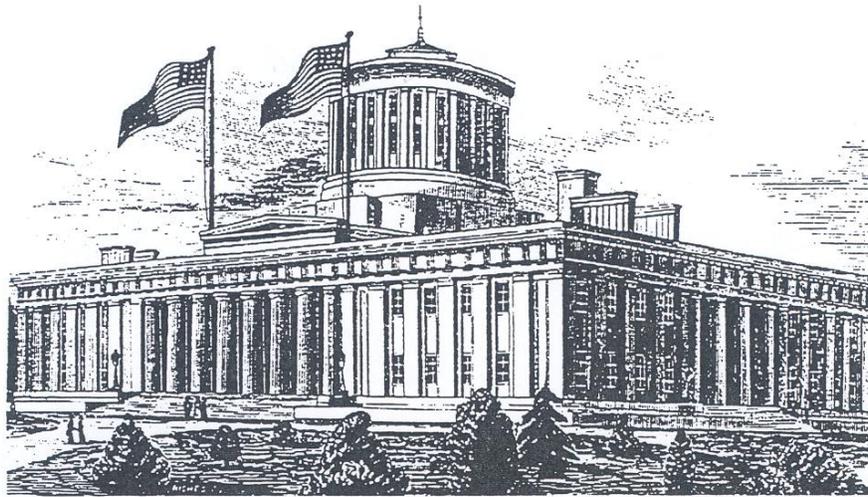


Public Practice CLE Seminar

Topics in Sports Law



Friday, October 25, 2013
ODOT Auditorium
1980 West Broad Street
Columbus, Ohio

Sponsored by the:



Mark Flanders
Director

Ohio Legislative Service Commission

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H.B. 143 and Related Concussion Legislation

Carol Napp
Legislative Service Commission

Socrates Tuch
Office of the General Counsel, Ohio Department of Health

Cameron McNamee
Violence and Injury Prevention Program, Ohio Department of Health

Beau Rugg
Ohio High School Athletic Association

Carol Napp is a research associate on the Legislative Service Commission staff and works on education issues. She received her Bachelor of Arts in English and mathematics from the University of Kansas in 2004 and her Juris Doctor from the University of Kansas School of Law in 2008. Ms. Napp is a member of the Kansas Bar.

Socrates Tuch is a Senior Legal Counsel in the Office of the General Counsel, Ohio Department of Health. Mr. Tuch is a graduate of the Capital University Law School and received a Master of Arts degree in Speech Communication, emphasizing intercultural communication and rhetoric, and a Bachelor of Arts degree in Political Science, emphasizing public law and Latin American politics, from the California State University.

Cameron McNamee, MPP, serves as Policy Specialist for the Violence and Injury Prevention Program (VIPP) at the Ohio Department of Health. He worked closely with a wide range of injury prevention stakeholders to develop all H.B. 143-related materials featured on the ODH web site and answers calls daily to help local coaches, parents, and organizations understand the law.

Beau Rugg is an Assistant Commissioner with the Ohio High School Athletic Association (OHSAA). Mr. Rugg graduated from Deerfield Academy in western Massachusetts. He holds two degrees from Ohio State, earning a Bachelor of Science degree in physical education in 1980 and a Master of Arts degree in sport management in 1981. He has also completed doctoral work in physical education/sport management with a minor in business management.



Ohio Legislative Service Commission

Final Analysis

Carol Napp

Sub. H.B. 143

129th General Assembly
(As Passed by the General Assembly)

Reps. Stinziano and O'Brien, Grossman, Mallory, Milkovich, R. Hagan, Foley, Clyde, Letson, Yuko, Reece, Combs, Murray, Garland, Antonio, Henne, Sears, Ashford, Boyce, Carney, Celebrezze, Celeste, Goyal, Hackett, Newbold, Pillich, Ramos, Sprague, Williams

Sens. Tavares, Bacon, Beagle, Brown, Cafaro, Eklund, Faber, Gentile, Hite, Hughes, Jones, Kearney, LaRose, Lehner, Manning, Niehaus, Obhof, Oelslager, Patton, Peterson, Sawyer, Schaffer, Seitz, Skindell, Turner, Wagoner, Widener

Effective date: April 26, 2013; requirements that Department of Health post information sheet and links to online training effective March 27, 2013

ACT SUMMARY

- Prohibits a school authority from allowing a student to practice for or compete in interscholastic athletics until the student has submitted a signed form stating that the student and the student's parent or other guardian have received a concussion and head injury information sheet created by the Department of Health.
- Requires a youth sports organization to provide to the parent or other guardian of an individual who wishes to practice for or compete in an athletic activity the Department's concussion and head injury information sheet.
- Prohibits a school authority from allowing an individual to coach interscholastic athletics without holding a pupil-activity program permit for coaching interscholastic athletics from the State Board of Education.
- Prohibits a school authority from allowing an individual to referee interscholastic athletics without holding a pupil-activity program permit or successfully completing a specified training program.
- Prohibits an individual from acting as a coach or referee for a youth sports organization without holding a pupil-activity program permit or successfully completing a specified training program.

- Requires a coach or referee of interscholastic athletics or a coach, referee, or official of a youth sports organization to remove a student or individual exhibiting signs, symptoms, or behaviors consistent with having sustained a concussion or head injury from practice or competition.
- Prohibits a coach or referee of interscholastic athletics or a coach, referee, or official of a youth sports organization from allowing a student or individual to return to the practice or competition from which the student or individual was removed, or to participate in any other practice or competition for which the coach, referee, or official is responsible, until the student or individual has been assessed and cleared for return by a physician or by any other licensed health care provider authorized by the school authority or youth sports organization.
- Provides that a school authority that is subject to the rules of an interscholastic conference is considered to be in compliance with the act, as long as the requirements of those rules are substantially similar to the act's requirements.
- Requires the State Board of Education to (1) require each individual applying for a pupil-activity program permit to coach interscholastic athletics to successfully complete training on brain trauma and brain injury management and (2) require each individual renewing a pupil-activity program permit to coach interscholastic athletics to successfully complete a specified training program.
- Requires the Department of Health to create a concussion and head injury information sheet for participants in interscholastic activities and youth sports organizations.
- Requires the Department to provide a link on its web site to one or more free online training programs in recognizing the symptoms of concussions and head injuries that are appropriate for coaches or referees of schools or youth sports organizations.

CONTENT AND OPERATION

Concussions and head injuries in interscholastic and other youth sports

The act establishes several prohibitions and requirements related to concussions and other head injuries in interscholastic athletics and in youth sports that are conducted by entities other than schools. The act includes provisions that apply to all of the following entities:

(1) Public schools, including schools operated by school districts, community schools, and science, technology, engineering, and math (STEM) schools;

(2) All private schools, including both chartered and nonchartered nonpublic schools;

(3) "Youth sports organizations," which are defined by the act as public or nonpublic entities that organize athletic activities in which the athletes are not more than 19 years old and are required to pay a fee to participate in the athletic activity or whose cost to participate is sponsored by a business or nonprofit organization.¹

Information sheet

The act prohibits a school district board of education or other public or nonpublic school governing authority from allowing a student to practice for or compete in interscholastic athletics until the student has submitted to a designated school official a form signed by the parent, guardian, or other person having care or charge of the student acknowledging receipt of a concussion and head injury information sheet created by the Department of Health (see "**Department of Health: Concussion and head injury information sheet**," below). A completed form must be submitted each school year for each sport or other category of interscholastic athletics for or in which the student practices or competes.²

A youth sports organization also must provide the Department's concussion and head injury information sheet to the parent, guardian, or other person having care or charge of an individual who wishes to practice for or compete in an athletic activity organized by the sports organization. The information sheet must be provided annually for each sport or other category of athletic activity for or in which the individual practices or competes.³

Training for coaches and referees

The act prohibits a district board or other school governing authority from allowing an individual to coach interscholastic athletics unless the individual holds a pupil-activity program permit for coaching interscholastic athletics issued by the State Board of Education (see "**Pupil-activity program permit**," below).⁴ It also prohibits a district board or other school governing authority from allowing an individual to referee interscholastic athletics unless the individual either (1) holds a pupil-activity program permit or (2) presents evidence that the individual has successfully completed,

¹ R.C. 3707.51.

² R.C. 3313.539(B), 3314.03(A)(11)(d), and 3326.11.

³ R.C. 3707.511(B).

⁴ R.C. 3313.539(C)(1), 3314.03(A)(11)(d), and 3326.11.

within the previous three years, an online training program in recognizing the symptoms of concussions and head injuries that is linked on the Department of Health's web site (see "**Department of Health: Online training program**," below) or a training program authorized and required by an organization that regulates interscholastic conferences or events.⁵

In the case of a youth sports organization, the act prohibits an individual from acting as a coach or referee unless the individual either (1) holds a pupil-activity program permit or (2) presents evidence that the individual has successfully completed, within the previous three years, an online training program in recognizing the symptoms of concussions and head injuries that is linked on the Department's web site. The organization for which the individual intends to act as a coach or referee must inform the individual of this requirement.⁶

Removal from practice or competition

Under the act, a student or an individual exhibiting signs, symptoms, or behaviors consistent with having sustained a concussion or head injury while practicing for or competing in an interscholastic athletic event or an athletic event organized by a youth sports organization must be removed from the practice or competition by specified individuals. In the case of interscholastic athletics, a student must be removed by the individual serving as the student's coach during that practice or competition or an individual serving as a referee during that practice or competition.⁷ In the case of a youth sports organization, an individual must be removed by the individual serving as the individual's coach during that practice or competition, an individual serving as a referee during that practice or competition, or an official of the sports organization who is supervising that practice or competition.⁸

After the student or individual is removed, the coach, referee, or official who removed the student or individual is prohibited from allowing the student or individual, on the same day the student or individual is removed, to return to that practice or competition or to participate in any other practice or competition for which the coach, referee, or official is responsible.⁹

⁵ R.C. 3313.539(C)(2), 3314.03(A)(11)(d), and 3326.11.

⁶ R.C. 3707.511(C).

⁷ R.C. 3313.539(D), 3314.03(A)(11)(d), and 3326.11.

⁸ R.C. 3707.511(D).

⁹ R.C. 3313.539(E)(1), 3314.03(A)(11)(d), 3326.11, and 3707.511(E)(1).

Assessment and clearance to return

The coach, referee, or official who removed a student or individual from practice or competition is prohibited from allowing the student or individual to return to that practice or competition, or to participate in any other practice or competition for which the coach, referee, or official is responsible, until *both* of the following conditions are satisfied:

(1) The student athlete's or individual's condition is assessed by either of the following:

(a) A physician authorized to practice medicine and surgery or osteopathic medicine and surgery; or

(b) Any other licensed health care provider the district board, school governing authority, or youth sports organization authorizes to assess a student or individual who has been removed from practice or competition; and

(2) The student or individual receives written clearance that it is safe to return to practice or competition from a physician or authorized licensed health care provider.¹⁰

The act specifies that a physician or other licensed health care provider who makes an assessment or grants a clearance may be a volunteer.¹¹

Authorization of licensed health care providers other than physicians

The act permits a district board, other school governing authority, or youth sports organization to authorize a licensed health care provider who is not a physician to make an assessment or grant a clearance, as described above, only if the provider is acting in accordance with one of the following, as applicable to the provider's authority to practice in Ohio:

- (1) In consultation with a physician;
- (2) Pursuant to the referral of a physician;
- (3) In collaboration with a physician;
- (4) Under the supervision of a physician.¹²

¹⁰ R.C. 3313.539(E)(1), 3314.03(A)(11)(d), 3326.11, and 3707.511(E)(1).

¹¹ R.C. 3313.539(E)(3), 3314.03(A)(11)(d), 3326.11, and 3707.511(E)(1).

¹² R.C. 3313.539(E)(2)(a) to (d), 3314.03(A)(11)(d), 3326.11, and 3707.511(E)(2).

Schools subject to interscholastic conference rules

The act provides that a district board or other school governing authority that is subject to the rules of an interscholastic conference or an organization that regulates interscholastic conferences or events is to be considered to be in compliance with the act's provisions, as long as the requirements of those rules are "substantially similar" to the act's requirements.¹³

Qualified immunity from liability

The act provides that certain school authorities, employees, and volunteers generally are not liable in damages in a civil action for injury, death, or loss to person or property allegedly arising from providing services or performing duties required by the act. However, that immunity does not apply if an authority's, employee's, or volunteer's action or omission constitutes willful or wanton misconduct. This qualified immunity extends to all of the following:

(1) A school district, member of a school district board of education, or school district employee or volunteer, including a coach or referee;

(2) A chartered or nonchartered nonpublic school or any officer, director, employee, or volunteer of the school, including a coach or referee;

(3) A community school, member of a community school governing authority, community school employee or volunteer, community school operator, or employee or volunteer of a community school operator, including a coach or referee;

(4) A STEM school, member of a STEM school governing body, or STEM school employee or volunteer, including a coach or referee.¹⁴

The act also provides that a youth sports organization or official, employee, or volunteer of a youth sports organization is not liable in damages in a civil action for injury, death, or loss to person or property allegedly arising from providing services or performing duties required by the act, again unless the action or omission constitutes willful or wanton misconduct.¹⁵

Moreover, the act specifies that its qualified immunity from liability does not eliminate, limit, or reduce any other immunity or defense that a public entity, public

¹³ R.C. 3313.539(F), 3314.03(A)(11)(d), and 3326.11.

¹⁴ R.C. 3313.539(G), 3314.142(A), and 3326.27(A).

¹⁵ R.C. 3707.511(F)(1).

official, or public employee may be entitled to under the Political Subdivision Tort Liability Law or any other provision of the Revised Code or under the common law of Ohio.¹⁶

Pupil-activity program permit

Under the act, as a condition of issuing a first-time pupil-activity program permit to coach interscholastic athletics, the State Board of Education must require each individual applying on or after the act's effective date to successfully complete a training program specifically focused on brain trauma and brain injury management. As a condition of renewing a pupil-activity program permit to coach interscholastic athletics, the State Board must require each individual applying on or after the act's effective date to present evidence that the individual has successfully completed, within the previous three years, an online training program in recognizing the symptoms of concussions and head injuries that is linked on the Department of Health's web site or a training program authorized and required by an organization that regulates interscholastic conferences or events.¹⁷

Department of Health

Concussion and head injury information sheet

The act requires the Department of Health to create a concussion and head injury information sheet for participants in interscholastic activities and youth sports organizations and to make the information sheet available on its web site in a format suitable for easy downloading and printing. The Department must include pertinent information to inform and educate coaches, athletes, and the parents, guardians, or other persons having care or charge of athletes of the signs and symptoms of a concussion or head injury and the risks of continuing to practice for or compete in an athletic event or activity after sustaining a concussion or head injury. The Department must periodically review and update the information sheet.¹⁸

Online training program

The act also requires the Department to provide a link on its web site to one or more free online training programs in recognizing the symptoms of concussions and

¹⁶ R.C. 3313.539(G)(1), 3314.142(B), and 3326.27(B).

¹⁷ R.C. 3319.303(C).

¹⁸ R.C. 3707.52(A).

head injuries. The Department must include one or more programs that are appropriate for coaches or referees of schools or youth sports organizations.¹⁹

Effective date

Only the requirements that the Department of Health post the concussion and head injury information sheet and links to online training programs take effect March 27, 2013 (the act's effective date). The rest of the act's provisions take effect April 26, 2013 (30 days later).²⁰

HISTORY

ACTION	DATE
Introduced	03-08-11
Reported, H. Health and Aging	06-12-12
Passed House (84-4)	06-13-12
Reported, S. Health, Human Services & Aging	12-04-12
Passed Senate (32-0)	12-04-12
House concurred in Senate amendments (91-2)	12-05-12

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¹⁹ R.C. 3707.52(B).

²⁰ Section 3.





Ohio Legislative Service Commission

Final Analysis

Elizabeth Molnar

Am. S.B. 26

130th General Assembly
(As Passed by the General Assembly)

Sens. Schaffer, Gardner, Brown, Tavares, Eklund, Hite, Jones, Kearney, Manning, Obhof, Oelslager, Peterson, Turner

Reps. Bishoff, Brown, Hottinger, Amstutz, Anielski, Antonio, Ashford, Barborak, Beck, Boose, Budish, Carney, Celebrezze, Cera, Curtin, Derickson, DeVitis, Dovilla, Grossman, Hackett, C. Hagan, Hayes, Henne, Johnson, Letson, Mallory, McClain, Milkovich, Perales, Pillich, Ruhl, Scherer, Schuring, Sears, Smith, Sprague, Stebelton, Stinziano, Winburn, Batchelder

Effective date: Emergency, May 28, 2013

ACT SUMMARY

- Provides that youth sports organizations and their coaches, referees, and officials are not subject to criminal penalties for violating a law regarding concussions and head injuries in youth sports.
- Modifies certain statutory descriptions of organizations that regulate interscholastic athletics.

CONTENT AND OPERATION

H.B. 143 and concussions in youth sports

Sub. H.B. 143 of the 129th General Assembly established requirements related to providing information on concussions and head injuries that occur during youth sports activities and removing participants with those conditions from athletic practice or competition. The requirements that apply to schools and youth sports organizations and their coaches, officials, and referees became effective April 26, 2013. Effective 30 days before (March 27, 2013), the Ohio Department of Health (ODH) was required to post on its website a concussion and head injury information sheet, along with links to free training programs.

Under H.B. 143, a youth sports organization is any entity that organizes an athletic activity in which the athletes are not more than 19 years of age and (1) are required to pay a fee to participate or (2) have the cost of participating sponsored by a business or nonprofit organization.

Removal of criminal penalties

H.B. 143's provisions relating to youth sports organizations and ODH are located in R.C. 3707.51, 3707.511, and 3707.52. These provisions fell within the scope of the following prohibition under preexisting law: "[n]o person shall violate [R.C.] 3707.01 to 3707.53 . . .".¹ Violation of the prohibition in its continuing form is a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense, either of which can result in criminal penalties.²

The act removes H.B. 143's provisions relating to youth sports organizations and ODH from the scope of the prohibition described above.³ Accordingly, the revised prohibition and its accompanying criminal penalties are no longer applicable. Schools are not addressed by the act since there were no criminal penalties associated with failing to perform their H.B. 143 duties.

Organizations that regulate interscholastic athletics

The act replaces references to "an organization that regulates interscholastic conferences or events" with "an organization that regulates interscholastic athletic competition and conducts interscholastic athletic events" in H.B. 143's provisions that do the following: (1) allow an individual who referees interscholastic athletics to fulfill the requirement for training regarding concussions and head injuries by completing a training program authorized and required by such an organization and (2) deem a school board or other school governing authority subject to the rules of such an organization to be in compliance with H.B. 143 if the rules are substantially similar to H.B. 143's requirements.⁴

¹ R.C. 3707.48.

² R.C. 3707.99, not in the act.

³ R.C. 3707.48.

⁴ R.C. 3313.359(C) and (F) and 3319.303(C).



HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, S. Medicaid, Health & Human Services	03-12-13
Passed Senate (33-0)	03-13-13
Reported, H. Health & Aging	05-08-13
Passed House (98-0)	05-15-13
Senate concurred in House amendments (33-0)	05-22-13

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****Ohio's return-to-play law goes into effect on April 26th, 2013****

Ohio's Return to Play Law – Frequently Asked Questions

Updated: 5/30/2013



1. When does the law go into effect?

Ohio's return to play law goes into effect on April 26th, 2013.

