

Regarding Dr. Hurwitz's Case

[A response by Dr Joel Hochman to the article printed in the Washington Post, entitled "[2 N.Va. Doctors Linked to Deluge Of Illegal Drugs; Patients Resold Painkillers; Half-Dozen Deaths Probed](#)" published on December 23 and written by Josh White. Originally posted: January 25, 2003.]

Dear Editors, Dear Mr. White:

Your paper has published several articles about the DEA's investigation of Washington area pain practitioner Dr. William Hurwitz, including a report that Dr. Hurwitz would close his practice rather than subject his patients to further harassment and the risk of abandonment were he arrested. On December 23rd you published another article, reporting that two Virginia doctors (were) Linked to a Deluge of OxyContin deaths. I am writing to rebut your article on several very serious grounds.

To begin, your conclusions in this article are founded upon very dubious premises and flawed facts, and pander to sensationalism. May I refer you to the May 2nd, 2002 article in the Cleveland Free Times, entitled, "[OxyCon Job](#) - The Media Made OxyContin Drug Scare."

The claim that 146 deaths are directly attributable to the drug and that 464 deaths are "related" to the drug are spurious . Furthermore, expert testimony refutes these sensationalistic claims. Dr. June Dahl, professor of pharmacology at the University of Wisconsin Medical School and president of the American Alliance of Cancer Pain Initiatives (AACPI), points out that "cocaine accounts for half of all drug-related emergency room visits, at a cost of more than \$30 billion annually." When placed in that context, claims of a national OxyContin epidemic "seem incredibly exaggerated."

And there is another reason why the increase is not as significant as it might first appear. The increase in ER visits was largely predictable since legitimate use of OxyContin rose by a similar amount, argues Dr. Fisher of the American Pain Foundation. He points to Vicodin as a much more serious prescription drug problem, since illegal usage of it as a percentage of its total sales is rising much faster than that of oxycodone. "That's the real problem," he claims. " Compared to it, OxyContin only accounts for 10 percent of the cases but gets 90 percent of the attention."

So the demonic picture you presume of the "epidemic of OxyContin abuse and the terrorization of pharmacies" lacks a defensible foundation in fact. Further, to the extent it has any factual basis, it appears to be significantly generated by media sensationalism and popularization.

The near hysterical claims that Drs. Hurwitz and Statkus have been the source of this fictional calamity and multiple deaths is plainly propaganda provided to you by prosecutors seeking to make their case in public before they enter the court room. It is standard prosecutory fare, and was employed precisely in this way in the fruitless persecutions of Doctors Robert Weitzel and Frank Fisher. Your sources are biased and you appear to be simply providing a conduit for misinformation.

As for the plea bargain inspired claims by 16 patients that the doctors were responsible for their behavior, this is simply a prosecutorial deal. Wanting to fabricate a high profile case against doctors, they have offered a deal to those who will "roll over" on their physicians. This is standard operating procedure for drug prosecution. Get a small fish and offer to let him go if he will implicate a big fish, is the name of the game. These patients are, in the vernacular, "snitches." Having apparently abused their medications and now the trust of the physicians who were attempting to legitimately treat them, they are offered as proof against the doctors. It is a slimy business, but typical of the modus operandi of "drug warriors."

In contrast to this propaganda, I offer the following factual information, based upon specific case experiences. My practice consists of treating patients with chronic, intractable pain. I am also the Executive Director of the National Foundation for the Treatment of Pain (<http://www.paincare.org/>) A number of Dr. Hurwitz's former patients have come to me. I have established the following:

- 1.** All were legitimately and correctly diagnosed.
- 2.** All believed that their treatment regimen was effective and were thoroughly satisfied with Doctor Hurwitz's care.
- 3.** All described marked improvement in functionality under his care. None presented any credible reason to doubt their reliability and legitimacy.
- 4.** All were accompanied by more than competent and adequate medical records that clearly established conditions which medically justified chronic and long-term opioid therapy.
- 5.** Their clinical notes are extensive and highly organized.
- 6.** The records show that Doctor Hurwitz adjusted medications to effective levels.
- 7.** Upon reaching effective treatment, doses were stable and did not accelerate.
- 8.** Tolerance did not develop and no adverse medical or behavioral changes occurred. With one possible exception in the cases I have seen, no addictive behaviors or symptoms occurred.

9. None of the patients I have seen appeared likely to engage in, nor was there any history or evidence of, diversion.

10. In several cases a difference in treatment philosophy occurred, regarding some dosages and schedules, and occasionally as to the choice of long or short acting opioids. My impression was that in these cases Doctor Hurwitz elected to utilize a very aggressive treatment regimen, under very acute circumstances. When I entered the clinical picture the cases had become stable and chronic, permitting much more conservative treatment.

