit against the company in private had a blatant conflict of interest.”

In any event, I wish to make a clear record that you are now aware of certain other facts regarding the whole subject of CTE as it relates to Chris Benoit specifically.

First, as you know, the so-called Benoit CTE findings were not originally announced in any peer reviewed scientific journal. As noted, the findings were announced at a high profile press conference on September 5, 2007 to launch SLI. Indeed, the so-called Benoit findings of Dr. Omalu were said to be the springboard for the formation of SLI (Exh. 1, pp. 2-3; Exh 2) SLI was organized and operated by Mr. Chris Nowinski, a Harvard educated former WWE talent whose own concussion history motivated him to study the subject in depth with Dr. Robert Cantu of Boston University, a recognized world class expert on concussions that WWE had paid to treat Mr. Nowinski when he developed concussion-related problems. The persons affiliated with SLI on the day of that September 2007 press conference were not only physicians from Boston University but also a physician from West Virginia University, Dr. Julian Bailes. Michael Benoit

² As you know, Dr. Omalu is the forensic pathologist who supposedly obtained Mr. Benoit’s brain and delivered tissue samples to a histologist to prepare slides held out as containing the brain tissue of Chris Benoit.

and his lawyer, Cary Ichter,, were also present at that conference but consistently denied litigation motives in response to media inquiries, only to threaten litigation a week later in an attempt to obtain millions from WWE. (Exh. 3) In the widespread publicity surrounding and following this media event, Benoit's brain was said to be depicted in histological slides and pathologically similar to the brain of an extremely old person with dementia. Dr. Omalu was quoted as stating: "Chris Benoit's brain looked like the brain of an individual suffering from a specific type of dementia and this type of dementia you see in people in the 80s and 90s which was extremely unusual." (Exh. 4, p. 14) As you know, WWE questioned from the onset any purported professional finding that Chris Benoit had the mental capacity of a geriatric with dementia. Chris Benoit simply could never have traveled to cities throughout the world and performed intricate athletic maneuvers if he had the brain of a geriatric with dementia.

Second, and as you are aware from your prior writings on the subject which consistently distort the truth, WWE was to be given access to the evidence relied upon by SLI according to the statements of SLI's principals made at the September 2007 press conference. (Exh. 1, p. 11) Thereafter, we asked SLI, Dr. Omalu, and Michael Benoit to produce the most basic evidence of all—chain of custody records constituting the proof that the tissue on the slides was in fact that of Chris Benoit. As you know, we never even received a response to that request. In fact, you later reported that Dr. Omalu and Dr. Bailes, when asked why they had not produced information requested by WWE, told reporters they would be glad to provide us what we had asked for. (Exh. 5) Once they said they would do so, I thereafter requested the same information from Dr. Bailes and again from Dr. Omalu in January 2010. My request was given to their lawyer, Mr. Robert Fitzsimmons, and once again, they did not produce chain of custody records or provide any proof that the tissue on the histological slides was that of Chris Benoit.³

Third, as has been reported and as you know, I had the opportunity to cross examine Dr. Omalu in February 2008 during the criminal trial of Dr. Cyril Wecht, another prominent Pittsburgher who you have also systematically defamed in your reporting on Benoit. Dr. Wecht had been the medical examiner for Allegheny County and was charged with using county resources in furtherance of his private autopsy practice. Dr. Omalu was hired years ago by Dr. Wecht as a county pathologist and also assisted Dr. Wecht in his private autopsy practice, a large part of which involved brain autopsies of elderly people with debilitating mental diseases. Dr. Omalu appeared as a prosecution witness, and evidence introduced at trial showed he feared deportation if he did not cooperate with the prosecution. (Exh. 6) For days, Dr. Omalu testified to various brains and body parts he had removed from private autopsy patients of Dr. Wecht and brought back to the county morgue to photograph, index, make slides of, and put on computer data banks maintained by him for his use. One of the more bizarre exhibits was a bucket of brain fragments Omalu had brought back from the private autopsies and stored in the coroner's office. He was shown at trial to have access to tissue samples from various so-called brain banks, and various news reports since have indicated that Omalu actually took brain tissue fragments home with him. (Exh.7)

³ In one of your oft-repeated lies about Dr. Maroon and WWE, you repeatedly suggest that WWE did see the evidence it has requested because Dr. Maroon was shown slides represented to be of Benoit's brain when viewing the slides at West Virginia University on behalf of his work for the NFL and the Pittsburgh Steelers. As you no doubt know when you tell that lie, the issue is not what is depicted on the slides or whether Dr. Maroon was shown such slides. The issue is whether the tissue on the slides is in fact that of Chris Benoit.