2. What are the requirements for interscholastic (school-based) athletics?

As of April 26th, 2013, Ohio's return-to-play law (ORC 3313.539 and ORC 3314.03) requires the following for interscholastic athletics:

- Prohibits a school from allowing a student to practice for or compete in interscholastic athletics until the student has submitted a signed form stating that the student's parent, guardian or other person having care or charge of the student has received a concussion and head injury information sheet created by the Department of Health.
- Requires a coach or referee to remove a student athlete exhibiting signs, symptoms, or behaviors consistent with having sustained a concussion or head injury from practice or competition.
- Prohibits an athlete to return to play on the same day as he/she is removed.
- Prohibits a coach or referee from allowing a student to return to practice or competition from which the student was removed, or to participate in any other practice or competition for which the coach or referee is responsible, until the student has been assessed and cleared for return by a physician or by any other licensed health care provider authorized by the school.
- Institutes new training requirements for coaches and referees of interscholastic athletics (**see Questions 9 & 10**).

3. What are the requirements for youth sports organizations?

As of April 26th, 2013, Ohio's return-to-play law (ORC 3707.511) requires the following for youth sports organizations:

- Requires a youth sports organization to provide to the parent or other guardian of an individual who wishes to practice for or compete in an athletic activity organized by the organization, a concussion and head injury information sheet created by the Department of Health.
- Prohibits an individual from acting as a coach or referee for a youth sports organization without successfully completing a free online training program every three years in recognizing the symptoms of concussions [posted to the Ohio Department of Health's web site](#) **or** holding a pupil-activity program permit from the State Board of Education.
- The youth sports organization for which the individual intends to act as a coach or referee shall inform the individual of the training requirements.

www.healthyohioprogram.org/concussion

****Ohio's return-to-play law goes into effect on April 26th, 2013****

- Requires a coach, referee, or official of a youth sports organization to remove an athlete exhibiting signs, symptoms, or behaviors consistent with having sustained a concussion or head injury from practice or competition.
- Prohibits a coach, referee or official of a youth sports organization from allowing an athlete to return to play on the same day as he/she is removed.
- Prohibits a coach, referee, or official of a youth sports organization from allowing an individual to return to the practice or competition from which the individual was removed or to participate in any other practice or competition for which the coach, referee, or official is responsible until the individual has been assessed and cleared for return by a physician or by any other licensed health care provider authorized by the youth sports organization.

4. Who can clear an athlete to return-to-play?

Under Ohio law (R.C. 3313.539 and R.C. 3707.511), a physician must provide **WRITTEN** clearance for an athlete to return to play. A school district or youth sports organization may also authorize a licensed health care provider who is not a physician to make an assessment or grant clearance to return to play **if** the provider is acting in accordance with one of the following, as applicable to the provider's authority to practice in Ohio:

1. In consultation with a physician;
2. Pursuant to the referral of a physician;
3. In collaboration with a physician;
4. Under the supervision of a physician.

It is important to review your school or youth sports organization's policy regarding what health care providers are authorized to clear an athlete to return-to-play.

5. Can a child return to play on the same day if he/she is cleared to return by a physician or other authorized health care provider?

No. Ohio law prohibits a child to return to play (practice or competition) on the same day that he/she is removed on suspicion of having sustained a concussion, regardless of whether he/she has been cleared by a physician or other authorized health care provider. He/she may return the following day if cleared **in writing** by a physician (MD or DO) or other authorized health care provider that they did not sustain a concussion. If they sustained a concussion, then they should complete the recommended [5 Phase Exercise Progression](#) before returning.

6. How is a Youth Sports Organization defined under the law?

Under the law (ORC 3707.51), youth sports organizations are defined as public or nonpublic entities that organize athletic activities in which the athletes are not more than nineteen (19) years old and are required to pay a fee to participate in the athletic activity or whose cost to participate is sponsored by a business or nonprofit organization.

****Ohio's return-to-play law goes into effect on April 26th, 2013****

7. What schools must comply with Ohio's return-to-play law?

The prohibitions and requirements for interscholastic athletics apply to public schools, including schools operated by school districts, community schools, and science, technology, engineering, and math (STEM) schools. They also apply to all private schools, including both chartered and nonchartered nonpublic schools. (ORC 3313.539, ORC 3314.03, ORC 3326.27.)

8. What are the training requirements for coaches, referees and officials of youth sports organizations?

Individuals who wish to coach or referee in a youth sports organization will be required to successfully complete, every three years, [a free online training program in recognizing the symptoms of concussions and head injuries provided by the Ohio Department of Health](#) if they do not already hold a [Pupil Activity Permit](#) for coaching interscholastic sports from the Ohio Department of Education. (ORC 3707.511) (see **Questions 11 & 12** for more information on Pupil Activity Permits).

9. What are the training requirements for referees of interscholastic (school-based athletics)?

Individuals who wish to referee interscholastic athletics must either:

- 1) hold a [Pupil Activity Permit](#) (see **Questions 10 & 11**) for coaching interscholastic athletics
- OR-
- 2) successfully complete an online training program, every three years, in recognizing the symptoms of concussions and head injuries that is [linked on the Department of Health's web site](#) or a training program authorized and required by an organization that regulates interscholastic conferences or events.

(ORC 3313.539)

10. What are the training requirements for coaches of interscholastic (school-based) athletics?

Those wishing to coach interscholastic athletics must hold a Pupil Activity Permit (PAP) issued by the [Ohio Department of Education](#). Coaches who already have a current PAP will be required to present evidence that they have successfully completed a training program in recognizing the symptoms of concussions and head injuries that [is linked on the Department of Health's web site](#) **or** a training program authorized and required by an organization that regulates interscholastic conferences or events in order to renew their permit (permit renewal occurs every three years). (ORC 3319.303)

Those who apply for a first-time Pupil Activity Permit to coach interscholastic athletics will be required to successfully complete a training program that is specifically focused on concussion management as part of their application requirements. (ORC 3319.303)

11. What is a Pupil Activity Permit?

****Ohio's return-to-play law goes into effect on April 26th, 2013****

Ohio Revised Code section 3319.303 of the Revised Code requires the State Board of Education to adopt rules establishing standards and requirements for obtaining a [Pupil Activity Permit](#). The Pupil Activity Permit is necessary for all individuals who wish to direct, supervise or coach a program in the schools of Ohio involving athletics, routine or regular physical activity, or health and safety considerations, whether it is done on a paid or volunteer basis. For more information on the pupil activity permits, please visit the [Ohio Department of Education's web site](#).

12. I have a Pupil Activity Permit. Do I need to take the online concussion training?

Under the law (ORC 3319.303), individuals who possess a current permit will be required, as a condition of renewing their Pupil Activity Permit, to present evidence that the individual has successfully completed, within the previous three years, a training program in recognizing the symptoms of concussions and head injuries [that is linked on the Department of Health's web site](#) or a training program authorized and required by an organization that regulates interscholastic conferences or events.

Those who apply for a first-time Pupil Activity Permit to coach interscholastic athletics will be required to successfully complete a training program that is specifically focused on concussion management as part of their application requirements. (ORC 3319.303)

13. Where can I download the concussion information sheet?

The forms can be accessed by using the links below or visiting:
www.healthyohioprogram.org/concussion

[Student Athlete Concussion Information Sheet \(for Interscholastic Activities\)](#) – Starting April 26th, 2013, Ohio law (ORC 3313.539) prohibits schools from allowing a student to practice for or compete in interscholastic athletics until the student has submitted this signed form stating that the student and the student's parent or guardian have received the information contained in the information sheet.

[Youth Sports Organization Concussion Information Sheet \(for Youth Sports Organizations\)](#) – Starting April 26th, 2013, Ohio law (ORC 3707.511) requires a youth sports organization to provide this sheet to the parent or other guardian of an individual who wishes to practice for or compete in an athletic activity organized by the organization.

14. What are the approved online training courses?

The following free online trainings have been approved by the Ohio Department of Health for coaches and referees:

[National Federation of State High School Associations Concussion in Sports - What you Need to Know:](#)

<http://www.nfhslearn.com/electiveDetail.aspx?courseID=38000>

www.healthyohioprogram.org/concussion

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(This free on-line course is available through the NFHS. You will need to click the "order here" button and complete a brief registration form to take the course. However, you do not need to be a member of NFHS to access this course.) Follow these steps to complete the course:

- 1) Click on the button that says, please login to order. In the window that appears, click Register Now.
- 2) When your registration is complete you may "order" the free concussion course offered along the left hand side of the page. Continue following prompts. Although it may look like you'll be charged for the course, there is no cost.
- 3) Once you've completed "checkout," you'll be able to take the free online course.
- 4) When you've completed and passed the course, you have the option of printing a certificate of completion.

[Centers for Disease Control and Prevention Heads Up Concussion in Youth Sports On-Line Training Program:](http://www.cdc.gov/concussion/HeadsUp/online_training.html)

http://www.cdc.gov/concussion/HeadsUp/online_training.html

PLEASE NOTE: Both courses offer a "certificate of completion" upon successful passage. The NFHS course allows organizations [to search for and track coaches who have completed the course](#) while the CDC course does not.

15. How often are student athletes (interscholastic athletics) required to submit the signed Concussion Information Sheet?

Students are required to submit a completed form each school year for each sport or other category of interscholastic athletics for which the student practices or competes. (ORC 3313.539)

16. If a student submits the signed concussion information sheet for an activity in the fall and would like to participate in another interscholastic athletic activity during the same school year, does he or she have to turn in another concussion information sheet?

Yes. Student athletes are required to submit the form for each sport or other category of interscholastic athletics for which the student practices or competes. (ORC 3313.539)

17. How often are youth sports organizations required to provide the ODH concussion information sheet?

Youth sports organizations are required to provide the information sheet annually for each sport or other category of athletic activity. (ORC 3707.511)

18. What if a coach or referee thinks a player should be removed from practice or a game after a head injury, but the player's parent/guardian disagrees and thinks the player should continue playing – who makes the final decision?

www.healthyohioprogram.org/concussion

****Ohio's return-to-play law goes into effect on April 26th, 2013****

Ideally, parents who have received and reviewed the ODH concussion information sheet will recognize the signs and symptoms of a possible concussion. However, coaches, referees (and officials in the case of youth sports organizations) are responsible for removing an athlete from play if he or she shows the signs and symptoms of a concussion – even if a parent or the player disagrees (ORC 3313.539 and ORC 3707.511). The athlete is not permitted to return to play on the same day as he/she is removed.

19. What are the signs, symptoms, or behaviors consistent with having sustained a concussion or head injury?

Athletes do not have to be “knocked out” to have a concussion. In fact, less than 1 out of 10 concussions result in loss of consciousness. Concussion symptoms can develop right away or up to 48 hours after the injury. *Ignoring any signs or symptoms of a concussion puts a child's health at risk!*

Signs Observed by Parents of Guardians:

- Appears dazed or stunned.
- Is confused about assignment or position.
- Forgets plays.
- Is unsure of game, score or opponent.
- Moves clumsily.
- Answers questions slowly.
- Loses consciousness (even briefly).
- Shows behavior or personality changes (irritability, sadness, nervousness, feeling more emotional).
- Can't recall events before or after hit or fall.

Symptoms Reported by Athlete:

- Any headache or “pressure” in head. (How badly it hurts does not matter.)
- Nausea or vomiting.
- Balance problems or dizziness.
- Double or blurry vision.
- Sensitivity to light and/or noise
- Feeling sluggish, hazy, foggy or groggy.
- Concentration or memory problems.
- Confusion.
- Does not “feel right.”
- Trouble falling asleep.
- Sleeping more or less than usual.

20. Are there any resources available for health care providers on clearing an athlete to return to play?

****Ohio's return-to-play law goes into effect on April 26th, 2013****

The Centers for Disease Control and Prevention (CDC) have a number of resources to assist health care providers in helping to identify, diagnose and manage concussions. These resources can be accessed here: www.cdc.gov/concussion/clinician.html

21. Are there any resources available for parents, coaches, teachers and school administrators to help students return to school after sustaining a concussion?

Nationwide Children's Hospital offers a number of resources to educate parents, coaches, teachers and school administrators about the signs, symptoms, treatment and management of concussions. These materials can be accessed here: <http://www.nationwidechildrens.org/concussion-toolkit>

22. Does the law apply to out of state coaches and referees?

If an individual from out-of-state is to coach or referee for an Ohio youth sports organization in Ohio, then that individual must comply with Ohio law, including successfully completing the concussion and head injury recognition training program identified by the Ohio Department of Health and removing an athlete from practice or play if they exhibit the signs and symptoms of a concussion.

23. What do youth sports organizations have to do to comply with the training requirements under the law?

The youth sports organization for which the individual intends to act as a coach or referee shall inform the individual of the requirement described in Ohio law.

24. Is physician defined under the law?

"Physician" means a person authorized under [Chapter 4731](#) of the Revised Code to practice medicine and surgery (MD) or osteopathic medicine and surgery (DO).

25. Does an out-of-state coach or referee have to take the online training if they completed a concussion awareness training in their own state?

If an out-of-state coach or referee took the one of the two [ODH identified training courses](#) to meet the requirements in their own state within the past three years, then they do not have to re-take the training. If they took another course that has not been approved by ODH, then they would have to take [one of the two identified trainings](#) to ensure compliance with Ohio law.

26. If my youth sports organization is part of a larger youth sports organization, who is responsible for providing the concussion information sheet to parents/guardians?

Which ever organizational unit or entity that has direct contact with the athlete is the most reasonably appropriate entity to distribute the concussion information sheet. Several organizations are incorporating the sheet into their registration procedures.

www.healthyohioprogram.org/concussion

****Ohio's return-to-play law goes into effect on April 26th, 2013****

27. Is there a form that health care providers must sign to permit an athlete to return to practice or play after they are removed?

For school sports that are members of the Ohio High School Athletic Association, there is an OHSAA sanctioned form available here: <http://ohsaa.org/medicine/AuthorizationToReenter.pdf>

For youth sports organizations and schools that are not part of the OHSAA, there is no specific form that must be filled out by a healthcare provider authorizing an athlete to return to play. The law only requires that the athlete must present evidence in writing by a physician (MD or DO) or other authorized health care provider that they have been cleared to return.

Disclaimer: *This document is intended to serve as guidance for Ohio's "Return to Play" Law and should not be construed as legal advice or legal opinion on specific facts or circumstances. You should consult an attorney with respect to any particular issue or concern.*

INFORMATION ON CONCUSSION MANAGEMENT

CONCUSSION REGULATIONS – UPDATED FOR 2013-14

DATE OF IMPLEMENTATION – APRIL 26, 2013

Implementation of State Law and NFHS Playing Rules Related to Concussion and Concussed Athletes and Return to Play Protocol

Notwithstanding the leading role that the Ohio High School Athletic Association has played in the area of developing policies concerning concussion prevention, recognition and management, in December of 2012, Ohio's Governor Kasich signed into law legislation that was passed by Ohio's 129th General Assembly which incorporated much of what the OHSAA regulations previously mandated. This law adds several aspects to previous OHSAA regulations. Therefore, in order to be fully compliant with this law as signed by our Governor, modifications have been made to OHSAA policy. These modifications are set forth in these updated Concussion Regulations.

It is important for all individuals involved in interscholastic athletics to recognize the potential for catastrophic injury and even death from concussions. Thus it is extremely important that each coach, administrator, contest official and medical support personnel review their responsibilities in protecting students. Further both students and parents have responsibilities in this area as well.

Note: It has always been the ultimate responsibility of the coaching staff, in all sports, to ensure that students are only put into practice or contests if they are physically capable of performing. However, all individuals involved in the conduct of interscholastic competition have responsibilities in this endeavor.

In January 2011, the OHSAA Board of Directors adopted a sports regulation which incorporated the National Federation of State High School Associations (NFHS) playing rules related to concussion recognition and management. On April 26, 2013, legislation adopted by Ohio's General Assembly on concussion and head injuries in youth sports became effective. On February 14, 2013, the OHSAA Board of Directors mandated that these regulations become effective on April 26, 2013 for the remainder of the spring sports season and thereafter. This OHSAA regulation, as amended to incorporate this recent legislation, now reads:

Any student, while practicing for or competing in an interscholastic contest, who exhibits signs, symptoms or behaviors consistent with having sustained a concussion or head injury (such as loss of consciousness, headache, dizziness, confusion or balance problems) shall be immediately removed from the practice or contest by either of the following:

- 1) The individual who is serving as the student's coach during that practice or competition.
- 2) An individual who is serving as a contest official or referee during that practice or competition.

RETURN TO PLAY PROTOCOL

If a student is removed from practice or competition due to a suspected concussion or head injury, the coach or referee who removes the student shall not permit the student, **ON THE SAME DAY THE STUDENT IS REMOVED**, to return to that practice or competition or to participate in any other practice or competition for which the coach or contest official is responsible. Thereafter, which means no earlier than the next day, the coach or contest officials shall not permit the student to return to practice or competition until both of the following conditions are satisfied:

- 1) The student's condition is assessed by either of the following:
 - a. A physician, who is a person authorized under Chapter 4731 of the Ohio Revised Code (OCR) to practice medicine and surgery or osteopathic medicine or surgery (M.D. or D.O.)
 - b. Any other licensed health care provider that the school district board of education or other governing authority of a chartered or non-chartered nonpublic school, authorizes to assess the student who has been removed from practice or competition.
- 2) The student receives **written authorization** that it is safe for the student to return to practice or competition from a physician or other licensed health care provider authorized to grant the clearance. Click here <http://ohsaa.org/medicine/AuthorizationToReenter.pdf> to retrieve the OHSAA's Medical Authorization to Return To Play (RTP) form.

A school district board of education or governing authority of a chartered or non-chartered nonpublic school may authorize a licensed health care provider who is NOT a PHYSICIAN to make an assessment and grant authorization for a student to return to participation ONLY if the provider is acting in accordance with one of the following as applicable to the provider's authority to practice in Ohio:

- 1) In consultation with a physician;
- 2) Pursuant to the referral of a physician;
- 3) In collaboration with a physician, or
- 4) Under the supervision of a physician.

Note: A physician or other licensed health care provider who makes an assessment or grants clearance for a student to return to participation may be a volunteer.

COACHES REQUIREMENTS

All coaches, paid and volunteer, must possess a current Department of Education-issued Pupil Activity Program/Coaching Permit. When renewing this permit, the coach will be required to complete an online concussion education course as stipulated in the section entitled **Approved Online Concussion Education Course**. This course is valid for three years and expires at the time the Pupil Activity Program/Coaching Permit expires.

CONTEST OFFICIALS REQUIREMENTS

New legislation signed into law by the Governor provides that no school "shall permit" an individual to referee interscholastic athletic contests unless the individual holds a Pupil Activity Program/Coaching Permit or has successfully completed within the last three years a training program in concussion recognition. Therefore, all OHSAA licensed officials shall possess either a current Department of Education-issued Pupil Activity Program/Coaching Permit or **show evidence of completing an approved online concussion education course** as stipulated in the section entitled **Approved Online Concussion Education Courses**. This course is valid for three years from the date of completion.

