

At Least 20 Years Await Convicted Doctor

Some pain specialists fear William Hurwitz's case will impair their ability to treat patients.

by Ralph Vartabedian; [Los Angeles Times](#); April 14, 2005

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In a federal courtroom in suburban Washington today, a Stanford University-educated pain doctor assailed by prosecutors as a common drug pusher is expected to receive at least 20 years in prison for his December conviction on drug trafficking.

The prosecution of Dr. William E. Hurwitz, 59, was surrounded by controversy and the prospective long sentence is reverberating among doctors who treat pain. Though he was charged with diverting potent opioid drugs to two dozen dealers and addicts from his office in McLean, Va., Hurwitz is also regarded as a pioneer in pain treatment.

Along with tougher federal regulation of pain pills, the Hurwitz case has roiled the medical and legal establishments, creating fear of prosecution among some doctors who treat debilitating pain.

"We have a real legitimate worry that there is going to be greater reluctance to prescribe pain medication and as a consequence more under-treatment of chronic pain," said Dr. Russell K. Portenoy, chairman of the pain medicine department at Beth Israel Medical Center in New York.

Since the Hurwitz case began, 30 state attorneys general have assailed the Bush administration's Justice Department for its pain-pill policies, saying in a joint letter in January that state and federal policies were increasingly at odds on how to balance legitimate pain treatment with drug enforcement.

And during the Hurwitz trial, a group of eminent medical authorities, all past presidents of the American Pain Society, lambasted one of the Justice Department's expert witnesses for "misrepresentations" that have damaged the ability of doctors to treat pain without fear of prosecution.

But Justice Department officials insisted that the Hurwitz prosecution should have no effect on legitimate doctors, saying Hurwitz knowingly dispensed pills to patients reselling their Oxycontin and Dilaudid on the streets. In a sentencing memorandum, prosecutors Gene Rossi and Mark Lytle say that the only chilling effect on other doctors from the Hurwitz trial results from his misrepresentations that he was duped by his patients.

During the trial, Hurwitz was described by some of his patients as a hero who had successfully treated debilitating pain. The Pain Relief Network, a patient group, said in a letter to President Bush this week that Hurwitz's conviction was the result of deceptions by federal prosecutors.

Each day, the court was packed with dozens of supporters, including the mother of a student at Yale University, who told prosecutors her son's debilitating pain was cured by Hurwitz and that he was now unable to find another doctor to treat him.

Prosecutors never disagreed that many of Hurwitz's 5,000 patients were legitimate. But they charged that 24 of the patients were illegally getting large prescriptions, even though Hurwitz knew they were either reselling the drugs on the street or abusing them. Prosecutors asserted that Hurwitz engaged in egregious and blatantly illegal behavior, writing prescriptions for as many as 1,200 Dilaudid pills per day to one patient who was a known cocaine abuser.

The Justice Department has attempted to turn up its fight against rapidly growing abuse of pain pills, concerned by surveys that show 6.4 million Americans abuse pain pills. But at the same time, medical experts say many Americans are in profound chronic pain and could lead more normal lives if they were put on regular doses of opioids.

Throughout the case, Hurwitz said he did not know about his patients' drug dealing and that a doctor should not be held accountable for the illegal behavior of others. And despite the allegations against him, Hurwitz continued to receive strong support.

Dr. Frank Fisher, a California doctor who also was charged with dealing drugs but exonerated last year after a long legal battle, attended every day of the trial and kept Web logs that assailed the prosecution.

"We are burning Dr. Billy Hurwitz at the stake," Fisher said. "It is really having a chilling effect on the treatment of pain. Surveys show that half of terminally ill cancer patients die in agony."

Portenoy and other highly regarded pain doctors were on the witness list for Hurwitz. In an interview Wednesday, Portenoy said he was concerned that Hurwitz had engaged in many practices that seemed problematic, but that it would have been better for the medical establishment to handle the matter internally than to criminalize the treatment of pain.

Portenoy was among a panel of doctors that helped the Drug Enforcement Administration write a question-and-answer policy statement to help doctors avoid trouble in prescribing opioids. But shortly after the document was posted on the Internet by the DEA, the defense team for Hurwitz saw that it could exonerate their client. Prosecutors successfully blocked the document from being introduced and then the DEA repudiated it.

Afterward, 30 attorneys general — including California's Bill Lockyer — wrote a letter to DEA Administrator Karen P. Tandy, saying the agency was not properly balancing the need for stopping drug diversion with the need to treat legitimate pain, specifically citing the withdrawn document.

"As attorneys general have worked to remove barriers to quality care for citizens of our states at the end of life, we have learned that adequate pain management is often difficult to obtain because many physicians fear investigations and enforcement actions if they prescribe adequate levels of opioids."

One issue that befuddles many experts is why Hurwitz would have engaged in drug trafficking, as prosecutors alleged. Hurwitz not only has a medical degree, but also a law degree from George Mason University in Virginia.

Some of his critics say that Hurwitz wanted to confront authority and became infatuated with his notoriety, though his supporters say he was morally committed to curing pain with high doses of pills even if it meant occasionally erring in who he would treat.

U.S. District Judge Leonard D. Wexler denied Hurwitz bail in December during an appeal of his conviction, saying he represented a flight risk. Wexler noted that under federal sentencing guidelines, he would be forced to hand down at least 20 years of prison time. Federal prosecutors have asked for a life sentence.

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