11. In all these cases I have continued the long term opioid therapies. Medications have been revised in some cases, and adjustments in doses and schedules have been made. Several patients were transitioned to different, sustained release medications. The changes reflected legitimate and acceptable differences in professional practices, preferences and circumstances.

12. With one exception, all the patients have continued to do well and improve.

13. Specifically, the patients have done nothing to suggest criminal intent or activity.

14. Their physical and social functioning has unarguably improved, through the provision of critical, effective pain relief.

The ethics of medicine require compassionate care. Chronic pain is a scourge in this country that disables millions and blights the lives of patients and their families. Medical standards and regulatory guidelines support and encourage effective pain management. Despite this, most doctors are afraid to treat pain aggressively. The chilling effect of the Hurwitz investigation will only step up this trend. Sadly, it also stigmatizes pain patients, and particularly those who have been attended by Dr. Hurwitz. No doctor can consider helping them without wondering if investigations, notoriety and financial catastrophe will come with them. The situation is horrific for all.

Secondly, judging the legitimacy, appropriateness and effectiveness of medical care is not the business of prosecutors, Grand Juries or law enforcement. Professional mechanisms for such review are universally available. Why are they being circumvented?

In that regard, I have copied, below, the resolution of the Utah Medical Association:

THE CRIMINALIZATION OF MEDICAL PRACTICE

a resolution of the Utah Medical Association

The Utah Medical Association opposes the criminalization of medical care and sees unfounded accusations of physicians in criminal court and the criminal trial of physicians' professional judgment and quality of practice as a serious threat to patient care in the State of Utah and an unreasonable burden on the medical profession. Although it is acknowledged that the public must be defended against criminal actions, we do not believe that the professional assessment of medical competence necessary to discriminate between medical incompetence and criminal negligence can be judged fairly and knowledgeably before a lay jury in criminal court in the manner contemplated in *State v. Warden*. Instead, we strongly affirm the following statement of the Kansas Court of Appeals in the public policy defining decision of *State v. Narramore*:

- "When there is such strong evidence supporting a reasonable, non criminal explanation for the doctor's actions, it cannot be said that there is no reasonable doubt of criminal guilt. This is particularly true in a situation as we are faced with here, where the only way the defendant's actions may be found to be criminal is through expert testimony, and that testimony is strongly controverted in every detail. ... [If] criminal responsibility can be assessed based solely on the opinions of a portion of the medical community which are strongly challenged by an opposing and authoritative medical consensus, we have criminalized malpractice, and even the possibility of malpractice."

Lastly, we believe that when a medical expert admonishes a prosecutor against filing a criminal complaint, it behooves the prosecutor to reconsider his position and seek the opinion of the Utah Medical Association, the Physicians Licensing Board, or some other regularly established and constituted panel of medical peers. Neither Utah's physicians nor their patients can afford this type of judicial embarrassment. It is a serious threat to good patient care for all Utah's citizens.

[END: UMA RESOLUTION]

This resolution was triggered by the Doctor Robert Weitzel case, in which he was charged with five counts of murder. Evocative of the historic Dreyfuss affair, after four horrific years Doctor Weitzel was completely exonerated. Review of the facts makes it clear that this was a bizarre effort by a local district attorney to "put a doctor away." The same is true of the Doctor Frank Fisher case in California. Now the DEA is planting news releases in Virginia calling for murder prosecutions against Drs. Hurwitz and Statkus.

The decision about what constitutes appropriate medical care can only be made by physicians. It is outside the credible domain of prosecutors and Grand Juries. Each time it has been taken to a real jury of peers, they have affirmed this principle. Medicine cannot

be practiced by regulators, undercover agents, snitches, cooperating witness-defendants in criminal cases, prosecutors, districts attorney, attorneys general or even syndicated news reporters.

Doctor William Hurwitz saved hundreds of lives when other physicians, frightened and/or opiophobic, turned their backs to them. The suggestion that he should now be made a poster boy for the DEA's latest campaign to "prevent drug diversion," itself a trivial issue in the large picture of drug abuse, is bestial and vile. If being duped by a drug abusing patient is grounds for murder charges, there is virtually no doctor in America who is not vulnerable.

Pain patients and their treatment must be left to the physicians who must treat them. Drug warriors need to go after the real masters behind the illicit drug empires and their confederates. Smoke and mirror murder prosecutions of legitimate physicians are no longer effective distractions from the real issues. We all know about the highest level corruption behind drug trafficking. Are those cases perhaps a little more politically risky than prosecuting a few solo practitioners?

Addiction, Pain, and Public Health website – www.doctordeluca.com