

WHEN PRESCRIBING
PSYCHOTROPIC DRUGS
BECOMES CRIMINAL
NEGLIGENCE:
CASES AND CONVICTIONS



A PUBLIC INTEREST REPORT AND RECOMMENDATIONS
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OVERVIEW

On January 22, 2008, acclaimed Australian actor, Heath Ledger, died from an accidental overdose of six types of prescribed painkillers and sedatives. Ellen Borakove, spokesperson for the New York Medical Examiner's office, said the cause of death was "acute intoxication by the combined effects of oxycodone, hydrocodone, diazepam [Valium], temazepam [Restoril], alprazolam [Xanax] and doxylamine.¹ Valium, Restoril and Xanax are benzodiazepines or tranquilizers/sedatives. The U.S. Drug Enforcement Administration (DEA) launched an investigation into how Mr. Ledger acquired the prescription drugs that killed him.

A year earlier, on February 5, Anna Nicole Smith died of an accidental drug overdose in Hollywood, Florida. She was taking 11 prescribed drugs, including the tranquilizers Valium, Ativan and Klonopin, the sedative Chloral Hydrate and the anticonvulsant Topomax. Smith's California psychiatrist, Khristine E. Eroshevich had prescribed the cocktail of drugs. The DEA is also investigating this death.

These are tragic examples of prominent figures—and more follow—but they draw attention to a common scenario: someone prescribed those drugs and are they culpable in any way for the deaths? Very often it is a psychiatrist that does the prescribing; he or she knows these drugs are addictive and potentially very harmful. The question is whether the prescribing methods are simply malpractice or criminally negligent.

In July 2007, Murrieta, California psychiatrist Joel Stanley Dreyer was arrested for unlawfully prescribing controlled substances in exchange for cash. The drug-dealing psychiatrist had been prescribing large amounts of addictive drugs such as Oxycontin, Vicodin and Xanax to seemingly young and healthy patients for \$100 per prescription, after meeting them at places such as parking lots and restaurants, where he would fill out the prescriptions.² The case is pending.

In Dreyer's case, he was *illegally* selling the drugs and arrested; however, accountability should exist even when a psychiatrist or doctor is *lawfully* prescribing psychiatric drugs in such quantities that it results in a patient's death. Death due to respiratory failure because of heavy sedation or a patient's accidental overdose of prescription drugs warrant criminal investigation and with evidence, appropriate criminal charges filed.

Since 2003, there have been more than 90 international drug regulatory agency warnings that psychiatric drugs can potentially cause life-threatening affects. This is now common knowledge. When a psychiatrist or other mental health practitioner has prescribed such drugs in disregard of the life and safety of his patient, it is a crime deserving of punishment.

LAWFUL & UNLAWFUL PRESCRIBING OF PSYCHOTROPIC DRUGS THAT RESULTED IN DEATH

The following are a small example of convictions for both lawful and unlawful prescribing of psychotropic drugs (sometimes in combination with painkillers) that resulted in death.

Note that while some involve general physicians prescribing sedative/hypnotics and other psychotropic drugs, often such doctors pick a “disorder” from the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM) to justify the prescription of the drug—and in the absence of any physical examination. Rather, they use the DSM—acknowledged by medical experts as unreliable because it is based on subjective opinion, not science—and, thereby no physical test can be conducted to substantiate any diagnosis. This makes it easy to use and get insurance reimbursement. Indeed, according to one veteran California health care fraud investigator, one of the simplest ways to detect fraud is to look for excessive prescribing rates among psychiatrists.

