

## Fatal overdose sparks class-action suit against makers of powerful painkiller patch

**Jodie Sinnema**

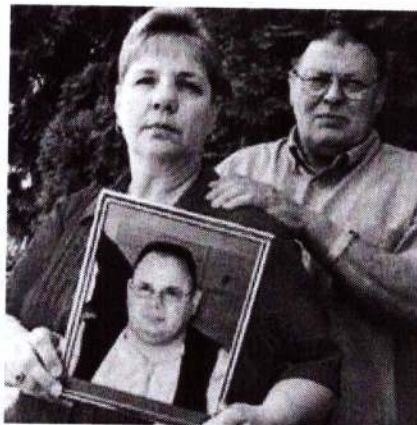
Edmonton Journal

Wednesday, July 15, 2009

The last time Ellen Robb spoke with her brother, he was doing chores and laundry at home, optimistic that with his chronic back pain under control, he would soon be back at work as an electrician.

Four days later, after many unanswered phone calls, Robb found Doug Hoy dead on his apartment floor, barefoot as if he were on his way to get his laundry basket across the hall.

Months later, a toxicology report revealed Hoy's blood had three times the safe amount of fentanyl, Robb said in an interview. Fentanyl is an opiate 80 to 100 times as strong as morphine, and approved for use as a pain medication in Canada and the United States. Hoy had been prescribed the fentanyl patch to treat his severe chronic back pain after another powerful opiate, OxyContin, failed to bring relief.



CREDIT: Chris Schwarz, The Journal  
 Ellen Robb, left, and Steve Hoy hold a photograph of their late brother, Doug Hoy. A toxicology report said the man had three times the safe level of the opiate fentanyl in his system.

Now, Robb and her family have taken steps to launch a class-action lawsuit against five pharmaceutical companies, alleging the companies that design, test and distribute fentanyl patches were negligent in warning people about the risks of breathing problems or death, as well as severe weakness, drowsiness and confusion.

"Fentanyl has been prescribed to thousands of persons without clear, complete and current warning of the risk of serious defects," reads the statement of claim filed with the Saskatchewan Court of Queen's Bench in February.

The court has been asked to certify a class-action lawsuit that people from across Canada could join.

Named in the court documents are Ratiopharm Inc., Janssen-Ortho Inc., Novopharm Limited, Cobalt Pharmaceuticals Inc., and Ranbaxy Pharmaceuticals Canada Inc. None of the companies have responded.

"The defendants did shoddy pre-and post-marketing research and testing on fentanyl mainly to obtaining financial benefit and ignoring the potentially serious risks posed to the public and deliberately held back information from the public and the class," the statement reads.

It alleges the companies "misled" and "deceived" Hoy and his family, over-promoted the product, negligently represented fentanyl as safe and didn't adequately educate doctors on the "defective drug product."

The class-action suit, filed by Merchant Law Group LLP whose head office is in Winnipeg, is seeking an undetermined amount in damages for loss of income, pain and suffering and costs of future care for those living with long-lasting effects.

Earlier this month, Health Canada advised health-care workers to be cautious when prescribing the pain-relief patch after it sent a child to hospital last year. A mother wearing the fentanyl patch fell asleep beside her toddler. In the night, the patch inadvertently became attached to the child. He was treated and released from hospital, but the consequences could have been far more severe.

The patch--sold under the brand name Duragesic--was suspected of contributing to at least 52 deaths in Canada from 1992-2007, according to Health Canada's Adverse Drug Reaction Database. Health Canada has no immediate plans to pull the patches off shelves.

Hoy didn't know these details, his sister said. Nor did he know about warnings from the U. S. Food and Drug Administration that improper use of the powerful narcotic--replacing the patch too often, applying more than one patch or applying heat to the pad, which increases the amount of fentanyl that reaches the blood--could end in death. When that warning came out in 2005, the FDA was investigating 120 deaths potentially linked to the drug.

Certain batches of the patch have also been recalled, once because the covering on the patch could break or crack, allowing too much medication to seep into the skin.

Robb said her 56-year-old brother was using the patch properly and died from breathing problems and oxygen deprivation brought on by fentanyl toxicity.

"He couldn't function because of the pain," Robb said. While living in Fort McMurray, he was sent to Edmonton's pain clinic where doctors recommended he start taking OxyContin, the statement of claim says. But even with ever increasing prescription strength and injections into his back, nothing seemed to help. Hoy couldn't work, saw his marriage dissolve and eventually moved to Edmonton and began taking fentanyl in March 2008, the claim reads.

"It controlled the pain very well," Robb said during an interview. But six months later, Hoy was dead.

"He probably was in a coma a few days before I found him," she said.

Robb said her family decided to launch a class-action lawsuit when it saw similar cases in the U. S. Last October, Johnson & Johnson was ordered to pay \$13.3 million US to the family of a 34-year-old mother who overdosed on fentanyl after using two pain patches on her skin after back surgery.

"We need to make some awareness," said Robb. "I'm sure my brother had no idea how dangerous it would be. This is lethal, and I don't think it should be on the market."

Nicholas Robinson, a lawyer with Merchant Law Group, said he doesn't know how many people have asked to join the case, but estimated it could be in the hundreds.

"We've received tonnes of calls from people residing in B. C., Alberta, Saskatchewan, Ontario and even other provinces," Robinson said. He said his office is currently working on getting a certification hearing. "Companies have a duty to warn Canadians of the risks and dangers posed by consumer products. Products that enter the human body are of particular sensitivity, obviously.

Class actions are an important deterrent that can force manufacturers to disclose risks and dangers posed by products such as the fentanyl patch. So we think this action is

important in terms of modifying company behaviour."

© The Edmonton Journal 2009

CLOSE WINDOW

---

Copyright © 2012 CanWest Interactive, a division of CanWest MediaWorks Publications, Inc.. All rights reserved.  
CanWest Interactive, a division of CanWest MediaWorks Publications, Inc.. All rights reserved.