

Weighing the Difference Between Treating Pain and Dealing Drugs

by Tina Rosenberg; Editorial Observer; New York Times; 3/26/2005

Originally posted 2/24/2005: [www.doctordeluca.com/Library/WOD/WeighingDiffPainRx&Dealing05.doc]

Also available at:

[<http://www.nytimes.com/2005/03/26/opinion/26sat3.html?ex=1112504400&en=a968ca948289f511&ei=5040&partner=MOREOVERFEATURES>]

Federal prosecutors in Virginia want Dr. William Hurwitz, recently convicted on 50 counts of distributing narcotics, to go to prison for life without parole when he is sentenced in mid-April.

For the 50 million or so Americans who suffer from chronic pain, the fate of Dr. Hurwitz should be of some interest. He is a prominent doctor committed to aggressive treatment of pain. His behavior in some cases was inexcusable. Patients for whom he freely provided large prescriptions should, at the very minimum, have been given more close supervision. But malpractice should be cause for loss of license.

Instead, Dr. Hurwitz has been prosecuted as a drug kingpin because some patients sold their pills, although prosecutors never claimed he made a penny from it. That sends a chilling message to doctors who treat people with extreme pain.

Dr. Hurwitz's case involved prescriptions for opioids like OxyContin or Vicodin. Abuse of those drugs can be a lethal problem, but the new consensus among pain doctors is that very high doses are appropriate in some chronic pain cases. The Drug Enforcement Administration apparently disagrees. The Hurwitz case shows that increasingly it is the D.E.A., not doctors, that decides what is appropriate therapy.

Last August the D.E.A. published policies to guide doctors in treating pain. The document said the amount or duration of pain medicine prescribed was a physician's decision and would not by itself spark a criminal investigation. Dr. Hurwitz's lawyers filed to introduce it as evidence. Mysteriously, it suddenly disappeared from the D.E.A. Web site. The agency then announced it contained "misstatements." In November, the agency published new guidelines that said doctors who prescribe high dosages of opioids for long stretches are subject to investigation.

Pain is already undertreated in America. Although pain experts estimate that perhaps one in 10 people who suffer from chronic pain could benefit from opioids, the vast majority will never find this out. Many doctors won't prescribe opioids, especially in high doses. Opioids are safe and nonaddictive if used correctly, but addictive and deadly if crushed and injected or snorted, which defeats their time-release mechanism.

Abuse of narcotics like OxyContin is a serious problem and has devastated many communities. But a huge amount of OxyContin on the street is stolen from pharmacies - 1.5 million tablets from 2001 to 2003, according to the D.E.A.

Diversion of prescriptions may account for only a small part of the abuse, but it has brought a sadly disproportionate response from authorities. For example, Richard Paey, who has used a wheelchair since a car accident in 1985 and also developed multiple sclerosis, is serving a 25-year prison sentence in Florida for fraudulently obtaining prescriptions for Percocet even though prosecutors acknowledged he consumed all the pills himself.

Dozens of doctors have been charged with drug trafficking because the D.E.A. felt they were prescribing too many pills. The Association of American Physicians and Surgeons warns doctors to think twice before treating pain. "Discuss the risks with your family," it says.

One California doctor who prescribed opioids, Frank Fisher, was charged with five counts of murder - including that of a patient who died as a passenger in a car accident. All charges were dropped. A doctor in Florida, James Graves, is serving 63 years for four counts of manslaughter involving overdoses by people who either abused their prescriptions or mixed their prescribed medicines with other drugs.

Dr. Hurwitz, a crusader for aggressive pain treatment, had a controversial practice. More than 90 percent of his patients were genuine, and many say he was the only doctor who quieted their chronic pain. But his willingness to treat patients other doctors shunned, including drug addicts, also attracted scammers. It is legal to prescribe to addicts who are in pain, and many respected pain doctors believe that in some cases, addiction is caused by untreated pain and ends when the pain is controlled.

Dr. Hurwitz, who was disciplined by medical boards several times, testified that he did dismiss 17 patients he concluded were abusing their prescriptions and was tapering down the dosage for others. But he also said he felt that cutting off patients was tantamount to torture, and he did not do so without strong evidence of bad behavior.

Many of Dr. Hurwitz's colleagues believe that he was far too slow to accept such evidence and that he should not have been practicing medicine. But while he was blind to his patients' deceptions, there has never been any evidence that he was part of their conspiracy. In the prosecutors' post-trial motions, they argue that the conviction should stand even if Dr. Hurwitz believed he was prescribing for a legitimate medical purpose.

His prosecution seems inexplicable except as a signal to other doctors that they can go to prison for life for being duped by their patients. That signal is being heard - the exodus from aggressive treatment of pain is increasing. This might marginally reduce the amount of opioids on the street, but in the process it will sentence hundreds of thousands of people to suffer needlessly.

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