STUDENT AND PARENT REQUIREMENTS

All students and their parents or legal guardians shall review and sign the "Concussion Information Sheet" which has been developed by the Ohio Department of Health and which shall be distributed by OHSAA member schools to all students and their parents prior to each sports season. Students and parents shall review and sign this form each year and should keep a copy of the form. In addition, parents and students are encouraged to complete an approved concussion education course. The Concussion Information Sheet can be found here:

http://www.healthyohiprogram.org/~/_media/HealthyOhio/ASSETS/Files/injury%20prevention/concussion/Interscholastic%20Concussion%20Form%20-%20ODH%20Revised%202.ashx

APPROVED ONLINE CONCUSSION EDUCATION COURSES

THE FOLLOWING FREE ONLINE TRAINING COURSES HAVE BEEN APPROVED BY THE OHIO DEPARTMENT OF HEALTH FOR COACHES AND CONTEST OFFICIALS:

National Federation of State High School Associations Concussion in Sports - What you Need to Know:

<http://www.nfhslearn.com/electiveDetail.aspx?courseID=38000>

(This free online course is available through the NFHS. Click the "order here" button, and complete a brief registration form to take the course. Follow these steps to complete the course:

1. Click on the button that says "Please Login to Order." In the window that appears, click "Register Now."
2. When your registration is complete, you may "order" the free concussion course offered along the left-hand side of the page. Continue following prompts. Although it may look like you will be charged for the course, there is no cost.
3. Once you've completed "Checkout," you will be able to take the free online course.
4. When you have completed and passed the course, you have the option of printing a certificate of completion.
5. All Ohio Officials should select this option to print, retain a copy of the certificate and carry it with them to all contests.

Centers for Disease Control and Prevention Heads Up Concussion in Youth Sports On-Line Training

Program: http://www.cdc.gov/concussion/HeadsUp/online_training.html -

PLEASE NOTE: Both courses offer a "certificate of completion" upon successful passage. The NFHS course allows organizations to search for and track coaches and other individuals such as contest officials who have completed the course, while the CDC course does not.

FREQUENTLY ASKED QUESTIONS

1. **What are the "signs, symptoms, or behaviors consistent with a concussion?"** The National Federation rule lists some of the signs, symptoms and behaviors consistent with a concussion. The U.S. Department of Health and Human Services, Centers for Disease Control and Prevention has published the following list of signs, symptoms and behaviors that are consistent with a concussion:

SIGNS OBSERVED BY OTHERS	SYMPTOMS REPORTED BY ATHLETE
<ul style="list-style-type: none">• Appears dazed or stunned• Is confused about assignment• Forgets plays• Is unsure of game, score, or opponent• Moves clumsily• Answers questions slowly• Loses consciousness• Shows behavior or personality changes• Cannot recall events prior to hit• Cannot recall events after hit	<ul style="list-style-type: none">• Headache• Nausea• Balance problems or dizziness• Double or fuzzy vision• Sensitivity to light or noise• Feeling sluggish• Feeling foggy or groggy• Concentration or memory problems• Confusion

2. **Who is responsible for administering this rule?**

All individuals who have responsibilities and duties in the interscholastic athletics environment are responsible: coaches, contest officials, administrators, students, parents and medical personnel.

3. What is the role of coaches in administering this rule?

- Coaches are to review and know the signs and symptoms of concussion and to prohibit any athlete who displays these signs or symptoms from participating in a practice or a contest.
- Coaches are not medical professionals and have no authority to determine whether or not a student has sustained a concussion. The coach is responsible for insuring that the student's parents are notified and the student is referred to a medical professional.
- Coaches shall be aware that any student removed from a practice or a contest due to a suspected concussion or head injury **shall not return to participation on the same day as the removal.**
- Coaches shall possess a current Pupil Activity Program/Coaching Permit and shall take one of the approved online concussion courses upon renewal of the permit.

4. What is the role of contest officials in administering the rule?

- Officials are to review and know the signs and symptoms of concussion and to direct immediate removal of any student who displays these signs or symptoms. When informing the head coach about removal of an athlete, the official shall be accompanied by another (second) official if possible.
- An official **shall not permit the athlete who has been removed under this rule to return to competition that same day.**
- If a contest official is aware that a student has been permitted to return to competition on the same day as removal, that official shall immediately stop play and remove that student from competition and report the incident to the OHSAA.
- Note that officials are not medical professionals and have no authority to determine whether or not a student has sustained a concussion. The official is responsible for directing removal when he or she observes signs and symptoms that may indicate a student is concussed.
- All Officials shall possess either a current Pupil Activity Program/Coaching Permit or shall complete one of the online concussion courses which are valid for three years from the date of completion.
- At initial licensure or renewal of the OHSAA officiating permit, the official shall indicate that he or she has either a current Pupil Activity Program/Coaching Permit or has completed one of the approved online concussion courses.
- All officials should carry with them evidence of completion of one of these options at all times while officiating a contest.
- Officials are required to submit to the OHSAA the "OHSAA Concussion Report" within 48 hours whenever a student has been removed from a contest under this regulation.

5. What are the expectations of student-athletes in concussion management?

- **While all individuals involved in the interscholastic athletics program have a responsibility to recognize the potential for catastrophic injury and even death from concussions, it is also the responsibility of student-athletes to recognize the signs, symptoms and behaviors consistent with a concussion.**
- **Student-athletes who exhibit symptoms such as loss of consciousness, headache, dizziness, confusion or balance problems, have the responsibility to report these immediately to their coach and/or health care professional. Teammates also share the responsibility to report these symptoms when they are exhibited by a fellow student-athlete.**
- **Student-athletes shall review and sign, on an annual basis, along with their parents or**

legal guardians, the Ohio Department of Health's Concussion Information Sheet found on the OHSAA website and at this link

<http://www.healthyohioprogram.org/~media/HealthyOhio/ASSETS/Files/injury%20prevention/concussion/Interscholastic%20Concussion%20Form%20-%20ODH%20Revised%202.ashx>

6. Who decides if an athlete has not been concussed and/or who has recovered from a concussion?

• **Only an M.D. (Medical Doctor), D.O. (Doctor of Osteopathy), or another health care provider approved by the school's Board of Education or other governing body who is acting in accordance with one of the following as applicable to the provider's authority to practice in Ohio:**

- 1) In consultation with a physician;
- 2) Pursuant to the referral of a physician;
- 3) In collaboration with a physician;
- 4) Under the supervision of a physician.

is empowered to make the on-site determination that an athlete has **not** received a concussion. **Even if that determination has been made, however, the student may not return to practice or competition on the same day he/she has been removed from a practice or competition (see No. 7 below).**

• If any one of these physicians or authorized medical providers has answered that "yes" there has been a concussion, that decision is final.

7. Can an athlete return to play on the same day as he/she has been removed from a practice or competition for a suspected concussion?

- No, under no circumstances can that athlete return to play that day.
- No coach or contest official shall allow a student to return to practice or to competition on any day after the initial removal until that student has been assessed and cleared for return with **written authorization** by a physician or licensed health care provider authorized by the school.
- If the event continues over multiple days, then the designated event physician has ultimate authority over return to play decisions.

8. Once the day has concluded, who can issue authorization to return to practice/competition in the sport for a student who has diagnosed with a concussion?

- Once a concussion has been diagnosed by a physician or other approved health care provider, only a physician or approved provider can authorize subsequent Return To Play (RTP), and such authorization shall be in writing to the administration of the school. This written **RTP authorization shall be kept at the school indefinitely** as a part of that student's permanent record. Click here <http://ohsaa.org/medicine/AuthorizationToReenter.pdf> to access the OHSAA "Medical Authorization to Return to Play" Form.
- School administration shall then notify the coach as to the permission to return to practice or play.

9. What should be done after the student is cleared by an appropriate health care professional?

- After a clearance has been issued, the student's actual return to practice and play should follow a graduated protocol.
- The National Federation of State High School Associations has included the following graduated protocol in its Suggested Guidelines for Management of Concussion in Sports:

(Note: This is simply a suggested protocol. The appropriate health care professional who issues the clearance may wish to establish a different graduated protocol.)

NFHS SUGGESTED MEDICAL CLEARANCE RETURN TO PLAY PROTOCOL

1. No exertional activity until asymptomatic.
2. When the athlete appears clear, begin low-impact activity such as walking, stationary bike, etc.
3. Initiate aerobic activity fundamental to specific sport such as running or skating, and may also begin progressive strength training activities.
4. Begin non-contact skill drills specific to sport such as dribbling, fielding, batting, etc.
5. Full contact in practice setting.
6. Game play/competition.
 - Athlete must remain asymptomatic to progress to the next level. (It is often suggested that an athlete not be allowed to progress more than one level per day.)
 - If symptoms recur, athlete must return to previous level and should be reevaluated by an appropriate health care professional.
 - Medical check should occur before contact. (Final written clearance from the medical professional shall be obtained before the athlete engages in any unrestricted or full contact activity.)

QUICK LINKS FROM THE OHIO DEPARTMENT OF HEALTH

OHIO DEPARTMENT OF HEALTH CONCUSSION INFORMATION SHEET

[HTTP://WWW.HEALTHYOHIOPROGRAM.ORG/~MEDIA/HEALTHYOHIO/ASSETS/FILES/INJURY%20PREVENTION/CONCUSSION/INTERSCHOLASTIC%20CONCUSSION%20FORM%20-%20ODH%20REVISED%202.ASHX](http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/INJURY%20PREVENTION/CONCUSSION/INTERSCHOLASTIC%20CONCUSSION%20FORM%20-%20ODH%20REVISED%202.ASHX)

[Online Concussion Management Training - http://www.healthyohio.org/concussion.aspx#Training](http://www.healthyohio.org/concussion.aspx#Training)

[Ohio's Return to Play Law: Frequently Asked Questions -](http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/injury%20prevention/concussion/Frequently%20Asked%20Questions%20Updated%202513.ashx)

<http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/injury%20prevention/concussion/Frequently%20Asked%20Questions%20Updated%202513.ashx>

[Ohio's Return to Play Law: What Coaches and Referees Need to Know -](http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/injury%20prevention/concussion/Return%20to%20Play%20-%20What%20Coaches%20Need%20to%20Know%20-%20School%20Sports%20-%20Final.ashx)

<http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/injury%20prevention/concussion/Return%20to%20Play%20-%20What%20Coaches%20Need%20to%20Know%20-%20School%20Sports%20-%20Final.ashx>

[Ohio's Return to Play Law: What Parent/Guardians Need to Know -](http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/injury%20prevention/concussion/Return%20to%20Play%20-%20What%20Parents-Guardians%20Need%20to%20Know%20-%20School%20Sports%20-%20Final.ashx)

<http://www.healthyohio.org/~media/HealthyOhio/ASSETS/FILES/injury%20prevention/concussion/Return%20to%20Play%20-%20What%20Parents-Guardians%20Need%20to%20Know%20-%20School%20Sports%20-%20Final.ashx>

ADDITIONAL CONCUSSION RESOURCES

[Ohio Department of Health, Violence and Injury Prevention Program - Sports/Recreation Traumatic Brain Injuries -](http://www.healthyohio.org/vipp/child/tbi.aspx)

<http://www.healthyohio.org/vipp/child/tbi.aspx>

[CDC Heads Up: Concussion in Youth Sports](#)

Nationwide Children's Hospital – Concussion Information Toolkit - <http://www.nationwidechildrens.org/concussion-toolkit>

CDC Materials on Returning to School for Parents, School Nurses and Educators - <http://www.cdc.gov/concussion/HeadsUp/schools.html>

Ohio Legislative Service Commissioner HB 143 Bill Analysis - <http://www.lsc.state.oh.us/analyses129/12-hb143-129.pdf>

Brain Injury Association of Ohio – www.biaoh.org

Liability and Related Issues in Sports

Greg Kirstein
Columbus Blue Jackets

Greg Kirstein is the Senior Vice President and General Counsel for the Columbus Blue Jackets and oversees the Club's legal matters and human resources department. He received a bachelor's degree in journalism from The Ohio State University in 1977. He graduated from the Duquesne University School of Law in 1982.

I. PUCK STRIKES

- Fans
 - Patricia Higgins (physician): struck in head, between the eyes at Stanley Cup Final Game (Blackhawks fan) on 6/12/13 – damaged retina, temporarily lost 50% vision
 - Emily Austin (18 year-old student): struck in head during warm-ups at Miami (Ohio) University on 11/9/12 – sued University & lost (see: Puck Strike Liability Caselaw #5, herein)
 - Isabella Kowalski (7 years old): struck in head above left eye at a Flyers game on 11/16/10
- Players
 - Kyle Fundytus (16 years old): killed when struck in neck during a game – November 2011
 - Quinn Connaly (12 year-old) killed when struck in back of head during practice on December 10, 2000
- Referees
 - NHL referee Chris Rooney: struck in head during a Dallas vs. Colorado game on 2/4/13
 - Swedish referee: killed when struck in back of head during a junior game in northern Sweden in January, 2010
- Puck Strike Liability Caselaw
 - *Rees v. Cleveland Indians*, 2004-Ohio-6112 (see internal citations)
 - “Primary assumption of the risk is essentially a principle of no duty, or no negligence, to the injured plaintiff.”
 - “This defense is typically used in baseball cases where a person is injured when a baseball enters the spectator area.”
 - “Ohio courts have consistently held that assumption of the risk bars recovery by spectators who are injured by baseballs thrown or batted during the normal course of the game.”

- “Moreover, other states have determined that baseball games present inherent risks that are well known to the public, and that anyone who attends these events assumes the risk of injury.”
 - “Ohio courts and other jurisdictions have applied the same principles of primary assumption of the risk in non-baseball cases.”
 - “...spectators as well as participants ‘must accept from a participant conduct associated with that sport’ or activity and that where injuries stem from ‘conduct that is a foreseeable, customary part’ of the activity, the defendant ‘cannot be held liable for negligence because no duty is owed to protect the victim from that conduct.’”
 - “For most fans, the everyday reality of attending a baseball game includes voluntarily subjecting oneself to the risk that a ball or bat might leave the field and cause injury.”
 - “The concept of primary assumption of the risk provides that there is no duty to warn patrons of risk of harm within common knowledge.”
- *Morris v. Cleveland Hockey Club* (1952), 157 Ohio St. 225 (“Baseball Rule” [enunciated in *Cincinnati Baseball Club Co. v. Eno* (1925), 112 Ohio St. 175] re assumption of risk not applicable to hockey; distinguished “assumption of risk” from “contributory negligence”)
 - *Gallagher v. Cleveland Browns Football Co.*(1996), 74 Ohio St. 3d 427 (participants and spectators at sporting events barred from bringing actions for injuries arising out of “normal conduct of the game” absent defendant’s intentional tort or reckless conduct)
 - *Bundschu v. Naffah* (2002), 147 Ohio App. 3d 105 (Mahoning Cty.) (any analysis of primary assumption of risk turns on whether or not the injured spectator was subjected to risks or hazards that a reasonable participant would or would not expect to encounter in a particular sporting activity)
 - *Nungester v. Risk Mgt.*, 2008-Ohio-1214 (Ct. of Claims of Ohio) (no difference between baseball and hockey when applying the doctrine of primary assumption of risk to spectators injured by flying objects leaving the area of play and entering the stands)
 - *Austin v. Miami Univ.*, (citation pending, journalized August 13, 2013) Case No. 2013-00078-AD (Ct. of Claims of Ohio) (no obligation on the part of the operator of a hockey game to protect a spectator against being hit by a flying puck, a danger incident to the entertainment which any reasonable spectator could and did foresee. The baseball rule of primary assumption of risk is applicable to hockey)

- Illinois Statute: 745 Illinois Composite Statute 52. Hockey Facility Liability Act
 - 745 ILCS 52.10: no hockey facility owner/operator liability for injury by puck or stick strike unless injury is due to defect in protective net or glass that is itself due to owner/operator negligence, or unless injury is caused by willful and wanton conduct by owner/operator, player(s) and/or coach(es) employed by owner/operator.

2. Injuries Under Questionable Circumstances

- Legal Background: workers' compensation law; collective bargaining agreements
 - Players are considered "employees" for workers' compensation law.
 - Employers (the teams) continue paying salary for injuries sustained during course of employment per Collective Bargaining Agreements.
 - 23.4 A Player under an SPC who is disabled and unable to perform his duties as a hockey Player by reason of an injury sustained during the course of his employment as a hockey Player, including travel with his team or on business requested by his Club, shall be entitled to receive his remaining Paragraph 1 Salary and Signing Bonuses due in accordance with the terms of his SPC for the remaining stated term of his SPC as long as the said disability and inability to perform continue but in no event beyond the expiration date of the fixed term of his SPC. (NHL CBA, available at: <http://www.nhlpa.com/inside-nhlpa/collective-bargaining-agreement>)
 - Teams perform exit physicals with players at the end of seasons, so all parties are aware of current health going into the offseason.
 - 23.10 At the conclusion of each season, the Club shall provide each Player with a complete copy of his medical records at the time of his annual exit physical (to the extent the Club maintains physical possession of the Player's medical records; otherwise the Club's physician will provide the Player with a complete copy of his medical records upon the Player's direction to do so). The exit physical shall document all injuries that may require future medical or dental treatment either in the near future or post-career. The Club shall remain responsible for the payment of medical and dental costs associated with treatment of such hockey-related injuries at such future date. (Id.)

contract. All this occurred against the backdrop of the 2004-05 NHL full season lockout. The primary issues at arbitration were whether Irbe's injury was hockey-related, and whether he was unfit to play as of the commencement of the Club's obligations to pay him. In a decision that turned as much on the credibility of witnesses as on issues of law, the arbitrator upheld Irbe's grievance for his 2004-05 salary, but denied his claim for medical benefits for treatments that were clearly unauthorized by the Club.

- Off-Field/Court/Ice Injuries:
 - NY Yankees pitcher Joba Chamberlain dislocated his ankle playing on a trampoline with his son (6 weeks in a cast)
 - San Diego Padres pitcher Adam Easton accidentally stabbed himself in the stomach with a pocketknife while opening a package
 - Jacksonville Jaguars punter Chris Hanson gashed his foot with an axe while taking part in a wood-chopping team-building exercise devised by his head coach, Jack Del Rio
 - Ken Griffey, Jr. broke his throwing hand while wrestling with his son
 - Both Pittsburgh Steelers Quarterback Ben Rothlisberger and Cleveland Browns tight end Kellen Winslow, Jr. were injured were seriously injured in separate motorcycle accidents
 - The New York Knicks' Amar'e Stoudemire mangled his left hand when he punched a glass fire extinguisher case in anger after a playoff loss to the Miami Heat.