Of particular interest to the so-called Benoit findings, portions of Dr. Omalu's testimony clearly established the existence of a disagreement between him and the others at SLI which caused his departure from SLI. Remarkably, this departure coincided with being cross-examined by me. Dr. Omalu testified that he was "not in support of so many things that [Nowinski] did." (Exh. 8, pp. 213-14) He testified that he was disassociating himself from SLI, had sent a letter to Mr. Nowinski explaining why, and that he regretted all the publicity associated with his CTE findings. (Exh. 8, pp. 29-30, 213) He claimed he wanted nothing to do with such publicity (even though he was then scheduled to and did appear on CBC's Fifth Estate: A Fight to the Death shortly after his testimony). Oddly, he also exchanged emails with Michael Benoit while testifying at this trial in Pittsburgh. (Exh. 8, p. 201)

Fourth, since this sharp break between SLI and Dr. Omalu in early 2008 which has gone largely unreported by the media and not explained by SLI or Dr. Omalu, SLI has divorced itself from Omalu. Recently, Mr. Nowinski was quoted as stating that the first pathologist who reviewed CTE work had "over interpreted" the findings and was not as credible as Dr. McKee, an apparent reference to Dr. Omalu. (Exh. 9, p. 4)

Fifth, and most importantly of all, Omalu finally got around to publishing a peer reviewed piece on the so-called Benoit findings on September 7, 2010, which was prior to the press conference you helped arrange for the Blumenthal campaign in order that Michael Benoit could spew his views that his son murdered his family due to CTE. In contradistinction to the original press conference in 2007 and the widespread media coverage sought for it by SLI, Omalu's September 7, 2010 publication was buried in a relatively obscure nursing journal with a complete lack of an attendant press release or any attempt to publicize it. (Exh. 10) Significantly, this scientific work was co-authored by Mr. Fitzsimmons, the same West Virginia attorney who is now in business with Dr. Omalu and Dr. Bailes at WVU and who also declined to produce chain of custody records proving that the tissue on the slides was in fact that of Chris Benoit. Significantly, Omalu's own article, co-authored by his legal counsel, squarely admits that a definitive diagnosis of CTE cannot be made without the whole brain and elsewhere disclosed that he does not even claim to have had the whole brain of Chris Benoit. The article also discloses, for the first time, that Benoit's brain was sectioned in the fresh state at his autopsy, discarded, and "later retrieved" from the body. The article claims that, after dissecting the brain during the autopsy of Chris Benoit, it was supposedly put back inside his cadaver for cremation by unnamed persons and was decomposing there when presumably Dr. Omalu arrives to secure the brain. The article claims that "partially decomposed pieces were later retrieved" by an unnamed forensic pathologist. The article discloses nothing about the chain of custody after retrieval of brain pieces, but other published reports indicate Dr. Omalu drove his car back to Pittsburgh with the brain fragments in the car. (Exh. 11) Now, it is admitted in the article that sections of the brain containing the mesial temporal lobe, amygdale, and hippocampus were not examined and "most probably were inadvertently left inside the body and possibly were cremated with the body." (Exh. 10, p. 132)

Notably, nobody from SLI or Boston University signed on to Dr. Omalu's recent paper, nor have they endorsed his work at all since it was published. Thus, as far as the Benoit findings are concerned, it is now clear that Dr. Omalu cannot establish that the tissue on the slides is in fact that of Chris Benoit and he now admits that a "definitive diagnosis of CTE, like all typed of

dementias and brain degeneration, can only be made by direct tissue examination of the whole brain,” which he also admits he did not receive. (Exh. 10, p. 135) (emphasis added) Despite these definitive admissions in scientific journals, Dr. Omalu continues his exaggerated statements, most recently claiming in Charlie Deitch’s article that a condition which he elsewhere admits cannot be definitely diagnosed nevertheless accounted for Chris Benoit’s “berserk” actions. Prior to that exaggeration, Dr. Omalu further discredited himself by recently claiming on the internet that he has invented a “drug cocktail” that will “cure” concussions. (Exh. 12)

Kindly be guided by these facts in your future writings and advise if you intend to retract the false statements made by you in Mr. Deitch’s article and on your blog site coverage of it noted herein.

Very truly yours,
Jerry S. McDevitt