- **July 10, 2006:** Dr. Thomas Merrill of Florida was convicted of unlawful dispensing of controlled substances resulting in death and was sentenced to life in prison. He prescribed excessive and inappropriate amounts and combinations of controlled substances to abusers and drug addicts, and failed to monitor the use and/or abuse of the substances, resulting in the deaths of five patients. Between January 2000 and May of 2004, Dr. Merrill wrote prescriptions for controlled substances without conducting any physical examination and without determining a sufficient medical necessity for the prescription. The drugs included oxycodone (Oxycontin), alprazolam (Xanax), and diazepam (Valium).³
- **September 14, 2004:** Dr. Jesse Henry of New Mexico was convicted of seven counts of involuntary manslaughter in the deaths of three patients due to the quantities and combinations of drugs he prescribed them. An investigation by the State Medical Investigator found that the deaths of three of Dr. Henry’s patients were attributable to the quantities and combinations of methadone, hydrocodone (pain medication), Oxycontin, alprazolam (Xanax), and diazepam (Valium) prescribed by Henry. Henry was sentenced to five years supervised probation and ordered to pay a \$50,000 fine.⁴
- **March 31, 2003:** Florida psychiatrist George Kubski was jailed for 12 months for manslaughter in the death of a patient due to drug toxicity: he had prescribed more than 20,000 pills (Serax [oxazepam], an anti-anxiety drug; hydrocodone, a narcotic painkiller; and Ambien, a sleep aid) in three months to a patient, Jamie Lea Massey, for pain relief following two back surgeries. Kubski, 55, pleaded guilty to manslaughter by culpable negligence. Kubski’s defense for failure to properly and safely prescribe the drug was that he had brain damage and the onset of dementia. He also got 10 years probation during which he cannot practice medicine and was ordered to pay \$150,000 for a trust fund for the 11-year-old daughter of Massey.⁵

- **February 19, 2002:** Dr. James Graves of Florida was convicted of manslaughter for prescribing Oxycontin, Xanax, Soma (pain muscle relaxant) and other narcotics, that led to the overdose deaths of four patients. Assistant State Attorney Russ Edgar said the verdict is the first salvo in a battle to curb prescription drug abuse in Northwest Florida. "I thought if we succeeded in prosecuting this case, it would deter others and make our community safer," Edgar said. "It's a matter of public safety and public health." "He killed my son, and the jury confirmed that today," said Jane Daniels, whose son, Jeffrey Daniels, was a patient of Graves and fatally overdosed in November 1999. To convict Graves of manslaughter by culpable negligence, jurors were required to find that Graves should have reasonably known his prescriptions were "likely to cause death or great bodily injury." To be guilty of unlawful delivery of a controlled substance, the jury had to agree that Graves "acted outside the usual course of professional practice" and for "no legitimate medical purpose."⁶
- **June 13, 1997:** Ohio physician Charles L. Dunifer was sentenced to four to 15 years in prison for involuntary manslaughter in the 1994 death of a patient who overdosed on a combination of painkillers and sleeping pills (no specific names given in media) prescribed by Dunifer. The patient had come to Dunifer for pain due to a work-related back injury. Dunifer had been on a list of doctors who wrote many more prescriptions than most of their colleagues. Investigators became aware of him through routine pharmacy-board audits and through complaints dating back to 1990. Assistant County Prosecutor James Gutierrez said in court that Dunifer had been dealing drugs since 1990 and described him as "nothing but a drug dealer in a suit" and "one of the biggest drug dealers" in the county.⁷
- **January 6, 1981:** The Pennsylvania Superior Court upheld the sentence of Dr. James F. Youngkin, who was convicted of involuntary manslaughter in the death of a teenage girl to whom he had prescribed the hypnotic sedative drug Tuinal—a barbiturate, the strongest of psychotropic drugs. He was sentenced to one to three years in jail and fined \$5,000. The court in rejecting his later appeal ruled, "a defendant's acts need not be the direct cause of death for criminal responsibility to be imposed." The victim, Barbara Fedder, 17, collapsed at a party in July 1976 and died the following day. Cause of death was ruled asphyxiation because the drug depressed her gag reflex so when she vomited, the contents went into her lungs. Trial evidence showed Dr. Youngkin issued Ms. Fedder seven prescriptions for double strength Tuinal in a two-month period. A pharmacist testified he had questioned the prescription to Youngkin when Ms. Fedder came to the pharmacy in such a dazed state that she had to hold onto the cash register to stand up. Youngkin told the pharmacist to fill the prescription. This, the court said, indicated "a prescription practice that was decidedly reckless and dangerous and led, ultimately, to Ms. Fedder's demise."⁸

MEDICAL LICENSING BOARD

INVESTIGATIONS

Aside from criminal convictions, there have also been high profile medical licensing board investigations of misconduct associated with prescribing psychotropic drugs, with several investigations still ongoing.