3. Violence in the Game

- Legal Background: criminal law; assumption of risk
- Disputes Turn On: whether conduct on the field/court/ice so unreasonable and reckless to find the athlete guilty of a criminal act

- Recent Examples:
 - Todd Bertuzzi – Ontario civil suit brought by Steve Moore (on 2/14/06) against Bertuzzi and the Vancouver Canucks for an allegedly planned ambush-assault by Bertuzzi on Moore, causing severe injuries that disabled Moore and ended his playing career. Bertuzzi previously pled guilty to assault causing bodily harm and was suspended by the NHL
 - Derek Boogaard – Wrongful Death Complaint against the National Hockey League (copy attached) for its alleged responsibility for the physical trauma and brain damage that Boogaard sustained during six seasons as an on-ice “enforcer,” and for his allegedly consequential addiction to prescription painkillers, both of which are alleged to have led to his suicide.
 - Pennsylvania High School Player May Face Criminal Charges for Hitting Player with Helmet
 - Facts: During a recent game, a high school football player ripped off his opponent’s helmet and hit the opponent in the head with it
 - Consequences: the local police department is considering pressing charges
 - Link: : <http://sports.yahoo.com/blogs/highschool-prep-rally/pa-player-may-face-criminal-charges-ripping-helmet-151701209.html>

4. Promotions

- Milwaukee Brewers “Sausage Gate”
 - Facts: Randall Simon (Pirates’ first basemen) bat swing to person running in sausage costume for Brewers promotion (no injury caused)
 - Consequences: Simon cited for disorderly conduct and fined \$432; no criminal charges; Pirates apologized and addressed the issue internally

- Link: http://sportsillustrated.cnn.com/baseball/news/2003/07/10/sausage_folo_ap/
- WWE Wrestler Owen Hart Dies from Fall
 - Facts: Owen Hart, in attempting to perform a stunt entry to the ring, fell 50 feet and died in 1999; television audience does not witness the fall but those in attendance do
 - Consequences: WWE settled lawsuit for \$18 million with Hart's family; family again sued WWE in 2010 for royalties as part of using his image and settled for undisclosed amount
 - Links: <http://www.cnn.com/US/9905/24/wrestler.dies.04/>
<http://www.inquisitr.com/602812/wwe-lawsuit-over-owen-harts-image-gets-settled/>

5. Fights in the Stands / Parking Lots

- San Francisco Giants Fan Beaten into Coma by outside Dodger Stadium
 - Facts: Giants fan beaten by Dodger fans at Dodger stadium on opening day 2011 suffers significant brain injury; cost of medical expenses in expenses for rest of his life in the tens of millions
 - Consequences: attackers pleaded not guilty and await criminal trial; family's civil suit versus Dodgers and company that controls the stadium parking lot set for trial; questions into previous incidents, staffing of security personnel and lighting in the parking lot are paramount
 - Link: <http://www.usatoday.com/story/sports/mlb/2013/06/25/bryan-stow-uncertain-future-giants-fan/2458329/>
- Dodgers Fan Fatally Stabbed Blocks from Giants' Ballpark
 - Facts: repeated fights between fans a few blocks from the ballpark leads to a Dodger fan being stabbed and killed (Sept 2013)
 - Consequences: suspect arrested but released pending further investigation

- With each incident, do teams have heightened duty to fans?
- And if so, does that duty extend beyond stadium property?
- Link: <http://abcnews.go.com/Sports/wireStory/dodgers-slain-fan-son-team-security-guard-20395204>

6. Slip-and-Falls

- Texas Rangers' Fan Falls Reaching for Ball Tossed by Josh Hamilton
 - Facts: Father reaching for foul ball tossed by Josh Hamilton falls 20 feet onto concrete and dies
 - Consequences: Review of stadium railing compliance (at city and league level); providing option grief counseling to players
 - Link: http://www.huffingtonpost.com/2011/07/08/shannon-stone-dead-josh-hamilton_n_893029.html

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ROBERT D. NELSON, Personal
Representative of the Estate of DEREK
BOOGAARD, Deceased,

Plaintiff,

v.

NATIONAL HOCKEY LEAGUE,
NATIONAL HOCKEY LEAGUE BOARD
OF GOVERNORS, and COMMISSIONER
GARY B. BETTMAN, (collectively, "NHL"),

Defendants.

No.

PLAINTIFF DEMANDS TRIAL BY JURY

FILED-1
MAY 10 PM 4:29
COURT CLERK BROWN
CIRCUIT COURT
LAW DIVISION

COMPLAINT AT LAW

Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, by and through his attorneys, CORBOY & DEMETRIO, P.C., complaining of Defendant, NHL, states:

Introduction

1. On May 13, 2011, NHL player DEREK BOOGAARD, age 28, was found dead. The cause of DEREK BOOGAARD's death was an accidental overdose of prescription pain medications.

2. From 2005 until the time of his death, DEREK BOOGAARD, six-foot seven-inches (6'7") and approximately 270 pounds, played in the NHL as an Enforcer/Fighter (i.e., a player that engages in fist-fights with players from the opposing team, on the ice, during a game) for the Minnesota Wild and the New York Rangers, playing in two-hundred-seventy-seven (277) regular season games. In his six-season career, DEREK BOOGAARD scored only three (3)

goals.

3. As an NHL Enforcer/Fighter, DEREK BOOGAARD participated in at least sixty-six (66) on-ice fights.

4. During these NHL games and fights, DEREK BOOGAARD sustained numerous painful physical injuries.

5. Due to the injuries sustained in NHL fights, DEREK BOOGAARD was provided copious amounts of prescription pain medications, sleeping pills, and painkiller injections by NHL team's physicians, dentists, trainers, and staff.

6. To wit, during the 2008-2009 hockey season, DEREK BOOGAARD received prescriptions from NHL team physicians, dentists, trainers, and staff totaling one-thousand-twenty-one (1,021) pills.

7. At the conclusion of the 2008-2009 season, DEREK BOOGAARD underwent two (2) surgeries, performed a week apart.

8. In the sixteen (16) days subsequent to these surgeries, DEREK BOOGAARD was prescribed one-hundred-fifty (150) pills of Oxycodone by NHL team physicians.

9. Under the Controlled Substances Act, Oxycodone (i.e., OxyContin, Percocet, etc.) is a Schedule II controlled substance because it "has a high potential for abuse," and because use of the drug "may lead to severe psychological or physical dependence."

10. Due to his ingestion of an inordinate amount of pain medications prescribed by NHL team physicians, DEREK BOOGAARD became addicted to opioids.¹

¹Opioids are morphine-like synthetic narcotics such as Oxycodone and Hydrocodone that have opiate-like activities. Common Opioids on the market include Oxycodone, Vicodin, and Percocet.

11. Once addicted, DEREK BOOGAARD was abusing the pain medications and sleeping pills.
12. DEREK BOOGAARD's family notified the NHL of the prescription medication drug abuse and, as a result, DEREK BOOGAARD was placed into the NHL's Substance Abuse and Behavioral Health Program ("SABH Program").
13. On September 23, 2009, the SABH Program checked DEREK BOOGAARD into "The Canyon" rehabilitation facility in California for in-patient treatment of his developed opioid and sleeping pill addiction.
14. Prior to his release from "The Canyon," the NHL mandated that DEREK BOOGAARD participate in an "Aftercare Program" and promised to monitor him and discipline him, if necessary, to prevent further drug abuse.
15. On July 7, 2010, DEREK BOOGAARD signed a four year contract with the New York Rangers NHL franchise.
16. While with the Rangers, on December 9, 2010, DEREK BOOGAARD was in an on-ice fight and sustained a cerebral concussion and resulting Post-Concussive Syndrome with persistent symptoms.
17. DEREK BOOGAARD never played in another NHL game.
18. Prior to this injury, the NHL knew DEREK BOOGAARD had relapsed and was again abusing pain pills. The NHL did not discipline him in any way.
19. On April 4, 2011, DEREK BOOGAARD was so impaired at a New York Rangers practice that he could not stay up on his skates and fell numerous times.
20. On April 5, 2011, at the direction of the NHL's SABH Program, DEREK

BOOGAARD was checked into the Authentic Rehabilitation Center ("ARC") in California for treatment of opioid addiction.

21. At ARC, the program therapists noted that DEREK BOOGAARD was "largely non-participatory in treatment," "resistant to treatment protocols," "indifferent in therapy sessions," and "views treatment episode as something he must do to comply with NHL."

22. At the time, the NHL knew, or should have known, that DEREK BOOGAARD, a known drug addict, with probable brain damage due to concussive brain traumas sustained in NHL fights, was not complying with treatment at ARC.

23. Despite the NHL's knowledge of DEREK BOOGAARD's drug addiction, on two occasions, the NHL released DEREK BOOGAARD from his treatment facility for a trip without a chaperone.

24. On the first night of his second release from treatment, in Minnesota, DEREK BOOGAARD ingested a Percocet and, shortly thereafter, phoned a member of the SABH Program and exchanged seven (7) text messages with this individual.

25. The next day, on May 13, 2011, DEREK BOOGAARD was found dead.

26. Post-mortem, neuro-pathological review of DEREK BOOGAARD's brain by Boston University School of Medicine, Center for the Study of Traumatic Encephalopathy, revealed that DEREK BOOGAARD had Stage II Chronic Traumatic Encephalopathy ("CTE") as a result of repeated blows to the head during his hockey career.

27. CTE caused progressive deterioration in DEREK BOOGAARD's brain, specifically, in the areas of the brain that control judgment, inhibition, mood, behavior and impulse control. The cumulative effect of DEREK BOOGAARD's concussive and sub-

concussive brain traumas from fighting as an Enforcer/Fighter in the NHL and/or returning to play and fight while recovering from these brain traumas caused, or contributed to exacerbate, the neuro-degenerative disease, CTE, to develop in his brain.

The NHL/NHLPA Collective Bargaining Agreements

28. During DEREK BOOGAARD's six seasons in the NHL, the league was operating under the 2005 Collective Bargaining Agreement, negotiated between the NHL and the NHLPA.

29. The 2005 Collective Bargaining Agreement does not address the NHL's duties or responsibilities to its players in administering controlled substances.

30. The 2005 Collective Bargaining Agreement does not address procedures for administering controlled substances to its players.

31. The 2005 Collective Bargaining Agreement does not address the NHL's duties or responsibilities to its players pursuant to the SABH Program.

32. The 2005 Collective Bargaining Agreement does not address the NHL's duties or responsibilities to keep its Enforcers/Fighters safe.

33. The 2005 Collective Bargaining Agreement does not address the NHL's duties or responsibilities to its players to monitor their general health.

34. LEN BOOGAARD, JOANNE BOOGAARD, and the next-of-kin of DEREK BOOGAARD, are not signatories to any NHL/NHLPA Collective Bargaining Agreement.

35. None of the claims by DEREK BOOGAARD's heirs are governed by the terms of the 2005 Collective Bargaining Agreement.

The Parties

36. Defendant, NATIONAL HOCKEY LEAGUE, is an unincorporated association

headquartered at 1185 Avenue of the Americas, New York, New York 10036. The NHL operates a professional ice hockey league, consisting of thirty franchised member clubs.

37. The NHL, as an unincorporated association of member teams, is a resident of each state in which its members are residents, including Minnesota and Illinois.

38. The NHL operates a franchise, the Minnesota Wild, located at 175 Kellogg Boulevard West, St. Paul, Minnesota 55102.

39. The NHL operates a franchise, the Chicago Blackhawks, located at 1901 West Madison Street, Chicago, Cook County, Illinois 60612, where DEREK BOOGAARD played multiple games and engaged in on-ice fights during his NHL career.

40. The NHL conducts continuous and systematic business within the State of Illinois.

41. The Defendant, NHL Board of Governors, and Defendant, NHL Commissioner, meet regularly to determine issues of player safety and the care the players receive when in the NHL.

42. ROBERT D. NELSON is a resident of Minneapolis, Minnesota. He was appointed by the State of Minnesota, Fourth Judicial Circuit Court as Personal Representative of the Estate of DEREK BOOGAARD and represents DEREK BOOGAARD's surviving heirs and next of kin: Len Boogaard, father; Joanne Boogaard, mother; Curtis Heide, brother; Ryan Boogaard, brother; Aaron Boogaard, brother; and Krysten Boogaard, sister.

COUNT I

The NHL's Failure to Prevent Over-Prescription of Addictive Medications to Derek Boogaard Caused Pain and Suffering and Loss of a Normal Life

Plaintiff re-alleges paragraphs 1 - 42 above and incorporates each allegation herein.

43. During DEREK BOOGAARD's NHL playing career, he sustained dozens of

injuries, including concussive and sub-concussive brain traumas, broken noses, torn shoulder tissue, facial lacerations, contusions, muscle strains, herniated disks, and teeth fractures in NHL fights.

44. During DEREK BOOGAARD's playing career, NHL team physicians, dentists, trainers, and staff provided treatment for these injuries.

45. During DEREK BOOGAARD's playing career, he received thousands of prescription medications from NHL team's physicians, dentists, trainers, and staff.

46. Often, DEREK BOOGAARD received prescriptions for controlled substances from NHL team physicians, dentists, trainers, and staff with no medical records in support of the prescriptions.

47. Prior to and during DEREK BOOGAARD's career, the NHL knew, or should have known, the high rate of injuries resulting from playing professional hockey.

48. Prior to and during DEREK BOOGAARD's career, the NHL knew, or should have known, the higher rate of injuries sustained by Enforcers/Fighters in the NHL.

49. Prior to and during DEREK BOOGAARD's career, the NHL knew, or should have known, that the Enforcers/Fighters in the NHL had an increased risk of brain damage due to concussive and sub-concussive brain trauma and were particularly susceptible to addiction issues.

50. Prior to and during DEREK BOOGAARD's NHL career, the NHL knew, or should have known, that the Enforcers/Fighters in the NHL had an increased risk of developing addiction to prescription pain medications.

51. The NHL knew, or should have known, that NHL team physicians, dentists,

trainers, and staff were prescribing controlled substances, including Oxycodone, to DEREK BOOGAARD.

52. The NHL knew, or should have known, the harmful effects of administering these controlled substances.

53. The NHL never discussed the risks associated with ingesting large quantities of controlled substances with DEREK BOOGAARD before administering the prescriptions.

54. During DEREK BOOGAARD's 2008-2009 season with the Minnesota Wild, he was prescribed over forty prescriptions by Minnesota Wild team physicians, dentists, trainers, and staff, totaling one-thousand-twenty-one (1,021) pills.

55. On October 16, 2008, DEREK BOOGAARD sustained a tooth fracture due to a punch in the mouth in an NHL fight. In the months that followed this injury, DEREK BOOGAARD was prescribed over four-hundred-thirty-two (432) pain pills (Hydrocodone a/k/a Vicodin) by Minnesota Wild and San Jose Sharks teams' physicians and dentists, documented as follows:

#	Date	Drug/Medication	Quantity/ Dosage	Physician	Injury?
1	10-20-2008	Hydrocodone/APAP	15 (750mg)	Dr. Edlund	Tooth Injury
2	10-23-2008	Vicodin	5 (500mg)	Dr. S. Burns	Tooth Injury
3	10-24-2008	Hydrocodone/APAP	15 (750mg)	Dr. Edlund	Tooth Injury
4	11-02-2008	Hydrocodone/APAP	40 (500mg)	Dr. Ting	None noted
5	11-11-2008	Vicodin	30**	Woodbury	Tooth Injury

6	11-11-2008	Hydrocodone/APAP	30 (500mg)	Dr. Stacy	Tooth Injury
7	11-16-2008	Hydrocodone/APAP	30 (500mg)	Dr. Pelke	Tooth Injury
8	11-21-2008	Hydrocodone/APAP	30 (750mg)	Dr. Nanne	None noted
9	12-04-2008	Hydrocodone/APAP	30 (750mg)	Dr. S. Burns	None noted
10	12-18-2008	Hydrocodone/APAP	30 (750mg)	Dr. Peterson	None noted
11	12-28-2008	Hydrocodone/APAP	20 (500mg)	Dr. S. Burns	None noted
12	01-01-2009	Hydrocodone/APAP	30 (750mg)	Dr. Peterson	None noted
13	01-14-2009	Vicodin	5 (75mg)	Dr. J. Boyd	Lliopsoas Strain
14	01-25-2009	Hydrocodone/APAP	30 (500mg)	Dr. Peterson	None noted
15	01-31-2009	Vicodin	6 (75mg)	Dr. J. Boyd	Cervical Strain
16	02-19-2009	Hydrocodone/APAP	20 (750mg)	Dr. Peterson	None noted
17	03-10-2009	Hydrocodone/APAP	30 (750mg)	Dr. S. Burns	None noted
18	03-22-2009	Hydrocodone/APAP	6 (750mg)	Dr. Nelson	SLAP Lesion
19	04-04-2009	Hydrocodone/APAP	30 (750mg)	Dr. S. Burns	None noted

56. Hydrocodone can be habit-forming, causing physical and psychological dependence. Its abuse liability is similar to morphine, but less than Oxycodone.

57. On April 14, 2009, DEREK BOOGAARD underwent nasal surgery and was

prescribed forty (40) pills of Oxycodone post-operatively.

58. On April 21, 2009, DEREK BOOGAARD underwent right shoulder surgery and was discharged on Percocet (i.e., Oxycodone/paracetamol) of an unknown quantity.

59. The NHL knew, or should have known, that under the Controlled Substances Act, Oxycodone is a Schedule II controlled substance because it “has a high potential for abuse,” and because use of the drug “may lead to severe psychological or physical dependence.”

60. The NHL knew, or should have known, of the high risk of developing addiction to controlled substances, including Oxycodone.

61. From April 14, 2009 to April 30, 2009, DEREK BOOGAARD was prescribed one-hundred-fifty (150) pills of Oxycodone and/or Percocet and forty (40) pills of Hydrocodone, documented as follows:

#	Date	Drug/Medication	Quantity/ Dosage	Physician
1	04-14-2009	Oxycodone/APAP	40	Dr. Hamlar
2	04-21-2009	Oxycodone/APAP	40 (325mg)	Dr. Nelson
3	04-24-2009	Oxycodone/APAP	30 (325mg)	Dr. Peterson
4	04-27-2009	Hydrocodone/APAP	40 (500mg)	Dr. Nelson
5	04-30-2009	Oxycodone/APAP	40 (325mg)	Dr. Nelson

62. DEREK BOOGAARD became addicted to these pain pills, often ingesting up to ten (10) per day.

63. During the off-season, DEREK BOOGAARD purchased and was provided Oxycodone off-market from multiple sources.

64. In September, 2009, DEREK BOOGAARD was checked into “The Canyon”

rehabilitation facility in California for in-patient treatment for opioid addiction.

65. As part of DEREK BOOGAARD's NHL-mandated "Aftercare Program" upon discharge from The Canyon, DEREK BOOGAARD was to refrain from all opioid and Ambien drug use and submit to random drug testing.

66. The NHL knew that DEREK BOOGAARD was addicted to prescription pain medications and prone to relapse.

67. Despite this knowledge, during DEREK BOOGAARD's 2010-2011 season with the New York Rangers, he was prescribed over seventeen (17) prescriptions for prescription pain medication and other controlled substances by NHL team's physicians, dentists, trainers, and staff, totaling three-hundred-sixty-six (366) pills, documented as follows:

Date	Drug/Medication	Physician	Dosage	Injury?
10-26-2010	Hydrocodone/APAP	Dr. Esposito	20 (750mg)	Tooth Injury
11-10-2010	Hydrocodone/APAP	Dr. Esposito	10 (750mg)	Tooth Injury
11-13-2010	Hydrocodone/APAP	Dr. Esposito	10 (750mg)	Tooth Injury
11-16-2010	Hydrocodone/APAP	Dr. Esposito	40 (325mg)	Tooth Injury
12-04-2010	Hydrocodone/APAP	Dr. Esposito	12 (750mg)	None noted
12-24-2010	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
01-06-2011	Ambien CR	Dr. Weissman	5 (10mg)	None noted
01-10-2011	Ambien CR	Dr. Weissman	14 (12.5mg)	None noted
01-18-2011	Zolpidem ER	Dr. Macaluso	30 (12.5mg)	Concussion
01-25-2011	Ambien CR	Dr. Weissman	10 (12.5mg)	None noted

02-02-2011	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
02-11-2011	Zolpidem ER	Dr. Weissman	5 (12.5mg)	None noted
02-13-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
02-27-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-04-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-24-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
04-08-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted

68. The NHL owed a duty to DEREK BOOGAARD to keep him reasonably safe during his NHL career and to refrain from causing an addiction to controlled substances.

69. The NHL breached its duty to DEREK BOOGAARD by:

- a. Failing to warn DEREK BOOGAARD of the increased risk of substance abuse due to his role as Enforcer/Fighter;
- b. Failing to monitor DEREK BOOGAARD's prescriptions to prevent substance abuse;
- c. Failing to establish proper procedures for administering prescription pain medication to DEREK BOOGAARD from NHL affiliated team physicians, dentists, trainers and staff;
- d. Failing to establish proper procedures for maintaining DEREK BOOGAARD's medical records and sharing those records with NHL affiliated team physicians, dentists, trainers and staff;
- e. Failing to implement or improve prescription drug monitoring programs ("PDMPs"), which are electronic databases that track all prescriptions for painkillers in the League;

- f. Failing to utilize PDMP and/or insurance plan data to identify multiple, duplicative prescriptions for painkillers;
- g. Failing to set up program plans that identify and address improper player use of painkillers; and
- h. Failing to set up prescription claims review programs to identify and address multiple, duplicative prescriptions and use of painkillers.

