

## **Why Is The DEA Hounding This Doctor [Richard Nelson]? The Feds are Cracking Down on Pain Specialists, and Doctors - and Their Patients - are Crying Foul**

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On a cold morning last April, in the shadow of Montana's Beartooth Mountain range, five agents from the federal Drug Enforcement Administration (DEA) walked into the office of Dr. Richard Nelson, a Billings neurologist. For six hours, they combed through his records, seizing 72 patient charts and confiscating his drug-dispensing permit. The charge? None so far, but the assumption is that he is suspected of improperly prescribing narcotic drugs. Despite a distinguished professional record spanning more than four decades, Nelson has had to spend \$20,000 on lawyers, fearing that the government will indict him if it turns out that one of his patients has misused his medicine. "My practice is sunk," says the 73-year-old physician, who specializes in chronic-pain treatment. "I can't even write a prescription for Tylenol 3 if someone has a migraine."

The DEA, for its part, says it was acting on tips from "several individuals in the community and pharmacies ... regarding suspicious prescriptions," according to a spokesman, who declined to elaborate.

It's a messy situation. No one is denying that federal and state officials, under pressure to combat a spike in pain-killer abuse, are waging an escalating war on drugs that is spilling into the waiting rooms of neighborhood doctors. Over the past six years, more than 5,600 physicians from Alaska to West Virginia have been investigated on suspicion of "drug diversion." Some doctors allegedly prescribed narcotics too freely, while others issued them to patients who turned out to be dealers or addicts. More than 450 doctors have been prosecuted on charges ranging from illegal prescribing and drug trafficking to manslaughter and murder.

But in the government's new crackdown, legitimate physicians and patients may be getting caught in the net. "Fifty million Americans are in severe pain from arthritis, back injuries, cancer and other disabilities," says Dr. Scott Fishman, president of the American Academy of Pain Medicine. "But the government is sending a message to avoid prescribing strong pain-killers."

Ultimately, it may be the patients who get hurt most, because a growing number of doctors, frightened of government scrutiny, are avoiding the use of powerful narcotics such as OxyContin, Vicodin, Percocet and Dilaudid. "It is impossible to be sure that a patient is not diverting any of his medication," says Dr. Thomas Stinson, a Medford,

Mass., anesthesiologist who is closing his 20-year practice to new pain patients. "I fear I might be targeted."

In the past year, hundreds of sufferers have contacted the Baltimore-based American Pain Foundation. "They've gone to every physician within hundreds of miles and can't get someone to prescribe to them," says executive director Will Rowe. In some cases, patients with high-dosage prescriptions are turned away by drug stores, which are also subject to DEA investigations. "It's demeaning," says Mary Vargas, a Maryland attorney whose spine was injured in an auto accident. "Pharmacists tell me they don't have the medication, only to recant and dispense it when I persist with the manager."

The pain wars escalated last April when Virginia internist Dr. William Hurwitz was sentenced to 25 years in federal prison after 16 former patients testified against him and a jury found that the death of another patient was caused by an overdose. Hurwitz's assets were seized, and now he is appealing his conviction with the help of the pain foundation and the Association of American Physicians and Surgeons. Hurwitz defenders acknowledge that he may have practiced overly aggressive medicine and allowed addicts to snooker him, but insist he never profited from drug sales and was not a criminal. "Maybe his license should have been suspended," says Dr. Russell Portenoy, chairman of the Department of Pain Medicine and Palliative Care at Manhattan's Beth Israel Medical Center. "But there was no evidence that his patients were not in pain."

That's not how DEA administrator Karen Tandy sees it. "Dr. Hurwitz was no different from a cocaine or heroin dealer peddling poison on the street corner," she told reporters after his sentencing. Prosecutors said Hurwitz prescribed "obscene" amounts of medicine to patients he knew were addicted to cocaine and other drugs. As for the DEA's other investigations and prosecutions, "We're not on a witch hunt," Tandy told TIME. "We are very careful in our investigations. More than 600,000 doctors are registered to prescribe controlled substances. There are a very small number of bad apples." Her agency, she says, has stepped up its investigations because of an "explosion" of illegal-prescription-drug abuse. "People are dying out there."

The use of opioids--medicine originally derived from poppies--dates back thousands of years. They were widely available in the U.S. until the public, alarmed by the growing number of addicts, called for strict anti-narcotics laws in the early 20th century. In the public mind, opioids such as morphine and laudanum, although they remained the most effective pain relievers, became associated with their illegal cousins--heroin and opium--and doctors often shied away from prescribing them.