- **November 8, 2007:** The California Medical Board publicly reprimanded Beverly Hills physician David A. Kipper for poor record keeping, bringing a nine-year Board investigation to an end. Kipper, who was well known in Hollywood circles for treating celebrities for addiction, originally came under State fire for operating unlicensed detoxification programs in hotel suites and on private estates. The Board accused Kipper in 2003 of gross negligence in the care of eight patients and threatened to revoke his license. Two weeks later, rocker Ozzy Osbourne blamed over-drugging by Kipper for his disoriented behavior on his reality TV show, "The Osbournes." "I was wiped out on pills," said Osbourne. "I couldn't talk. I couldn't walk. I could barely stand up.... It got to the point where I was scared to close my eyes at night—afraid I might not wake up." Osbourne filed his own complaint, accusing Kipper of putting him on a regimen of habit-forming drugs after charging tens of thousands of dollars for detoxification.⁹

- **February 5, 2007:** Anna Nicole Smith died of an accidental drug overdose in Hollywood, Florida. She was taking 11 prescribed drugs, including the tranquilizers Valium, Ativan and Klonopin, the sedative Chloral Hydrate and the anticonvulsant Topomax. Smith's California psychiatrist, Khristine E. Eroshevich had prescribed the cocktail of drugs and had accompanied Ms. Smith to Florida. Since April 2007, the California Medical Licensing Board has been investigating Dr. Eroshevich's practices. The Broward County medical examiner found 600 missing pills from the prescription bottles, none of which were more than five weeks old.¹⁰ On September 5, FOX News reported on its website that a Drug Enforcement Administration investigation is also ongoing. On September 10, 2006, Ms. Smith's son, Daniel, died of an accidental overdose of methadone and prescribed SSRI antidepressants Zoloft and Lexapro.¹¹ In September, Dr. Cyril Wecht, a forensic pathologist hired by her family, concluded that Daniel Smith died from methadone and the two antidepressants.¹²

- **July 6, 2000:** Eric Douglas, the son of Kirk Douglas and half-brother of Michael Douglas, died of "acute intoxication" from prescription tranquilizers and painkillers combined with alcohol.¹³ The coroner ruled it was an "accidental overdose." A *Los Angeles Times* article on his death noted, "Court and medical board records indicate that Douglas' final, fatal descent may have stemmed from treatment by a psychiatrist who has since had his license revoked by the Medical Board of California." In 2001, a lawsuit filed on behalf of Mr. Douglas against the psychiatrist, William O. Leader, who had treated him between 1997 and 1999, stated that Leader's near lethal doses of psychiatric drugs so incapacitated Mr. Douglas that he was unable to care for himself and nearly

died twice. According to the court documents, Leader also prescribed drugs over the phone without seeing Mr. Douglas. The lawsuit was settled out of court in May 2004.¹⁴

- **January 19, 1996:** Don Simpson, one of Hollywood's most successful producers was found dead of a massive drug overdose at his home. Police found 80 bottles of prescription drugs in the house, prescribed by psychiatrist Nomi Fredrick. An autopsy determined that a cocktail of cocaine and prescribed stimulants, antidepressants, sedatives and tranquilizers had caused heart failure and death.¹⁵ Agents from the California Medical Board, the California Board of Pharmacy and the Drug Enforcement Administration also found that an estimated 15,000 medications had been provided to Mr. Simpson by 15 doctors. For just 10 days of "treatment" Fredrick had billed Mr. Simpson \$38,600 in fees.¹⁶ The California Medical Board revoked Fredrick's license in September 2000 for gross negligence and repeated acts of negligence, noting that, "By far, the bulk of the trial of this matter concerned patient D.S., a very well known Hollywood producer, who died of a drug overdose.... Respondent (Fredrick) treated this patient.... Evidence...as well as testimony...presented clear and convincing proof that Respondent was incompetent in her treatment of D.S. and dishonest in her testimony, in her notes and in her dealings with other health care professionals regarding this patient." (She was reinstated in May 2005.)¹⁷