70. As a proximate result of one or more of the foregoing negligent acts or omissions, DEREK BOOGAARD suffered personal and pecuniary injuries in the form of addiction, which caused conscious pain and suffering and loss of a normal life, prior to his death on May 13, 2011; had he survived, he would have been entitled to bring an action for personal and pecuniary damages, and such action has survived him.

71. Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, brings this Survival Action, pursuant to 755 ILCS 5/27-6, commonly known as the Survival Act of the State of Illinois.

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, demands judgment against defendant, NHL, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT II

The NHL's Failure to Prevent Over-Prescription of Addictive Medications to Derek Boogaard Caused Wrongful Death

Plaintiff re-alleges paragraphs 1 - 42 above and incorporate each allegation herein.

72. During DEREK BOOGAARD's NHL playing career, he sustained dozens of injuries, including concussive and sub-concussive brain traumas, broken noses, torn shoulder tissue, facial lacerations, contusions, muscle strains, herniated disks, and teeth fractures in NHL

fight.

73. During DEREK BOOGAARD's playing career, NHL team physicians, dentists, trainers, and staff provided treatment for these injuries.

74. During DEREK BOOGAARD's playing career, he received thousands of prescription medications from NHL team's physicians, dentists, trainers, and staff.

75. Often, DEREK BOOGAARD received prescriptions for controlled substances from NHL team physicians, dentists, trainers, and staff with no medical records in support of the prescription.

76. Prior to and during DEREK BOOGAARD's career, the NHL knew, or should have known, the high rate of injuries resulting from playing professional hockey.

77. Prior to and during DEREK BOOGAARD's career, the NHL knew, or should have known, the higher rate of injuries sustained by Enforcers/Fighters in the NHL.

78. Prior to and during DEREK BOOGAARD's career, the NHL knew, or should have known, that the Enforcers/Fighters in the NHL had an increased risk of brain damage due to concussive and sub-concussive brain trauma and were particularly susceptible to addiction issues.

79. Prior to and during DEREK BOOGAARD's NHL career, the NHL knew, or should have known, that the Enforcers/Fighters in the NHL had an increased risk of developing addiction to prescription pain medications.

80. The NHL knew, or should have known, that NHL team physicians, dentists, trainers, and staff were prescribing controlled substances, including Oxycodone, to DEREK BOOGAARD.

81. The NHL knew, or should have known, the harmful effects of administering these controlled substances.

82. The NHL never discussed the risks associated with ingesting large quantities of controlled substances with DEREK BOOGAARD before administering the prescriptions.

83. During DEREK BOOGAARD's 2008-2009 season with the Minnesota Wild, he was prescribed over forty prescriptions by Minnesota Wild team physicians, dentists, trainers, and staff, totaling one-thousand-twenty-one (1,021) pills.

84. On October 16, 2008, DEREK BOOGAARD sustained a tooth fracture due to a punch in the mouth in an NHL fight. In the months that followed this injury, DEREK BOOGAARD was prescribed over four-hundred-thirty-two (432) pain pills (Hydrocodone a/k/a Vicodin) by Minnesota Wild and San Jose Sharks teams' physicians and dentists.

#	Date	Drug/Medication	Quantity/ Dosage	Physician	Injury?
1	10-20-2008	Hydrocodone/APAP	15 (750mg)	Dr. Edlund	Tooth Injury
2	10-23-2008	Vicodin	5 (500mg)	Dr. S. Burns	Tooth Injury
3	10-24-2008	Hydrocodone/APAP	15 (750mg)	Dr. Edlund	Tooth Injury
4	11-02-2008	Hydrocodone/APAP	40 (500mg)	Dr. Ting	None noted
5	11-11-2008	Vicodin	30**	Woodbury	Tooth Injury
6	11-11-2008	Hydrocodone/APAP	30 (500mg)	Dr. Stacy	Tooth Injury
7	11-16-2008	Hydrocodone/APAP	30 (500mg)	Dr. Pelke	Tooth Injury

8	11-21-2008	Hydrocodone/APAP	30 (750mg)	Dr. Nanne	None noted
9	12-04-2008	Hydrocodone/APAP	30 (750mg)	Dr. S. Burns	None noted
10	12-18-2008	Hydrocodone/APAP	30 (750mg)	Dr. Peterson	None noted
11	12-28-2008	Hydrocodone/APAP	20 (500mg)	Dr. S. Burns	None noted
12	01-01-2009	Hydrocodone/APAP	30 (750mg)	Dr. Peterson	None noted
13	01-14-2009	Vicodin	5 (75mg)	Dr. J. Boyd	Lliopsoas Strain
14	01-25-2009	Hydrocodone/APAP	30 (500mg)	Dr. Peterson	None noted
15	01-31-2009	Vicodin	6 (75mg)	Dr. J. Boyd	Cervical Strain
16	02-19-2009	Hydrocodone/APAP	20 (750mg)	Dr. Peterson	None noted
17	03-10-2009	Hydrocodone/APAP	30 (750mg)	Dr. S. Burns	None noted
18	03-22-2009	Hydrocodone/APAP	6 (750mg)	Dr. Nelson	SLAP Lesion
19	04-04-2009	Hydrocodone/APAP	30 (750mg)	Dr. S. Burns	None noted

85. Hydrocodone can be habit-forming, causing physical and psychological dependence. Its abuse liability is similar to morphine, but less than Oxycodone.

86. On April 14, 2009, DEREK BOOGAARD underwent nasal surgery and was prescribed forty (40) pills of Oxycodone post-operatively.

87. On April 21, 2009, DEREK BOOGAARD underwent right shoulder surgery and

was discharged on Percocet (i.e., Oxycodone/paracetamol) of an unknown quantity.

88. The NHL knew, or should have known, that under the Controlled Substances Act, Oxycodone is a Schedule II controlled substance because it “has a high potential for abuse,” and because use of the drug “may lead to severe psychological or physical dependence.”

89. The NHL knew, or should have known, of the high risk of developing addiction to controlled substances, including Oxycodone.

90. From April 14, 2009 to April 30, 2009, DEREK BOOGAARD was prescribed one-hundred-fifty (150) pills of Oxycodone and/or Percocet and forty (40) pills of Hydrocodone:

#	Date	Drug/Medication	Quantity/ Dosage	Physician
1	04-14-2009	Oxycodone/APAP	40	Dr. Hamlar
2	04-21-2009	Oxycodone/APAP	40 (325mg)	Dr. Nelson
3	04-24-2009	Oxycodone/APAP	30 (325mg)	Dr. Peterson
4	04-27-2009	Hydrocodone/APAP	40 (500mg)	Dr. Nelson
5	04-30-2009	Oxycodone/APAP	40 (325mg)	Dr. Nelson

91. DEREK BOOGAARD became addicted to these pain pills, often ingesting up to ten (10) per day.

92. During the off-season, DEREK BOOGAARD purchased and was provided Oxycodone off-market from multiple sources.

93. In September, 2009, DEREK BOOGAARD was checked into “The Canyon” rehabilitation facility in California for in-patient treatment for opioid addiction.

94. As part of DEREK BOOGAARD’s NHL mandated “Aftercare Program” upon discharge from The Canyon, DEREK BOOGAARD was to refrain from all opioid and Ambien

drug use and submit to random drug testing.

95. The NHL knew that DEREK BOOGAARD was addicted to prescription pain medications and prone to relapse.

96. Despite this knowledge, during DEREK BOOGAARD's 2010-2011 season with the New York Rangers, he was prescribed over seventeen (17) prescriptions for prescription pain medication and other controlled substances by NHL team's physicians, dentists, trainers, and staff, totaling three-hundred-sixty-six (366) pills, documented as follows:

Date	Drug/Medication	Physician	Dosage	Injury?
10-26-2010	Hydrocodone/APAP	Dr. Esposito	20 (750mg)	Tooth Injury
11-10-2010	Hydrocodone/APAP	Dr. Esposito	10 (750mg)	Tooth Injury
11-13-2010	Hydrocodone/APAP	Dr. Esposito	10 (750mg)	Tooth Injury
11-16-2010	Hydrocodone/APAP	Dr. Esposito	40 (325mg)	Tooth Injury
12-04-2010	Hydrocodone/APAP	Dr. Esposito	12 (750mg)	None noted
12-24-2010	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
01-06-2011	Ambien CR	Dr. Weissman	5 (10mg)	None noted
01-10-2011	Ambien CR	Dr. Weissman	14 (12.5mg)	None noted
01-18-2011	Zolpidem ER	Dr. Macaluso	30 (12.5mg)	Concussion
01-25-2011	Ambien CR	Dr. Weissman	10 (12.5mg)	None noted
02-02-2011	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
02-11-2011	Zolpidem ER	Dr. Weissman	5 (12.5mg)	None noted
02-13-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
02-27-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-04-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted

03-24-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
04-08-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted

97. The NHL owed a duty to DEREK BOOGAARD to keep him reasonably safe during his NHL career and to refrain from causing an addiction to controlled substances.

98. The NHL breached its duty to DEREK BOOGAARD by:

- a. Failing to warn DEREK BOOGAARD of the increased risk of substance abuse due to his role as Enforcer/Fighter;
- b. Failing to monitor DEREK BOOGAARD's prescriptions to prevent substance abuse;
- c. Failing to establish proper procedures for administering prescription pain medication to DEREK BOOGAARD from NHL affiliated team physicians, dentists, trainers and staff;
- d. Failing to establish proper procedures for maintaining DEREK BOOGAARD's medical records and sharing those records with NHL affiliated team physicians, dentists, trainers and staff;
- e. Failing to implement or improve prescription drug monitoring programs ("PDMPs"), which are electronic databases that track all prescriptions for painkillers in the League;
- f. Failing to utilize PDMP and/or insurance plan data to identify multiple, duplicative prescriptions for painkillers;
- g. Failing to set up program plans that identify and address improper player use of painkillers; and
- h. Failing to set up prescription claims review programs to identify and address multiple, duplicative prescriptions and use of painkillers.

99. As a proximate result of the foregoing acts and omissions by the NHL, DEREK BOOGAARD died from an accidental prescription drug overdose on May 13, 2011.

100. Plaintiff's decedent, DEREK BOOGAARD, left surviving him as his heirs and

next of kin: Len Boogaard, father; Joanne Boogaard, mother; Curtis Heide, brother; Ryan Boogaard, brother; Aaron Boogaard, brother; and Krysten Boogaard, sister, all of whom have sustained grief, sorrow, mental suffering and loss of society.

101. ROBERT D. NELSON has been appointed Personal Representative of the Estate of DEREK BOOGAARD, Deceased, and in such capacity brings this cause of action on behalf of the Estate of DEREK BOOGAARD for pecuniary injuries pursuant to the Illinois Wrongful Death Statute, 740 ILCS 180/1, *et seq.*

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, demands judgment against defendant, NHL, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT III

NHL, By and Through its Actual and Apparent Agents, Breached Its Assumed Duty to Curb, Cure, and Monitor Derek Boogaard's Drug Addiction Causing Wrongful Death

Plaintiff re-alleges paragraphs 1 - 42 above and incorporates each allegation herein.

102. On September 20, 2009, a Minnesota Metro Transit Police Officer found DEREK BOOGAARD asleep in a car on the side of the road. The Officer drove DEREK BOOGAARD to his home. Upon waking, DEREK BOOGAARD had no memory of the events.

103. On that date, LEN BOOGAARD spoke with DEREK BOOGAARD at length about seeking assistance for his drug addiction. LEN BOOGAARD also spoke with DEREK BOOGAARD's agent. DEREK BOOGAARD was enrolled in the NHL's SABH Program.

104. The SABH Program was created in September, 1996, separate and apart from any Collective Bargaining Agreement in place at the time or subsequently entered into.

105. The SABH Program was granted exclusive, unsupervised control of player substance abuse issues by the NHL.

106. The SABH Program was created to establish a league-wide program to address substance abuse, HIV, and related health matters for NHL players.

107. Dr. David Lewis and Dr. Brian Shaw were appointed to serve as Program Doctors for the SABH Program. These Program Doctors are paid by the NHL.

108. The Program Doctors are the actual and apparent agents of the NHL.

109. The Program Doctors meet with the players on each franchise team at least once a year to discuss issues relating to substance abuse.

110. SABH Program treatment costs are covered by the NHL medical insurance plan.

111. The SABH Program is supposed to operate according to a defined regimen:

- Any player who enters the SABH Program is to receive a comprehensive medical and psychological evaluation by one of the Program Doctors.
- Any player that enters the SABH Program is placed in Stage One of four defined stages for substance abuse. A Stage One player continues to receive his full NHL salary, with no penalties, so long as he fully complies with the treatment and follow-up care prescribed.
- A player that violates the Stage One treatment or follow-up care program is placed in Stage Two. A player in Stage Two is suspended without pay during active treatment and

is eligible for reinstatement upon recommendation of the Program Doctors.

- A player that violates Stage Two treatment or follow-up care program is placed in Stage Three. A player in Stage Three is suspended without pay for a minimum of six (6) calendar months and is eligible for reinstatement upon recommendation of the Program Doctors.
- A player that violates Stage Three treatment or follow-up care program is placed in Stage Four. A player in Stage Four is suspended without pay for a minimum of one (1) season.

Reinstatement is at the discretion of the NHL.

112. On September 23, 2009, DEREK BOOGAARD was admitted into the SABH Program for an addiction to prescription pain medications and Ambien and underwent an evaluation by Dr. David Lewis. DEREK BOOGAARD reported that he had taken Vicodin throughout the 2008-2009 season to assuage his back pain, had taken Ambien all season to sleep, and that since his shoulder surgery in April, 2009, he had been taking five (5) to ten (10) Percocet, Oxycontin or Roxycontin per day.

113. On October 9, 2009, DEREK BOOGAARD executed "Aftercare Program" documents from the SABH Program, signed by Dr. Lewis, Dr. Shaw, and SABH Program and NHL agent and employee, Dan Cronin. As part of DEREK BOOGAARD's "Aftercare Program" upon release from The Canyon, he was to refrain from all opioid and Ambien drug use and submit to random drug testing. At that time, DEREK BOOGAARD was informed by the NHL,

by and through its duly authorized agents and employees, that failure to follow the conditions of the "Aftercare Program" "may result in permanent suspension at the sole discretion of the Program Doctors." DEREK BOOGAARD would come to learn that this was an idle threat.

114. On October 12, 2009, DEREK BOOGAARD was discharged from The Canyon rehabilitation facility.

115. DEREK BOOGAARD's drug tests throughout the 2009-2010 hockey season with the Minnesota Wild were negative.

116. Prior to signing with the New York Rangers in the summer of 2010, DEREK BOOGAARD discussed his addiction issues with Rangers officials.

117. In September, 2010, and October, 2010, DEREK BOOGAARD began asking trainers for Ambien. Dr. Shaw of the SABH Program reminded DEREK BOOGAARD that he could not use Ambien or pain medications.

118. On October 14, 2010, LEN BOOGAARD informed the New York Rangers that DEREK BOOGAARD had relapsed. LEN BOOGAARD was assured that it would be dealt with properly by the NHL's Program.

119. On October 26, 2010, Dr. Lewis of the SABH Program noted that DEREK BOOGAARD had been requesting Vicodin from team dentists.

120. Despite his "Aftercare Program" restricting Ambien and prescription pain medications during the 2010-2011 season with the New York Rangers, DEREK BOOGAARD received the following prescriptions from NHL team's physicians, dentists, trainers, and staff:

Date	Drug/Medication	Physician	Dosage	Injury?
10-26-2010	Hydrocodone/APAP	Dr. Esposito	20 (750mg)	Tooth Injury
11-10-2010	Hydrocodone/APAP	Dr. Esposito	10 (750mg)	Tooth Injury
11-13-2010	Hydrocodone/APAP	Dr. Esposito	10 (750mg)	Tooth Injury
11-16-2010	Hydrocodone/APAP	Dr. Esposito	40 (325mg)	Tooth Injury
12-04-2010	Hydrocodone/APAP	Dr. Esposito	12 (750mg)	None noted
12-24-2010	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
01-06-2011	Ambien CR	Dr. Weissman	5 (10mg)	None noted
01-10-2011	Ambien CR	Dr. Weissman	14 (12.5mg)	None noted
01-18-2011	Zolpidem ER	Dr. Macaluso	30 (12.5mg)	Concussion
01-25-2011	Ambien CR	Dr. Weissman	10 (12.5mg)	None noted
02-02-2011	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
02-11-2011	Zolpidem ER	Dr. Weissman	5 (12.5mg)	None noted
02-13-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
02-27-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-04-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-24-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
04-08-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted

121. In January, 2011, DEREK BOOGAARD reported to Dr. Shaw of the SABH Program that he had purchased Oxycodone off the street in Minneapolis over Christmas break. Contrary to the SABH Program's stated regimen, DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

122. On January 13, 2011, DEREK BOOGAARD's urine tested positive for Oxymorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for

violation of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

123. On March 9, 2011, DEREK BOOGAARD's urine tested positive for Hydromorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

124. On March 21, 2011, DEREK BOOGAARD's urine tested positive for Oxymorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violation of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

125. On March 26, 2011, DEREK BOOGAARD's urine tested positive for Hydrocodone, Hydromorphone, and Diphenhydramine. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violation of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

126. On March 27, 2011, DEREK BOOGAARD's urine tested positive for Hydromorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violation of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

127. On March 31, 2011, DEREK BOOGAARD's urine tested positive for Hydromorphone, Morphine, Oxycodone, and Oxymorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violation of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

128. On April 1, 2011, the SABH Program finally placed DEREK BOOGAARD into *Stage One* Intervention, despite the fact that DEREK BOOGAARD had been in a treatment

facility two years before and had been perpetually violating the NHL's "Aftercare Program," DEREK BOOGAARD was not suspended.

129. On April 4, 2011, DEREK BOOGAARD was so impaired at New York Rangers practice that he could not stay up on his skates, fell numerous times, and was kicked out of practice.

130. On April 5, 2011, DEREK BOOGAARD was admitted into the Authentic Recovery Center ("ARC") in California for opioid dependence.

131. During DEREK BOOGAARD's inpatient treatment at the ARC, he was "largely non-participatory in treatment," "resistant to treatment protocols," "indifferent in therapy sessions," and "views treatment episode as something he must do to comply with NHL."

132. During DEREK BOOGAARD's treatment at the ARC, the SABH Program Doctors reviewed DEREK BOOGAARD's status and care.

133. The NHL knew, or should have known, that DEREK BOOGAARD, a known drug addict with probable brain damage, was not complying with treatment at ARC.

134. On April 29, 2011, DEREK BOOGAARD left ARC for a trip to New York.

135. Dan Cronin of the SABH Program arranged and paid for DEREK BOOGAARD's travel from California to New York and from Minnesota back to California. The SABH Program did not provide a chaperone.

136. While in New York, DEREK BOOGAARD purchased four-thousand dollars (\$4,000.00) of opioids on the street and drove the pills from New York City to Minneapolis.

137. On May 4, 2011, DEREK BOOGAARD returned to ARC in California.

138. On May 5, 2011, the NHL, by and through its duly authorized agent and

employee, Dr. Lewis, "Reviewed [DEREK BOOGAARD's] progress and plans for [his sister's] graduation."