But opioids made a comeback in the 1980s, after patient groups and physicians focused attention on the problem of under-treated pain. Research showed that addiction did not necessarily result from aggressive, well-managed opioid therapy. In the 1990s, as the specialty of pain management grew in hospitals and universities, opioid use spread from cancer and end-of-life patients to the chronic-pain victims of industrial accidents, car crashes and conditions such as migraines, diabetes and rheumatoid arthritis.

But as local internists began to prescribe stronger pain-killers for regular patients, some of those drugs--no one has reliable figures--began to flow into the black market, whether through pharmacy and warehouse theft, Internet sales or the scamming of legitimate doctors. When OxyContin, a time-release version of the opioid oxycodone, was introduced in 1995, drug addicts learned to grind up the pills to get a quick, intense high; in pockets of Appalachia, Maine and Ohio, OxyContin became the drug of choice. Meanwhile, celebrity abusers--including Rush Limbaugh and Courtney Love--sparked a flurry of publicity, leading politicians to push for a crackdown on what was being called an epidemic of prescription-drug abuse.

But the dimensions of that epidemic are in dispute--and from unexpected quarters. Last week a spokesman from the White House Office of National Drug Control Policy warned TIME that while prescription-drug abuse is a serious problem, and growing among teens, the numbers in a highly publicized study from Columbia University's National Center on Addiction and Substance Abuse are "not a reliable estimate." The survey describes a near doubling of prescription-drug abuse from 1992 to 2003, but because of changes in the way federal statistics were gathered in the past decade, no such claim can be made, the spokesman said. Last month the libertarian Cato Institute issued a report, Treating Doctors as Drug Dealers: The DEA's War on Prescription Painkillers, charging that the agency exaggerated reports of OxyContin deaths and overdoses. Nonsteroidal anti-inflammatory drugs (NSAIDs) like aspirin and ibuprofen, which can lead to intestinal bleeding, cause 35 times more deaths a year than OxyContin, the Cato report contended, and are far less effective.

The DEA's \$154 million drug-diversion campaign is also under attack by state officials. In a stinging 10-page critique issued last March, 32 state attorneys general, led by Oklahoma's Drew Edmondson, charged that the agency's proposed criteria for investigations would force severely ill patients to make frequent, unnecessary doctor visits, thus increasing both their hardship and their co-payments. "DEA is creating a climate that ... discourages good practice," they wrote. Tandy met with a delegation of attorneys general in April to reassure them that "the last thing DEA wants to do is to chill the legitimate prescription of pain medications," promising that new rules would balance medical and legal concerns. Meanwhile, 25 states are taking the initiative, mounting their own electronic systems in pharmacies to catch suspect patients.

As the national debate plays out, Nelson, the Montana neurologist, remains under investigation. He describes himself as a cautious prescriber. A graduate of Washington University School of Medicine in St. Louis, he also trained with the American Academy of Pain Medicine. He required that his patients sign a four-page, 21-item contract before getting any opioid treatment, pledging, for example, that they had never received a diagnosis of substance abuse or been involved in drug dealing, that they would not seek to replace lost medication or obtain early refills and that they would buy their drugs from only one designated pharmacy. Monthly checkups and extensive tests--including MRIs and electromyographic studies--were the norm, Nelson says. Over the years, he has dismissed more than 70 patients for not following his rules.

Since the DEA raid, many of Nelson's patients have been unable to find doctors. Few physicians are trained in the complexities of pain control, and fewer still want to risk government second-guessing. Some of Nelson's patients have suffered acute narcotic-withdrawal symptoms, as he was unable to wean them gradually. Others, unable to cope with their pain, lost their jobs. They have staged demonstrations and press conferences in downtown Billings and mounted petition drives. As one of the few Montana doctors offering opioid therapy, Nelson was "like the Mother Teresa of medicine," says Jeannie Huntley, a marketing consultant who suffered brain and neck injuries from a car crash.

No one knows yet if any of Nelson's patients may have overdosed or illegally sold their meds--and the DEA is keeping mum. But even if he is eventually absolved, the Montana native plans to close his practice. "We thought we were doing everything just about right," he says. "But now a whole bunch of people are sitting out there hurting like hell." -  
-With reporting by Pat Dawson/Billings

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