- **1994:** Three doctors—Dr. William F. Skinner, former director of the chemical dependency unit at St. John's Hospital and Health Center in Santa Monica; Dr. Michael Roth and Dr. Michael S. Gottlieb, an immunologist, were reprimanded by the California Medical Licensing Board for prescribing huge amounts of drugs to Elizabeth Taylor: more than 1,000 prescriptions in five years for 28 different drugs including Demerol, Percocet (painkillers), Valium and methadone. It was seen as a minor reprimand at the time.¹⁸

- **February 1988:** The California Board of Medical Quality charged Eugene Landy, a clinical psychologist and reputed "pioneer" in drug treatment, with ethical and license code violations. Landy voluntarily gave up his license to practice for two years. When he requested reinstatement in 1992, the Board opposed it.¹⁹ The Board found him guilty of gross negligence and administering drugs unlawfully. Landy had treated "Beach Boys" icon, Brian Wilson ("California Girls," "Good Vibrations" and "Surfin' USA") in 1976, quickly demanding "total therapeutic authority over the patient and the patient's environment."²⁰ He prescribed Mr. Wilson psychotropic drugs, including tranquilizers. In January 1983, Landy insisted on complete control of all aspects of Mr. Wilson's life—at a cost of nearly half a million dollars. A long time friend of Mr. Wilson reported Landy to the U.S. Attorney General. Unlike most stories of psychiatric drug abuse, with the support of family and friends, Brian Wilson beat the odds and returned to writing and recording.

- **1980-1995:** Elvis Presley was prescribed highly addictive barbiturates, sedatives, and painkillers leading to his accidental overdose death on August 16, 1977. His treating physician, Dr. George C. Nichopoulos wrote 196 medication orders for more than 10,000 pills and hundreds of injections for such painkillers as Demerol, Leritine, Percodan and Dilaudid, the amphetamines Dexedrine and Biphetamine and such barbiturates as Amytal, Tuinal, Quaalude and Placidyl. In summing up the findings of his tests on Mr. Presley's blood and tissue, Robert Cravey, chief toxicologist for the Orange County Sheriff's and Coroner's Department wrote: "In view of the lack of significant pathology to explain death, and considering the vast number of sedative-hypnotic and analgesic drugs found in concentrations ranging primarily from therapeutic to toxic, the combined effect of these drugs in combination must be considered. These findings would be consistent with coma and certainly could have proved fatal."²¹ In court, Nichopoulos admitted that the prescribed drugs were responsible for most of Mr. Presley's health problems, including his weight problems.²² On January 19, 1980, the Tennessee Board of Medical Examiners suspended Nichopoulos' medical license for *three months* for his prescribing methods.²³ In May the same year, Nichopoulos was indicted but later acquitted on 11 counts of criminally over-prescribing addictive drugs to rock star, Jerry Lee Lewis and others. Mr. Lewis was prescribed Dexamyl and Preludin, both amphetamine stimulants that Nichopoulos knew Mr. Lewis was addicted to at the time.²⁴ In 1995, Nichopoulos lost his license to practice when he was found guilty of gross medical malpractice and unethical conduct with 13 patients, including Jerry Lee Lewis.²⁵

SUMMARY & RECOMMENDATIONS

The practice of polypharmacy (multiple prescriptions for different drugs), especially when involving psychiatric drugs that are mind-altering and addictive or combined with painkillers that are also addictive is serious irregular medical practice. Even prescriptions of single psychiatric drugs can be so dangerous as to cause death and supervision of patients taking such drugs is even more imperative. Whether the victims of such prescribing are celebrities or not, the following should occur:

1. Each patient death resulting from an accidental overdose, asphyxiation or other psychotropic drug-related causes, should be investigated for criminal culpability.
2. Such an investigation should also include possible fraud: the psychiatrist picking a “disorder” from the *Diagnostic and Statistical Manual of Mental Disorders* to prescribe the drugs in order to obtain insurance reimbursement and to defraud government or private insurance companies.
3. Medical licensing boards investigating cases of medical negligence or misconduct involving prescription practices leading to the death of a patient should be required to report these to the police for criminal investigation.

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