139. Purportedly, on May 6, 2011, the NHL, by and through its duly authorized agent and employee, Dan Cronin, informed DEREK BOOGAARD that attending his sister's graduation was against Dr. Lewis' advice. But the NHL did not provide a chaperone; did not place DEREK BOOGAARD in Stage Two; did not provide DEREK BOOGAARD with an "Aftercare Program" or follow-up care instructions; and did not warn DEREK BOOGAARD of the risks associated with leaving the ARC facility.

140. On May 12, 2011, DEREK BOOGAARD was released from the ARC without a chaperone to attend his sister's college graduation.

141. On May 12 and 13, 2011, DEREK BOOGAARD ingested Percocet and numerous Oxycodone pills.

142. On May 13, 2011, DEREK BOOGAARD was found dead.

143. Post-mortem toxicology results revealed that DEREK BOOGAARD had a blood alcohol count of .180gm/dL and a blood opioid quantification of .14mg/L of Oxycodone. The cause of death was accidental drug overdose.

144. From 2009 until DEREK BOOGAARD's death on May 13, 2011, Dr. David Lewis, Dr. Brian Shaw, and Dan Cronin were the duly authorized agents and/or employees of the NHL, acting within the course and scope of their agency/employment relationship.

145. Dr. Lewis, Dr. Shaw, Dan Cronin, and each of them, held themselves out to the public and to the Boogaard family, specifically, as the agents of the NHL. DEREK BOOGAARD and his parents relied upon Dr. Lewis, Dr. Shaw and Dan Cronin's representations, that they

were acting as the agents of the NHL who would properly curb, cure, and monitor DEREK BOOGAARD's drug addiction.

146. When DEREK BOOGAARD was admitted into the SABH Program in 2009, the NHL voluntarily undertook a duty to monitor, treat, and curb DEREK BOOGAARD's drug addiction.

147. The NHL, individually, and by and through its agents in the SABH Program, breached its duty to DEREK BOOGAARD by:

- a. Failing to monitor and supervise its SABH Program;
- b. Failing to place DEREK BOOGAARD in the SABH Program defined four stages of intervention;
- c. Failing to intervene when necessary to treat DEREK BOOGAARD for substance abuse;
- d. Failing to appropriately treat DEREK BOOGAARD for substance abuse;
- e. Failing to ensure rapid, accurate diagnosis and intervention for DEREK BOOGAARD's relapse of prescription pain pill abuse;
- f. Failing to adequately monitor DEREK BOOGAARD for prescription pain pill abuse following his discharge from "The Canyon" rehabilitation facility;
- g. Failing to warn DEREK BOOGAARD of the increased risk of fatal overdose following his release from the ARC; and
- h. Failing to monitor DEREK BOOGAARD upon release from the ARC.

148. The foregoing acts and omissions by the NHL caused, or contributed to cause, DEREK BOOGAARD's death as a result of accidental drug overdose on May 13, 2011.

149. Plaintiff's decedent, DEREK BOOGAARD, left surviving him as his heirs and next of kin the following: Len Boogaard, father; Joanne Boogaard, mother; Curtis Heide, brother;

Ryan Boogaard, brother; Aaron Boogaard, brother; and Krysten Boogaard, sister; all of whom have sustained grief, sorrow, and mental suffering and loss of society.

150. ROBERT D. NELSON has been appointed Personal Representative of the Estate of DEREK BOOGAARD, Deceased, and in such capacity brings this cause of action on behalf of the Estate of DEREK BOOGAARD for pecuniary injuries pursuant to the Illinois Wrongful Death Statute, 740 ILCS 180/1, *et seq.*

151. To the extent this Count charges Healing Arts Malpractice, Plaintiff attaches, and incorporates herein, an affidavit as required by 735 ILCS 5/2-622.

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, demands judgment against defendant, NHL, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT IV

NHL, By and Through its Actual and Apparent Agents, Breached Its Assumed Duty to Curb, Cure, and Monitor Derek Boogaard's Drug Addiction Causing Pain and Suffering and Loss of a Normal Life

Plaintiff re-alleges paragraphs 1 - 42 above and incorporate each allegation herein.

152. On September 20, 2009, a Minnesota Metro Transit Police Officer found DEREK BOOGAARD asleep in a car on the side of the road. The Officer drove DEREK BOOGAARD to his home. Upon waking, DEREK BOOGAARD had no memory of the events.

153. On that date, LEN BOOGAARD spoke with DEREK BOOGAARD at length about seeking assistance for his drug addiction. LEN BOOGAARD also spoke with DEREK BOOGAARD's agent. DEREK BOOGAARD was enrolled in the NHL's SABH Program.

154. The SABH Program was created in September, 1996, separate and apart from any Collective Bargaining Agreement in place at the time or subsequently entered into.

155. The SABH Program was granted exclusive, unsupervised control of player substance abuse issues by the NHL.

156. The SABH Program was created to establish a league-wide program to address substance abuse, HIV, and related health matters for NHL players.

157. Dr. David Lewis and Dr. Brian Shaw were appointed to serve as Program Doctors for the SABH Program. These Program Doctors are paid by the NHL.

158. These Program Doctors are the actual and apparent agents of the NHL.

159. The Program Doctors meet with the players on each franchise team at least once a year to discuss issues relating to substance abuse.

160. SABH Program treatment costs are covered by the NHL medical insurance plan.

161. The SABH Program is supposed to operate according to a defined regimen:

- Any player who enters the SABH Program is to receive a comprehensive medical and psychological evaluation by one of the Program Doctors.
- Any player that enters the SABH Program is placed in Stage One of four defined stages for substance abuse. A Stage One player continues to receive his full NHL salary, with no penalties, so long as he fully complies with the treatment and follow-up care prescribed.
- A player that violates the Stage One treatment or follow-up

care program is placed in Stage Two. A player in Stage Two is suspended without pay during active treatment and is eligible for reinstatement upon recommendation of the Program Doctors.

- A player that violates Stage Two treatment or follow-up care program is placed in Stage Three. A player in Stage Three is suspended without pay for a minimum of six (6) calendar months and is eligible for reinstatement upon recommendation of the Program Doctors.
- A player that violates Stage Three treatment or follow-up care program is placed in Stage Four. A player in Stage Four is suspended without pay for a minimum of one (1) season.

Reinstatement is at the discretion of the NHL.

162. On September 23, 2009, DEREK BOOGAARD was admitted into the SABH Program for an addiction to prescription pain medications and Ambien and underwent an evaluation by Dr. David Lewis. DEREK BOOGAARD reported that he had taken Vicodin throughout the 2008-2009 season to assuage his back pain, had taken Ambien all season, and since his shoulder surgery in April, 2009, he had been taking five (5) to ten (10) Percocet, Oxycontin or Roxycontin per day.

163. On October 9, 2009, DEREK BOOGAARD executed "Aftercare Program" documents from the SABH Program, signed by Dr. Lewis, Dr. Shaw, and SABH Program and NHL agent and employee, Dan Cronin. As part of DEREK BOOGAARD's "Aftercare Program"

upon release from The Canyon, he was to refrain from all opioid and Ambien drug use and submit to random drug testing. At that time, DEREK BOOGAARD was informed by the NHL, by and through its duly authorized agents and employees, that failure to follow the conditions of the "Aftercare Program" "may result in permanent suspension at the sole discretion of the Program Doctors." DEREK BOOGAARD would come to learn that this was an idle threat.

164. On October 12, 2009, DEREK BOOGAARD was discharged from The Canyon rehabilitation facility.

165. DEREK BOOGAARD's drug tests throughout the 2009-2010 hockey season with the Minnesota Wild were negative.

166. Prior to signing with the New York Rangers in the summer of 2010, DEREK BOOGAARD discussed his addiction issues with Rangers officials.

167. In September and October, 2010, DEREK BOOGAARD began asking trainers for Ambien. Dr. Shaw of the SABH Program reminded DEREK BOOGAARD that he could not use Ambien or pain medications.

168. On October 14, 2010, LEN BOOGAARD informed the New York Rangers that DEREK BOOGAARD had relapsed. LEN BOOGAARD was assured that it would be dealt with properly by the NHL's Program.

169. On October 26, 2010, Dr. Lewis of the SABH Program noted that DEREK BOOGAARD had been requesting Vicodin from team dentists.

170. Despite his "Aftercare Program" restricting Ambien and prescription pain medications, during the 2010-2011 season with the New York Rangers DEREK BOOGAARD received the following prescriptions from NHL team's physicians, dentists, trainers, and staff:

Date	Drug/Medication	Physician	Dosage	Injury?
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12-04-2010	Hydrocodone/APAP	Dr. Esposito	12 (750mg)	None noted
12-24-2010	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
01-06-2011	Ambien CR	Dr. Weissman	5 (10mg)	None noted
01-10-2011	Ambien CR	Dr. Weissman	14 (12.5mg)	None noted
01-18-2011	Zolpidem ER	Dr. Macaluso	30 (12.5mg)	Concussion
01-25-2011	Ambien CR	Dr. Weissman	10 (12.5mg)	None noted
02-02-2011	Zolpidem ER	Dr. Peterson	30 (12.5mg)	None noted
02-11-2011	Zolpidem ER	Dr. Weissman	5 (12.5mg)	None noted
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02-27-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-04-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
03-24-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted
04-08-2011	Ambien CR	Dr. Weissman	30 (12.5mg)	None noted

171. In January, 2011, DEREK BOOGAARD reported to Dr. Shaw of the SABH Program that he had purchased Oxycodone off the street in Minneapolis over Christmas break. Contrary to the SABH Program's stated regimen, DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

172. On January 13, 2011, DEREK BOOGAARD's urine tested positive for Oxymorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

173. On March 9, 2011, DEREK BOOGAARD's urine tested positive for Hydromorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

174. On March 21, 2011, DEREK BOOGAARD's urine tested positive for Oxymorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

175. On March 26, 2011, DEREK BOOGAARD's urine tested positive for Hydrocodone, Hydromorphone, and Diphenhydramine. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

176. On March 27, 2011, DEREK BOOGAARD's urine tested positive for Hydromorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

177. On March 31, 2011, DEREK BOOGAARD's urine tested positive for Hydromorphone, Morphine, Oxycodone, and Oxymorphone. DEREK BOOGAARD was not placed in Stage Two or Stage Three treatment for violations of treatment and follow-up care program. DEREK BOOGAARD was not suspended.

178. On April 1, 2011, the SABH Program finally placed DEREK BOOGAARD into *Stage One* Intervention, despite the fact that DEREK BOOGAARD had been in a treatment facility two years before and had been perpetually violating the NHL's "Aftercare Program." DEREK BOOGAARD was not suspended.

179. On April 4, 2011, DEREK BOOGAARD was so impaired at New York Rangers practice that he could not stay up on his skates, fell numerous times, and was kicked out of practice.

180. On April 5, 2011, DEREK BOOGAARD was admitted into the Authentic Recovery Center ("ARC") in California for opioid dependence. On this date, for the first time, the SABH Program finally "staged" DEREK BOOGAARD at Stage One of its regimen.

181. During DEREK BOOGAARD's inpatient treatment at the ARC, he was "largely non-participatory in treatment," "resistant to treatment protocols," "indifferent in therapy sessions," and "views treatment episode as something he must do to comply with NHL."

182. During DEREK BOOGAARD's treatment at the ARC, the SABH Program Doctors reviewed DEREK BOOGAARD's status and care.

183. The NHL knew, or should have known, that DEREK BOOGAARD, a known drug addict, with probable brain damage, was not complying with treatment at ARC.

184. On April 29, 2011, DEREK BOOGAARD left ARC for a trip to New York.

185. Dan Cronin of the SABH Program arranged and paid for DEREK BOOGAARD's travel from California to New York and from Minnesota back to California. The SABH Program did not provide a chaperone.

186. While in New York, DEREK BOOGAARD purchased four-thousand dollars

(\$4,000.00) of opioids on the street and drove the pills from New York City to Minneapolis.

187. On May 4, 2011, DEREK BOOGAARD returned to ARC.

188. On May 5, 2011, the NHL, by and through its duly authorized agent and employee, Dr. Lewis, "Reviewed [DEREK BOOGAARD's] progress and plans for [his sister's] graduation."

189. Purportedly, on May 6, 2011, the NHL, by and through its duly authorized agent and employee, Dan Cronin, informed DEREK BOOGAARD that attending his sister's graduation was against Dr. Lewis' advice. But, the NHL did not provide a chaperone, did not place DEREK BOOGAARD in Stage Two, did not provide DEREK BOOGAARD with an "Aftercare Program" or follow-up care instructions, and did not warn DEREK BOOGAARD of the risks associated with leaving the ARC facilities.

190. On May 12, 2011, DEREK BOOGAARD was released from the ARC without a chaperone to attend his sister's college graduation.

191. On May 12 and 13, 2011, DEREK BOOGAARD ingested Percocet and numerous Oxycodone pills.

192. On May 13, 2011, DEREK BOOGAARD was found dead.

193. Post-mortem toxicology results revealed that DEREK BOOGAARD had a blood alcohol count of .180gm/dL and a blood opioid quantification of .14mg/L of Oxycodone. The cause of death was accidental drug overdose.

194. From 2009 until DEREK BOOGAARD's death on May 13, 2011, Dr. David Lewis, Dr. Brian Shaw, and Dan Cronin were the duly authorized agents and/or employees of the NHL, acting within the course and scope of their agency/employment relationship.

195. Dr. Lewis, Dr. Shaw, Dan Cronin, and each of them, held themselves out to the public and to the Boogaard family, specifically, as the agents of the NHL. DEREK BOOGAARD and his parents relied upon Dr. Lewis, Dr. Shaw and Dan Cronin's representations, that they were acting as the agents of the NHL who would properly curb, cure, and monitor DEREK BOOGAARD's drug addiction.

196. When DEREK BOOGAARD was admitted into the SABH Program in 2009, the NHL voluntarily undertook a duty to monitor, treat, and curb DEREK BOOGAARD's drug addiction.

197. The NHL, individually and by and through its agents in the SABH Program, breached its duty to DEREK BOOGAARD by:

- a. Failing to monitor and supervise its SABH Program;
- b. Failing to place DEREK BOOGAARD in the SABH Program defined four stages of intervention;
- c. Failing to intervene when necessary to treat DEREK BOOGAARD for substance abuse;
- d. Failing to appropriately treat DEREK BOOGAARD for substance abuse;
- e. Failing to ensure rapid, accurate diagnosis and intervention for DEREK BOOGAARD's relapse of prescription pain pill abuse;
- f. Failing to adequately monitor DEREK BOOGAARD for prescription pain pill abuse following his discharge to "The Canyon" rehabilitation facility;
- g. Failing to warn DEREK BOOGAARD of the increased risk of fatal overdose following his release from the ARC; and
- h. Failing to monitor DEREK BOOGAARD upon release from the ARC.

198. As a proximate result of one or more of the foregoing negligent acts or omissions

of defendant, NHL, DEREK BOOGAARD suffered personal and pecuniary injuries, including conscious pain and suffering, prior to his death on May 13, 2011, and, had he survived, he would have been entitled to bring an action for personal and pecuniary damages, and such action has survived him.

199. Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, brings this Survival Action, pursuant to 755 ILCS 5/27-6, commonly known as the Survival Act of the State of Illinois.

200. To the extent this Count charges Healing Arts Malpractice, Plaintiff attaches, and incorporates herein, an affidavit as required by 735 ILCS 5/2-622.

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, demands judgment against defendant, NHL, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT V

NHL's Negligence in Monitoring Derek Boogaard for Brain Trauma During Derek Boogaard's NHL Playing Career Caused CTE and Pain and Suffering and Loss of a Normal Life

Plaintiff re-alleges paragraphs 1 - 42 above and incorporate each allegation herein.

201. The NHL does not expel a player from a game for fighting; instead both participants of the fight are given five (5) minute penalties and neither team is short-handed.

202. Prior to and during DEREK BOOGAARD's NHL career, the NHL knew, or should have known, that the Enforcers/Fighters in the NHL had an increased risk of concussive and sub-concussive brain trauma resulting in long-term brain damage.

203. DEREK BOOGAARD played and fought through documented and undocumented concussions and the associated symptoms because he was not properly monitored for signs of concussions and/or warned of the risks of developing long-term brain damage as a result of playing through brain trauma.

204. On numerous occasions, the NHL allowed and encouraged DEREK BOOGAARD, after suffering concussions, to return to play and fight in the same game and/or practice.

205. The NHL did not document certain incidents of DEREK BOOGAARD's concussive head trauma.

206. The cumulative effect of DEREK BOOGAARD's concussive brain trauma and/or playing and fighting through these brain traumas during his NHL playing career caused or exacerbated brain damage, commonly referred to as CTE.

207. The NHL failed to warn DEREK BOOGAARD of the probability of developing brain damage and drug addiction due to fighting during NHL games.

208. The NHL voluntarily undertook a duty to DEREK BOOGAARD and all NHL players to keep them reasonably safe during their NHL careers and to prevent brain trauma.

209. The NHL breached its duty to DEREK BOOGAARD by:

- a. Drafting DEREK BOOGAARD to fight, on the ice, during games;
- b. Failing to warn DEREK BOOGAARD of his increased risk of substance abuse;
- c. Encouraging DEREK BOOGAARD, to fight during NHL games;
- d. Failing to warn DEREK BOOGAARD and other NHL players of the potential long-term impact of suffering numerous concussive head

traumas;

- e. Failing to warn DEREK BOOGAARD and other NHL players of the consequences of playing through the concussions and/or their symptoms;
- f. Failing to ensure rapid, accurate diagnosis of DEREK BOOGAARD's concussive brain injuries during his playing career;
- g. Failing to establish bench concussion assessment protocol to assist team physicians and trainers in their initial assessment of brain trauma;
- h. Failing to implement policies to prevent DEREK BOOGAARD from returning to a game or practice in which he sustained a head injury, in order to prevent harmful repetitive brain trauma;
- i. Failing to require that DEREK BOOGAARD be cleared by both a team physician and by an independent neurological or neuro-physiological consultant prior to resuming hockey activities after suffering a concussion;
- j. Failing to regulate and monitor practices, games, equipment and medical care so as to minimize the long-term risk associated with repetitive brain injuries suffered by DEREK BOOGAARD; and
- k. Failing to monitor and record DEREK BOOGAARD's concussive head traumas during his NHL career.

210. As a result of the foregoing acts and omissions by the NHL, DEREK BOOGAARD developed CTE, or exacerbated the condition, and suffered from its related symptoms.

211. As a proximate result of one or more of the foregoing negligent acts or omissions, DEREK BOOGAARD suffered personal and pecuniary injuries, including conscious pain and suffering, prior to his death on May 13, 2011, and had he survived, he would have been entitled to bring an action for personal and pecuniary damages, and such action has survived him.

212. Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, brings this Survival Action, pursuant to 755 ILCS 5/27-6,

commonly known as the Survival Act of the State of Illinois.

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, demands judgment against defendant, NHL, a corporation, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VI

NHL's Negligence in Monitoring Derek Boogaard for Brain Trauma During Derek Boogaard's NHL Playing Career Caused CTE and Wrongful Death

Plaintiff re-alleges paragraphs 1-42 above and incorporate each allegation herein.

213. The NHL does not expel a player from a game for fighting; instead both participants of the fight are given five (5) minute penalties and neither team is short-handed.

214. Prior to and during DEREK BOOGAARD's NHL career, the NHL knew, or should have known, that the Enforcers/Fighters in the NHL had an increased risk of brain damage due to concussive and sub-concussive brain trauma resulting in long-term brain damage.

215. DEREK BOOGAARD played and fought through documented and undocumented concussions and the associated symptoms because he was not properly monitored for signs of concussions and/or warned of the risks of developing long-term brain damage as a result of playing through brain trauma.

