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Painkillers at play in lawsuit aimed at NHL

Boogaard's case differs from NFL concussion litigation, lawyers say

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Two-hundred sixty-six games on the ice over six seasons, millions of dollars, three goals and the chance to fulfill a boyhood dream.

That is not all the NHL gave Derek Boogaard, who died two years ago at age 28, according to a wrongful-death lawsuit filed Friday on behalf of his family in Cook County Circuit Court.

It says the league provided the former "enforcer" numerous over-prescriptions of potent painkillers — during the 2008-2009 season, he received the equivalent of roughly five pills a day. The NHL also failed to properly monitor the ensuing addiction Boogaard developed to OxyContin and other drugs known as opioids, the suit says.

The 6-foot-7, 270-pound enforcer dropped gloves and fought at least 66 times on the ice while playing in the NHL — a league that Boogaard's family now says is responsible for brain damage found during the former Minnesota Wild winger's autopsy following his death in a Minnesota hotel room from an accidental drug overdose on May 13, 2011.

"The amount of prescription pain pills and injections that were given to Derek during his six-year NHL career were extraordinary," said William T. Gibbs, an associate at Corboy & Demetrio P.C. who filed the lawsuit with Thomas A. Demetrio.

"And when you couple that with the fact that ... his brain was deteriorating and degenerating, even at such a young age, the brain damage hindered his ability to deal with that

addiction."

Frank Brown, the NHL's group vice president of media relations, said the league had no comment on the lawsuit.

While Demetrio said the NHL needs to "adapt and change" to prevent future "tragedy," local lawyers said the scope of any such changes will likely not equal the shake-up of another pro sports league — the NFL — that could result from 4,000-plus former football players arguing their league failed to prevent brain injuries despite knowing of their consequence.

"The NHL is likely to argue that fighting is part of the game and, thus, a risk assumed. Ultimately, the NFL's demise may turn out to be what it knew and didn't tell the players," said Timothy L. Epstein, chairman of SmithAmundsen LLC's sports law practice.

"What did the league know and did it do anything about the risks? — This is the key question in both (cases) and (the answer) appears less obvious in the NHL case."

Corboy & Demetrio also represents former Chicago Bears safety Dave Duerson's family in a wrongful-death lawsuit against the NFL.

Gibbs said he filed the Boogaard suit in Chicago because it is roughly the midpoint of Minnesota, New York and California — places where discovery will happen.

Boogaard's suit could have been filed in any state where the NHL does business, he said, adding that Boogaard played and fought in Chicago. Boogaard's family, Gibbs said, "thought (Corboy & Demetrio) was the appropriate firm" after learning of its representation of Duerson.

Boogaard and Duerson were both found to have chronic trauma encephalopathy, or CTE, a degenerative brain disease.

Both lawsuits accuse a portion of the players' sports — hitting in football and fighting in hockey



William T. Gibbs

— of causing brain damage and would hold the NHL and NHL liable for doing so.

"To the Boogaard family, who now two years later still mourn Derek's death, they see no justification for allowing fighting in the NHL," Gibbs said.

Whether or not the NHL is liable for Boogaard's brain damage, the lawsuit has an arrow in its quiver that might not be present for NFL plaintiffs.

In addition to accusing the NHL of breaching its duty to Boogaard "by drafting him to fight on the ice during games," Boogaard's estate's lawsuit also provides a detailed account of his addiction to painkillers.

It says the NHL caused that addiction and then botched its duty to help him recover.

The complaint accuses the NHL of overprescribing oxycodone and hydrocodone — opioids better known as OxyContin and Vicodin — as well as injections of a pain masking agent called Toradol.

Boogaard developed an addiction to opioids after the 2008-2009 season when he was prescribed 1,021 pills by team physicians, the lawsuit says, adding he ingested up to 10 pills a day.

The NHL failed to "curb, cure and monitor" his addiction, the



Thomas A. Demetrio

suit says, even after Boogaard entered the NHL's drug rehabilitation program in September 2009.

As part of the NHL's program, Boogaard was to refrain from all opioids and the sleeping aid Ambien while submitting to random drug testing, the suit says.

Yet during the 2010-2011 season — Boogaard's last — he received 17 prescriptions from NHL doctors for 366 pills of opioids and Ambien, the suit says.

His urine samples tested positive for various drugs six times from January to March 2011, but the suit says he was never suspended nor placed into an elevated stage of the NHL's drug program. He played his final NHL game and fought his final fight as a New York Ranger on Dec. 9, 2010, the lawsuit says.

Dr. Edward Mischna, a board member at the American Pain Society who is not involved in the case, said that without direct knowledge of Boogaard's condition, it is difficult for doctors to make assessments of his treatment.

Still, he expressed concern over aspects of the prescription regimen as detailed in the lawsuit — including the number of doctors treating Boogaard as

well as their relationship to the team.

Mischna said opioid prescription limits often depend on the level of acetaminophen, or Tylenol, mixed in with the opioid.

A typical combination would allow a patient to take eight pills a day, he said. The 10 pills Boogaard's lawsuit says he ingested per day, "would not be a rational prescription" of opioids mixed with a common amount of Tylenol, Mischna said.

"It is even more worrisome

when there are physicians being paid by a team (to treat) a player that needs to be productive and utilized by that organization," he said.

Mischna said other portions of the lawsuit's account did not mesh with typical medical practices.

For instance, patients suffering tooth fractures are usually prescribed anti-inflammatory drugs such as ibuprofen, not opioids such as hydrocodone, he said. Yet in 2008, Boogaard

received 125 pills of hydrocodone by five different doctors who cited "tooth injury," the lawsuit says.

"It certainly raises a level of suspicion when this occurs in a setting where the physicians should have knowledge of this player's past issues," Mischna said.

"For the type of injury, the length of time that these drugs were prescribed or whether they were prescribed at all has to be called into suspicion and is

suspect."

Boogaard died of an accidental drug overdose one day after he was released from a drug rehabilitation facility, the lawsuit says. He was warned about the dangers of leaving the California facility, the lawsuit says, but he was not provided a chaperone to Minnesota, where he planned to attend his sister's college graduation.

The lawsuit is *Robert D. Nelson, personal representative of the estate of Derek Boogaard v. NHL*.