

## **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/](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](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.<sup>1</sup>

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<sup>1</sup>Opioids 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 Roxycotin 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?
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

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  
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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.

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

Defendants.

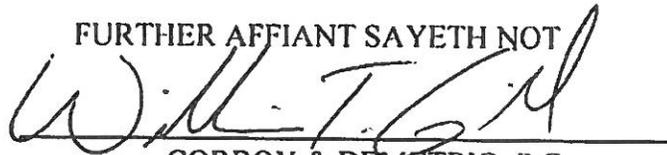
No.

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.

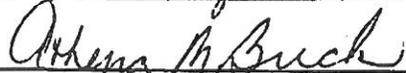
FURTHER AFFIANT SAYETH NOT

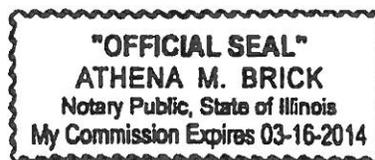


CORBOY & DEMETRIO, P.C.

By: William T. Gibbs

SUBSCRIBED and SWORN to before me  
this 10<sup>th</sup> day of May, 2013.

  
NOTARY PUBLIC



• • • Thomas A. Demetrio  
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