216. On numerous occasions, the NHL allowed and encouraged DEREK BOOGAARD, after suffering concussions, to return to play and fight in the same game and/or practice.

217. The NHL did not document certain incidents of DEREK BOOGAARD's

concussive head trauma.

218. The cumulative effect of DEREK BOOGAARD's concussive brain trauma and/or playing and fighting through these brain traumas during his NHL playing career caused or exacerbated brain damage, commonly referred to as CTE.

219. The NHL failed to warn DEREK BOOGAARD of the probability of developing brain damage and drug addiction due to fighting during NHL games.

220. The NHL voluntarily undertook a duty to DEREK BOOGAARD and all NHL players to keep them reasonably safe during their NHL careers and to prevent brain trauma and drug addiction.

221. The NHL breached its duty to DEREK BOOGAARD by:

- a. Drafting DEREK BOOGAARD to fight, on the ice, during games;
- b. Failing to warn DEREK BOOGAARD of his increased risk of substance abuse;
- c. Encouraging DEREK BOOGAARD to fight during NHL games;
- d. Failing to warn DEREK BOOGAARD and other NHL players of the potential long-term impact of suffering numerous concussive head traumas;
- e. Failing to warn DEREK BOOGAARD and other NHL players of the consequences of playing through the concussions and/or their symptoms;
- f. Failing to ensure rapid, accurate diagnosis of DEREK BOOGAARD's concussive brain injuries during his playing career;
- g. Failing to establish bench concussion assessment protocol to assist team physicians and trainers in their initial assessment of brain trauma;
- h. Failing to implement policies to prevent DEREK BOOGAARD from returning to a game or practice in which he sustained a head injury, in order to prevent harmful repetitive brain trauma;

- i. Failing to require that DEREK BOOGAARD be cleared by both a team physician and by an independent neurological or neuro-physiological consultant prior to resuming hockey activities after suffering a concussion;
- j. Failing to regulate and monitor practices, games, equipment and medical care so as to minimize the long-term risk associated with repetitive brain injuries suffered by DEREK BOOGAARD; and
- k. Failing to monitor and record DEREK BOOGAARD's concussive head traumas during his NHL career.

222. As a result of the foregoing acts and omissions by the NHL, DEREK BOOGAARD developed CTE, or exacerbated the condition, and suffered from its related symptoms.

223. If the NHL had taken the necessary steps to oversee and protect DEREK BOOGAARD by warning him of the dangers of head traumas and by educating and training all persons involved with the NHL teams in the recognition, prevention and treatment of concussive brain injuries, DEREK BOOGAARD would not have suffered dangerous repetitive head trauma; would have recovered more rapidly; would not have sustained permanent damage to his brain; would not have developed an addiction to prescription narcotics; and would not have overdosed causing his death.

224. DEREK BOOGAARD's death on May 13, 2011 resulted from a foreseeable combination of brain damage and addiction, both of which were the result of numerous concussions sustained during his NHL career and the psychological impact of being an NHL Enforcer/Fighter.

225. Plaintiff's decedent, DEREK BOOGAARD, left surviving him as his heirs and next of kin the following: Len Boogaard, father; Joanne Boogaard, mother; Curtis Heide,

brother; Ryan Boogaard, brother; Aaron Boogaard, brother; and Krysten Boogaard, sister; all of whom have sustained grief, sorrow, and mental suffering and loss of society.

226. ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, and in such capacity brings this cause of action on behalf of the Estate of DEREK BOOGAARD for pecuniary injuries pursuant to the Illinois Wrongful Death Statute, 740 ILCS 180/1, *et seq.*

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, demands judgment against defendant, NHL, a corporation, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VII

NHL's Negligence in Using Toradol During Derek Boogaard's Career Caused CTE and Pain and Suffering and Loss of a Normal Life

Plaintiff re-alleges paragraphs 1 - 42 above and incorporate each allegation herein.

227. During DEREK BOOGAARD'S playing career, he received intravenous injections of the drug Toradol (Ketorolac Tromethamine) administered by the NHL team's physicians. Toradol is a potent analgesic in its intramuscular form. In short, the drug masks the body's ability to perceive pain.

228. The NHL knew its member teams administered Toradol to DEREK BOOGAARD on the following occasions:

#	Date	Drug/Medication	Quantity/ Dosage	Physician	Injury?
1	12-29-2008	Toradol Injection	1 ml	Flames Dr.	Yes
2	12-31-2008	Toradol Injection	1 ml	Dr. Burns	Yes

3	02-04-2009	Toradol Injection	1 ml	Unknown	Yes
4	03-22-2009	Toradol Injection	1 ml	Unknown	Yes
5	01-09-2010	Toradol Injection	30 mg	Wild Dr.	Yes
6	01-11-2010	Toradol Injection	30 mg	Wild Dr.	Yes
7	01-13-2010	Toradol Injection	30 mg	Wild Dr.	Yes
8	01-14-2010	Toradol Injection	30 mg	Blues Dr.	Yes
9	01-16-2010	Toradol Injection	30 mg	Coyotes Dr.	Yes
10	01-18-2010	Toradol Injection	30 mg	Stars Dr.	Yes
11	03-05-2010	Toradol Injection	1 ml	Oilers Dr.	Yes
12	03-14-2010	Toradol Injection	1 ml	Wild Dr.	Yes
13	12-03-2010	Toradol Injection	1 ml	Rangers Dr.	Yes

229. The Toradol label states that “Toradol inhibits platelet function and is therefore, contraindicated in patients ... at high risk of bleeding.”

230. Toradol is not to be used if the recipient has a closed head injury or bleeding in the brain. The increase in bleeding risk can exacerbate injuries, such as concussive and sub-concussive brain traumas.

231. The NHL never warned DEREK BOOGAARD of the risks associated with Toradol before administering the injections.

232. Prior to and during DEREK BOOGAARD’s NHL career, the NHL knew, or should have known, that Toradol’s pain masking features can prevent the body’s natural, painful response to injury and increase the risk of head injuries and their long-term ramifications.

233. Prior to and during DEREK BOOGAARD’s NHL career, the NHL knew, or should have known, that DEREK BOOGAARD was at an increased risk of suffering even greater damages due to concussions because of Toradol's blood thinning effect.

234. DEREK BOOGAARD was injected and provided with Toradol without knowledge of the risks posed by the use of Toradol.

235. DEREK BOOGAARD received numerous Toradol injections shortly before, or after, sustaining concussive and sub-concussive brain traumas. These injections caused DEREK BOOGAARD to sustain brain damage as a result of head trauma.

236. To wit, on December 29 and 31, 2008, DEREK BOOGAARD received Toradol injections into his right shoulder prior to play, administered by team physicians of the Calgary Flames and Minnesota Wild. Then, in practice on January 3, 2009, DEREK BOOGAARD was 'blind-sided by a teammate along the boards and hit the right side of his head on the glass...[and] felt momentarily dazed.' As a result, DEREK BOOGAARD had 'some fogginess to the right field of vision and had a headache.' He finished practice. It took an hour for his visual field to clear and his headache persisted for days. The post-concussive symptoms were exacerbated by the presence of Toradol in his body.

237. Again, the next season, on January 9, 2010, January 11, 2010, January 13, 2010, January 14, 2010, January 16, 2010, and January 18, 2010, DEREK BOOGAARD received Toradol, administered by team physicians of NHL franchises: Minnesota Wild, St. Louis Blues, Phoenix Coyotes, and Dallas Stars.

238. Again, on March 5, 2010 and March 14, 2010, DEREK BOOGAARD received Toradol injections prior to play, administered by team physicians of NHL franchises: Edmonton Oilers and Minnesota Wild.

239. On March 14, 2010, DEREK BOOGAARD sustained a concussive brain trauma with resulting Post-Concussive Syndrome with persistent symptoms. The post-concussive

symptoms were exacerbated by the presence of Toradol in his body.

240. Again, the next season, on December 3, 2010, DEREK BOOGAARD received a Toradol injection prior to play, administered by team physicians of NHL franchise, New York Rangers. On December 9, 2010, DEREK BOOGAARD was in a fight on the ice and sustained a cerebral concussion with resulting Post-Concussive Syndrome with persistent symptoms. DEREK BOOGAARD never played in another NHL game after this concussion.

241. The cumulative effect of DEREK BOOGAARD's concussive brain traumas with Toradol in his body and/or playing through these brain traumas during his NHL playing career caused and/or exacerbated permanent brain damage, commonly referred to as CTE.

242. The NHL voluntarily undertook a duty to DEREK BOOGAARD and all NHL players to keep them reasonably safe during their NHL careers and to prevent brain trauma.

243. The NHL breached its duty to DEREK BOOGAARD by:

- a. Permitting numerous injections of Toradol to mask the pain DEREK BOOGAARD felt while playing as an Enforcer/Fighter in the NHL;
- b. Failing to educate players, including DEREK BOOGAARD, coaches and medical professionals about the risks associated with Toradol;
- c. Failing to warn DEREK BOOGAARD and other NHL players of the potential long-term effects of Toradol, and/or brain damage after injection with Toradol;
- d. Failing to warn DEREK BOOGAARD and other NHL players of the consequences of playing hockey while under the effects of Toradol; and
- e. Failing to warn DEREK BOOGAARD and other NHL players of the increased risk of suffering even greater damages due to concussions because of Toradol's blood thinning effect.

244. As a proximate result of one or more of the foregoing negligent acts or omissions,

DEREK BOOGAARD suffered personal and pecuniary injuries, including conscious pain and suffering, prior to his death on May 13, 2011, and, had he survived, he would have been entitled to bring an action for personal and pecuniary damages, and such action has survived him.

245. Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, brings this Survival Action, pursuant to 755 ILCS 5/27-6, commonly known as the Survival Act of the State of Illinois.

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, demands judgment against defendant, NHL, for a sum in excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VIII
NHL's Negligence in Using Toradol During Derek Boogaard's Career Caused CTE and Wrongful Death

Plaintiff re-alleges paragraphs 1 - 42 above and incorporate each allegation herein.

246. During DEREK BOOGAARD'S playing career, he received intravenous injections of the drug Toradol (Ketorolac Tromethamine) administered by the NHL team's physicians. Toradol is a potent analgesic in its intramuscular form. In short, the drug masks the body's ability to perceive pain.

247. The NHL knew its member teams administered Toradol to DEREK BOOGAARD on the following occasions:

#	Date	Drug/Medication	Quantity/ Dosage	Physician	Injury?
1	12-29-2008	Toradol Injection	1 ml	Flames Dr.	Yes
2	12-31-2008	Toradol Injection	1 ml	Dr. Burns	Yes

3	02-04-2009	Toradol Injection	1 ml	Unknown	Yes
4	03-22-2009	Toradol Injection	1 ml	Unknown	Yes
5	01-09-2010	Toradol	30 mg	Wild Dr.	Yes
6	01-11-2010	Toradol	30 mg	Wild Dr.	Yes
7	01-13-2010	Toradol	30 mg	Wild Dr.	Yes
8	01-14-2010	Toradol	30 mg	Blues Dr.	Yes
9	01-16-2010	Toradol	30 mg	Coyotes Dr.	Yes
10	01-18-2010	Toradol	30 mg	Stars Dr.	Yes
11	03-05-2010	Toradol Injection	1 ml	Oilers Dr.	Yes
12	03-14-2010	Toradol Injection	1 ml	Wild Dr.	Yes
13	12-03-2010	Toradol Injection	1 ml	Rangers Dr.	Yes

248. The Toradol label states that “Toradol inhibits platelet function and is therefore, contraindicated in patients ... at high risk of bleeding.”

249. Toradol is not to be used if the recipient has a closed head injury or bleeding in the brain. The increase in bleeding risk can exacerbate injuries, such as concussive and sub-concussive brain traumas.

250. The NHL never warned DEREK BOOGAARD of the risks associated with Toradol before administering the injections.

251. Prior to and during DEREK BOOGAARD’s NHL career, the NHL knew, or should have known, that Toradol’s pain masking features can prevent the body’s natural, painful response to injury and increase the risk of head injuries and their long-term ramifications.

252. Prior to and during DEREK BOOGAARD’s NHL career, the NHL knew, or should have known, that DEREK BOOGAARD was at an increased risk of suffering even greater damages due to concussions because of Toradol's blood thinning effect.

253. DEREK BOOGAARD was injected and provided with Toradol without knowledge of the risks posed by the use of Toradol.

254. DEREK BOOGAARD received numerous Toradol injections shortly before, or after, sustaining concussive and sub-concussive brain traumas. These injections caused DEREK BOOGAARD to sustain brain damage as a result of head trauma.

255. To wit, on December 29 and 31, 2008, DEREK BOOGAARD received Toradol injections into his right shoulder prior to play, administered by team physicians of the Calgary Flames and Minnesota Wild. Then, in practice on January 3, 2009, DEREK BOOGAARD was 'blind-sided by a teammate along the boards and hit the right side of his head on the glass...[and] felt momentarily dazed.' As a result, DEREK BOOGAARD had 'some fogginess to the right field of vision and had a headache.' He finished practice. It took an hour for his visual field to clear and his headache persisted for days. The post-concussive symptoms were exacerbated by the presence of Toradol in his body.

256. Again, the next season, on January 9, 2010, January 11, 2010, January 13, 2010, January 14, 2010, January 16, 2010, and January 18, 2010, DEREK BOOGAARD received Toradol, administered by team physicians of NHL franchises: Minnesota Wild, St. Louis Blues, Phoenix Coyotes, and Dallas Stars.

257. Again, on March 5, 2010 and March 14, 2010, DEREK BOOGAARD received Toradol injections prior to play, administered by team physicians of NHL franchises: Edmonton Oilers and Minnesota Wild.

258. On March 14, 2010, DEREK BOOGAARD sustained a concussive brain trauma with resulting Post-Concussive Syndrome with persistent symptoms. The post-concussive

symptoms were exacerbated by the presence of Toradol in his body.

259. Again, the next season, on December 3, 2010, DEREK BOOGAARD received a Toradol injection prior to play, administered by team physicians of NHL franchise, New York Rangers. On December 9, 2010, DEREK BOOGAARD was in a fight on the ice and sustained a cerebral concussion with resulting Post-Concussive Syndrome with persistent symptoms.

DEREK BOOGAARD never played in another NHL game after this concussion.

260. The cumulative effect of DEREK BOOGAARD's concussive brain traumas with Toradol in his body and/or playing through these brain traumas during his NHL playing career caused and/or exacerbated permanent brain damage, commonly referred to as CTE.

261. The NHL voluntarily undertook a duty to DEREK BOOGAARD and all NHL players to keep them reasonably safe during their NHL careers and to prevent brain trauma.

262. The NHL breached its duty to DEREK BOOGAARD by:

- a. Permitting numerous injections of Toradol to mask the pain DEREK BOOGAARD felt while playing as an Enforcer/Fighter in the NHL;
- b. Failing to educate players, including DEREK BOOGAARD, coaches and medical professionals about the risks associated with Toradol;
- c. Failing to warn DEREK BOOGAARD and other NHL players of the potential long-term effects of Toradol, and/or brain damage after injection with Toradol;
- d. Failing to warn DEREK BOOGAARD and other NHL players of the consequences of playing hockey while under the effects of Toradol; and
- e. Failing to warn DEREK BOOGAARD and other NHL players of the increased risk of suffering even greater damages due to concussions because of Toradol's blood thinning effect.

263. As a result of the foregoing acts and omissions by the NHL, DEREK

BOOGAARD developed CTE and suffered from brain damage and its related symptoms.

264. If the NHL had taken the necessary steps to oversee and protect DEREK BOOGAARD by warning him of the risks of Toradol, DEREK BOOGAARD would not have played while under the effects of Toradol; would not have sustained permanent damage to his brain; would not have developed an addiction to prescription narcotics; and/or would have been able to control his addiction to pain pills, and would not have overdosed causing his death.

265. DEREK BOOGAARD's death on May 13, 2011 resulted from a foreseeable combination of brain damage and addiction, both of which were the result of numerous concussions sustained during his NHL career, the psychological impact of being an NHL Enforcer/Fighter, and suffering from permanent, progressive brain damage that impeded his ability to control his impulses and contributed to cause his death as a result of overdosing on pain medications.

266. Plaintiff's decedent, DEREK BOOGAARD, left surviving him as his heirs and next of kin the following: Len Boogaard, father; Joanne Boogaard, mother; Curtis Heide, brother; Ryan Boogaard, brother; Aaron Boogaard, brother; and Krysten Boogaard, sister; all of whom have sustained grief, sorrow, and mental suffering and loss of society.

267. ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, and in such capacity brings this cause of action on behalf of the Estate of DEREK BOOGAARD for pecuniary injuries pursuant to the Illinois Wrongful Death Statute, 740 ILCS 180/1, *et seq.*

WHEREFORE, Plaintiff, ROBERT D. NELSON, Personal Representative of the Estate of DEREK BOOGAARD, Deceased, demands judgment against defendant, NHL, for a sum in

excess of the minimum jurisdictional limit for the Law Division of the Circuit Court of Cook
County, Illinois.

A handwritten signature in black ink, appearing to read 'W. T. Gibbs', written over a horizontal line.

William T. Gibbs

Thomas A. Demetrio
William T. Gibbs
Corboy & Demetrio, P.C.
Attorneys for Plaintiffs
33 North Dearborn Street, 21st Floor
Chicago, Illinois 60602
(312) 346-3191
Firm I.D. No. 02329

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ROBERT D. NELSON, Personal
Representative of the Estate of DEREK
BOOGAARD, Deceased.

Plaintiff,

v.

No.

NATIONAL HOCKEY LEAGUE.
NATIONAL HOCKEY LEAGUE BOARD
OF GOVERNORS, and COMMISSIONER
GARY B. BETTMAN, (collectively, "NHL"),

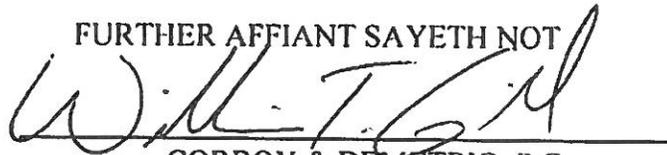
Defendants.

735 ILCS 5/2-622 AFFIDAVIT

I, William T. Gibbs, on oath state:

1. I am an attorney duly licensed in the State of Illinois and I am one of the attorneys for Robert D. Nelson in the above captioned cause of action.
2. The plaintiff has not previously voluntarily dismissed an action based upon the same or substantially the same acts, omissions, or occurrences as those described in the complaint filed today.
3. I have been unable to obtain a report of a qualified physician required by 735 ILCS 5/22-622(a)(1) because a statute of limitations would impair the action and the consultation required could not be obtained before the expiration of a statute of limitations.
4. Certification and a written report will be filed within 90 days after the filing of this complaint.

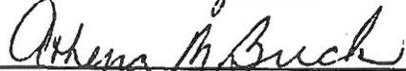
FURTHER AFFIANT SAYETH NOT

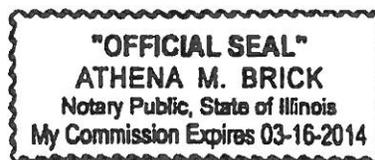


CORBOY & DEMETRIO, P.C.

By: William T. Gibbs

SUBSCRIBED and SWORN to before me
this 10th day of May, 2013.


NOTARY PUBLIC



• • • Thomas A. Demetrio
William T. Gibbs
CORBOY & DEMETRIO, P.C.
Attorneys for Plaintiff
33 North Dearborn Street, 21st Floor
Chicago, Illinois 60602
(312) 346-3191
Firm I.D. No. 02329

Performance Enhancing Drugs Overview

Ernest Boyd
Ohio Pharmacists Association

William Schmidt
State Medical Board of Ohio

Ernest Boyd, PharmD (Hon), CAE, is the Executive Director of the Ohio Pharmacists Association. Mr. Boyd holds many professional affiliations and government appointments and is a regular writer for the Ohio Pharmacists Association's magazine and continues to guest lecture at Ohio Northern University, the University of Cincinnati, the University of Toledo, Ohio State University, and the University of Findlay.

William Schmidt is the Senior Counsel, Investigations, Compliance and Enforcement, for the State Medical Board of Ohio.

Performance
Enhancing
Drugs

Ernest Boyd, PharmD (Hon),
CAE, MBA, Ohio
Pharmacists Association
Executive Director

Performance Enhancing Drugs
(PED)

- PEDs are substances used by athletes to improve their performance.
- The term can also be referenced by military personnel seeking to enhance combat performance.
- Although anabolic steroids are the most commonly thought of PEDs, there are a number of different classes.
- Most of these are prescription medications which are not being utilized for their intended purpose.

World Anti-Doping Agency's
(WADA) Prohibited Classes of
Drugs (in-and-out-of-competition)*

- Anabolic Agents
- Peptide Hormones, Growth Factors and Related Substances
- Beta-2 Agonists
- Hormone Antagonists and Modulators
- Diuretics and Other Masking Agents
- Stimulants (Prohibited in-competition only)
- Non-approved Substances

*The United States Anti-Doping Agency (USADA) utilizes the same list of prohibited substances.

World Anti-Doping Agency (WADA)

- WADA, established in 1999, is an international independent agency funded by the governments of the world to promote, coordinate, and monitor the fight against doping in sports.
- Activities include scientific research, education, development of anti-doping capacities, and monitoring of the World Anti Doping Code (Code).
- Each year on the 1st of January, WADA releases an update with regards to the prohibited list portion of the Code.
- WADA website available at <http://www.wada-ama.org/>

Substances Prohibited Both In-and-Out-of-Competition

- These substances are prohibited at all times.
- Any athlete, including elite athletes (registered testing pool) or non-national level (Masters, juniors, etc.) can be tested for these substances at any time.

Substances Prohibited In-Competition

- These substances are not tested for out-of-competition.
- "In-competition" may vary by definition based on different events. For example, some events may define in-competition as "12 hours before the start of the competition".
- Athletes must ensure that all substances prohibited in-competition have completely cleared from their body before competition.
- If total drug clearance is not possible, or the chronic use of a medication is needed, the athlete must apply for a Therapeutic Use Exemption (TUE).

Anabolic agents

- Normally are referred to as steroids or testosterone.
- Anabolic agents are substances similar to natural male sex hormones. They are only legally available with a prescription.
- Anabolic steroids are prescribed for the treatment of delayed male puberty and for individuals with low levels of testosterone.
- Steroids can come in a variety of different dosage forms including:
 - Creams, lotions, injections, dissolvable tablets, and capsules.

Anabolic agents

- Why are they abused?
 - Increase muscle size, strength, and endurance
 - Improve muscle recovery time
- Steroids are injected prior to training to reduce fatigue and increase recovery.
- Detrimental effects of steroids
 - Acne and cysts
 - Breast growth and shrinking of testicles in men
 - Voice deepening and growth of body hair in women
 - Heart problems, including heart attack
 - Liver disease, including cancer
 - Aggressive behavior
- Able to be detected by a urine sample. Will stay in the body for six months to a year.

Peptide Hormones, Growth Factors and Related Substances (Peptide Hormones)

- Peptide hormones include human growth hormone (hGH) and human chorionic gonadotropin (hCG), etc. that are normally used to treat adult growth hormone deficiency and female infertility, respectively.
- These hormones are sometimes referred to as lean muscle builders due to muscle production (anabolic) properties.

Human Growth Hormone (hGH)

- A hormone naturally found in the body that increases growth effects of cells within the body.
- Why is it abused?
 - Thought to increase muscle mass, reduce body fat, and increase injury resistance
 - Currently no clinical evidence
- Detrimental effects include:
 - Increased risk of diabetes
 - Retention of fluids
 - Joint and muscle pain
 - High blood pressure
 - Osteoporosis
- Blood tests have been used to detect hGH since 2004.
- Agents available as injections.

Questions?

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Peptide Hormones, Growth Factors and Related Substances (Peptide Analogues)

- Peptide analogues include erythropoietin (EPO), darbapoetin, etc. that are normally used to treat anemia from chronic kidney disease.
- These analogues are referred to as blood boosters because they increase the oxygen-carrying capacity of blood.
- Practice is referred to as blood doping.
- Agents available as injections.

Erythropoietin (EPO)

- Naturally produced by cells in the kidneys and liver, this analogue is involved in several biological functions including wound healing and red blood cell production.
- Why is it abused?
 - Increased number of red blood cells
 - Improved oxygen delivery to muscles, which directly improves their endurance capacity
- Detrimental effects include:
 - Heart disease
 - Stroke
 - Blood clots
- Since 2002, tests performed by US sports authorities have consisted of urine or "direct" tests while at the Olympics both blood and urine tests are done.

Beta₂ Agonists

- Beta₂ agonists are drugs that cause smooth muscle relaxation resulting in the opening of the lungs for greater oxygen delivery.
- Examples include albuterol, salmeterol, formoterol, terbutaline, etc. administered by injection or tablet.
 - Agents may be permitted with an approved Therapeutic Use Exemption (TUE)
- Normally used to treat asthma and pulmonary disorders.
- Why are these abused?
 - Reduce recovery time from an injury
 - Increase muscle mass
 - Increased endurance
- Detrimental effects include:
 - Insomnia
 - Anxiety
 - Increased heart rate
 - Tremors

Hormone Antagonists and Modulators (Anti-Estrogens)

- Approved for use in the treatment of breast cancer and the prevention of recurrent breast cancer.
- It works in the body by preventing the formation of estrogen or by blocking estrogen from binding to estrogen dependent cancers.
- Common anti-estrogen agents include tamoxifen and anastrozole available as tablets.

Anti-Estrogens

- Why are they abused?
 - Typically used to negate some adverse effects from steroids.
 - Reduce excess fluid accumulation
 - Prevent the development of breast
 - Also used from a misconception that less estrogen in the body will help athletes recover faster after a workout.
- Detrimental effects of anti-estrogens
 - Weakening of bones
 - Increased cardiovascular risk
 - Increased likelihood of the development of blood clots
- Anti-estrogens are only available as a prescription and are detectable in a urine drug test

Diuretics and Masking Agents

- Diuretics aka "water pills" such as furosemide, triameterene, hydrochlorothiazide, etc. are used in heart failure and high blood pressure to quickly eliminate excess body fluid.
- Why are they abused?
 - Meet weight restrictions (wrestlers, boxer, etc.)
 - Increase urine volume making it more difficult to detect other PEDs in doping tests
- Detrimental effects include:
 - Dehydration
 - Muscle cramps
 - Dizziness upon standing
- They are detected using urine analysis.
- Agents available as tablets

Stimulants

- Most abused stimulants for increased athletic performance are prescription medications.
- Stimulants are prescribed for the treatment of ADHD and narcolepsy.
 - Examples of stimulants include:
 - Adderall, Ritalin, Concerta, ephedrine, methylphenidate, and amphetamine.
- Why are they abused?
 - Stimulants are used to increase physical and mental processes.
 - Stimulants increase
 - Concentration
 - Alertness
 - Confidence
 - Reaction time
 - Stimulants decrease
 - Feeling of fatigue
 - Perception of pain

Stimulants

- Detrimental effects of stimulants include:
 - Heat stroke
 - Cardiac arrest
 - Heart rhythm abnormalities
 - Ruptured blood vessels in the brain
 - Increased heart rate
 - Increased blood pressure
- Most stimulants are CII controlled substances, the most highly regulated medications within a pharmacy. CII substances are defined by DEA as having a high potential for physical or psychological addiction.
- Stimulants are included in standard athletic drug testing protocols. Stimulants are used predominantly for performance enhancement during competition, as opposed to training. Stimulants are detectable for 48 hours after use in the urine.

Non-Approved Substances

- This "open" section addresses the abuse of pharmacological substances not included in other sections of the Prohibited List.
- This includes substances that are not approved by any governmental regulatory health authority for human therapeutic use.
- Examples include drugs under pre-clinical or clinical development, veterinary drugs, or street drugs (heroin, MDMA, PCP, LSD, etc.).
- These substances are prohibited at all times.

Special Mention – Creatine

- Creatine is a naturally occurring molecule in the body that helps supply energy to all cells in the body, primarily muscle.
- Creatine has been tried as a supplemental treatment for Parkinson's disease, heart failure, and muscular dystrophy.
- Why are they used?
 - Increased muscle mass
 - Increased exercise performance
- Detrimental effects include:
 - Kidney damage
 - Muscle cramping
 - Dehydration
- Use is not banned by the NCAA but colleges are prohibited from providing creatine to players.

References

- Saugy M, Robinson N, Saudan C, Baume N, Avois L, Mangin P (July 2006). "Human growth hormone doping in sport". *Br J Sports Med*. 40 Suppl 1: i35-9. doi:10.1136/bjbm.2006.027373. PMID: 2657499. PMID 16799101.
- Krych K, Goździcka-Józefiak A (2008). "Doping in Sport: New Developments". *Human Movement* 9 (11): 62-75. doi:10.2478/v10038-008-0009-4. full article available at: <http://versita.metapress.com/content/b13a66325532271/fulltext.pdf>
- The abuse of diuretics as performance-enhancing drugs and masking agents in sport doping: pharmacology, toxicology and analysis. *British Journal of Pharmacology*. 2010;97.
- Kindermann, W., and T. Meyer. "Inhaled β_2 agonists and performance in competitive athletes." *British journal of sports medicine* 40(suppl 1 (2006)): i43-i47. PMID: 16799103
- "Creatine". Medline Plus Supplements. U.S. National Library of Medicine. 20 July 2010. Retrieved 2010-08-16.

Questions?

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State Medical Board's Perspective on Performance Enhancing Drugs

William J. Schmidt, Esq.
Senior Counsel
State Medical Board of Ohio
October 25, 2013



Medical Board Overview

12 Board members appointed by the Governor – 7 MD, 1 DPM, 1 DO and 3 consumers; five year terms, Board meets monthly

Regulate over 65,000 licensees: MD, DO, DPM, Physician Assistants, Anesthesiologist Assistants, Radiologist Assistants, Cosmetic Therapists, Massage Therapists, Acupuncturists, Oriental Medicine Practitioners, and Genetic Counselors regulated by Medical Board.

Agency supports 79 positions; Agency funded by licensure fees

Protecting the public through effective medical regulation



Drugs of Interest

Steroids and related agents

- Testosterone
- Human Growth Hormone (HGH)
- Human Chorionic Gonadotropin (hCG)

Controlled substance stimulants

- Amphetamines

Concerns for Prescribing Physicians

Grounds for Medical Board disciplinary action:

- 4731.22 (B)(6) Minimal standards of care
- 4731.22 (B)(10) Acts constituting a felony
- 4731.22 (B)(12) Acts constituting a misdemeanor in the course of practice
- 4731.22 (B)(20) Violations of Board statutes or rules

Section 4731.22, Ohio Revised Code

Medical Board Rules

4731-11-03 Schedule II controlled substance stimulants

4731-11-05 Use of drugs to enhance athletic ability

4731-11-09 Prescribing to persons not seen by the physician (a.k.a. Internet Rx)

Chapter 4731-11, Ohio Administrative Code, Controlled Substances

Criminal Law Concerns

Section 2925.03, O.R.C. – TRAFFICKING

- (A) No person shall ...
- (1) sell or offer to sell a controlled substance ...
- (B)(1) Does not apply to prescriber whose conduct was in accordance with Chapter 3719. and 4731. of the Revised Code
- (B)(2) Exception for FDA approved research

Ohio Revised Code Chapter 3719., Controlled Substances; Chapter 4731., Medical Board

Criminal Law Concerns

Section 2925.11, O.R.C. – POSSESSION OF CONTROLLED SUBSTANCES

- (A) No person shall knowingly obtain, possess or use a controlled substance or a controlled substance analog
- (B)(1) Does not apply to prescriber whose conduct was in accordance with Chapter 3719. and 4731. of the Revised Code
- (B)(2) Exception for FDA approved research

Ohio Revised Code Chapter 3719., Controlled Substances; Chapter 4731., Medical Board

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Social Media Issues and Student Athletes

Julie Vannatta
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Social Media Issues and Student-Athletes

Legislative Service Commission – Public CLE

October 25, 2013

Julie D. Vannatta

The Ohio State University

Senior Associate Athletic Director – Legal

Senior Assistant General Counsel for Athletics

- I. NCAA Interpretation: University of North Carolina¹
 - A. Student-athlete tweets showed possible NCAA violations
 - B. UNC self-reported, but found in violation of “failure to monitor”
 - C. No “blanket duty to monitor” social media sites
 - D. Duty to monitor publically available social media sites “may arise as part of an institution’s heightened awareness when it has or should have a reasonable suspicion of rules violations”
 1. Have to keep your eyes open
 2. If know or should know of possible rules violations, check public social media.

- II. What Can / Should University Administrators Do?
 - A. Monitor: pro’s / con’s / what to monitor?
 1. “Friend” student-athletes on Facebook?
 - a. Danger – now seeing non-public information
 - b. Obligation to report
 - c. Legal for coaches to require student-athletes to “friend” them?
 - B. “Follow” on Twitter?
 1. Public information
 2. Inform student-athletes
 - C. Discipline? Suspend? Kick off team? Non-renew scholarship?
 1. Fourth Amendment (reasonable expectation of privacy)
 - a. Claimant must have a subjective expectation of privacy and “an objective expectation of privacy that society accepts and legitimizes” *Katz v. United States*, 389 U.S. 347, 360-361 (1967)
 - b. “students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy.” *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 657 (1995)

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<http://i.turner.ncaa.com/dr/ncaa/ncaa/release/sites/default/files/files/NC%20Public%20Infractions%20Report%20031212.pdf>

- (stating explicitly, “school athletes have a reduced expectation of privacy.”)
- c. There is no constitutionally-protected “right” or “entitlement” to participate in interscholastic athletics. Participating in athletics is a privilege and not a right. *Alerding v. Ohio High School Athletic Ass’n*, 779 F. 2d 315 (6th Cir. 1985); *Menke v. Ohio High School Athletic Ass’n*, 2 Ohio App. 3d 244, 246 (Ohio App. 1981)
 - d. To be safe . . . explicitly inform student-athletes that their web content is not private and is subject to being searched
2. Electronic Communications Privacy Act (“ECPA”)
 - a. Prevents an entity from “intentionally access[ing] without authorization . . . and thereby obtain[ing]” an electronic communication from an electronic communication service while it is in storage.
 - b. Consent of the student-athlete should defeat this claim
 - c. Employment case determined that “purported authorization was coerced.” *Pietrylo v. Hillstone Restaurant Group*, 2009 WL 3128420, No. 06-5754(FSH), at *3 (D.N.J. Sept. 25, 2009)
 - d. Voluntary nature of athletics (as opposed to employment) should allow authorization to be viewed as voluntary and not coerced.
 3. First Amendment
 - a. Generally, content-based speech restrictions are “presumed to be unconstitutional.” *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995). Constitutionally protected speech rights extend to “the playing field.” *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 513 (1969)
 - b. Need to show a compelling government interest in regulating speech (except “fighting words,” obscenity, defamation/libel/slander, child pornography, etc. are not typically protected categories of speech)
 - c. A “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” is not enough for a prohibition on speech. *Id.* at 509.
 - d. Free speech rights cannot “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school” and cannot collide with the rights of others. *Id.* at 509.
 - e. Courts recognize a difference between student-athlete speech while in the classroom and their speech relating to their sports team. *Wildman v. Marshalltown*, 249 F. 3d 768 (8th Cir. 2001). In athletics, a public school’s duty consists of providing “an educational environment conducive to learning team unity and sportsmanship and free from disruptions and distractions that could hurt or stray the cohesiveness of the team. *Id.* at 771.
 - f. OK to regulate student-athlete speech / discipline a student-athlete if it is needed to uphold team chemistry.

- g. *Lowery v. Euverard*, 497 F. 3d 584 (6th Cir. 2007) (cert. denied)
 - i. Several football players were removed from the team because they publicly challenged the coach's authority by writing a letter saying that they hated the coach.
 - ii. Sixth Circuit sided with coaches and high school. "The immediate goal of an athletic team is to win the game, and the coach determines how best to obtain that goal . . . Execution of the coach's will is paramount." *Id.* at 589.
 - iii. The court allowed the speech restriction to prevent a "substantially negative effect on a [sports] team," to uphold "team unity," to prevent a team from "break[ing] apart," and to maintain "team chemistry." *Id.* at 593, 595.
 - iv. The court stressed that student-athletes participate in their sports voluntarily, explaining that the case is NOT "fundamentally about the right to express one's opinion, but rather the ability of the government to set restrictions on voluntary programs it administers." *Id.* at 599
 - v. Student-athletes still have fundamental rights to express religious or political views.
 - vi. Penalties must be limited to disciplinary action from the athletics team. Cannot be suspended from school – just dismissed from the team.
 - vii. OK to regulate speech / discipline a student-athlete if posting violates criminal law
 - viii. OK to regulate speech / discipline a student-athlete if posting indicates potential violation of NCAA rules (violation of reasonable team rules might be OK)
- h. *T.V. v Smith-Green Community School Corp.*, No. 1:09-CV-290-PPS (N.D. Ind. 2011).
 - i. Photos were speech – humorous speech
 - ii. Photos didn't cause a "substantial disruption" to school activities
 - iii. Policy allowing punishment for conduct that "brings discredit or dishonor" on the school or student is too broad and vague
 - iv. 25% of season suspension was overturned

D. Establish Reasonable Team Rules?

1. No cases
2. Probably supportable – examples - No drinking during season; no tweeting X minutes before game, during game and X minutes after game; no hazing activities;
3. Probably less supportable – examples – Can't do anything embarrassing to you or the institution; can't use profanity

- E. Total Ban? Unwise. Difficult to prove institution has a legitimate, content-neutral interest in totally banning student-athlete social media.
- F. Educate
 - 1. Emphasize best practices – “If you wouldn’t want your grandmother to read it, don’t post it.”
 - 2. Specific NCAA rules applicable to them – can’t endorse businesses, can’t comment on recruit’s visit, etc.
 - 3. Safety issues – don’t post your location

III. The Ohio State University’s Student-Athlete Social Media policy

- A. Make clear – participating in athletics is a privilege, not a right, so student-athletes have no right to expect privacy in what they post on social media
- B. Explain that you may be monitoring their public posts and that you may need their passwords to access non-public information if necessary for an investigation
- C. Explain the reason for the policy – to ensure compliance with NCAA or other governing rules and to foster a positive team culture
- D. Make clear that the policy does not prohibit any constitutionally-guaranteed rights (can speak freely regarding religion, politics, academics, etc.)
- E. Have student-athletes sign it
- F. Be involved with policy creation – your clients will instinctively want to include impermissible items

*Good resource: Eric D. Bentley, *He Tweeted What? A First Amendment Analysis of the Use of Social Media by College Athletes and Recommended Best Practices for Athletic Departments*, JOURNAL OF COLLEGE AND UNIVERSITY LAW, Vol. 38, No. 3, pp 451-479 (2012).

** Thank you, James Saywell, OSU Office of Legal Affairs law clerk, for your consultation on this outline